

IN THE CLAIMS COMMISSION OF THE STATE OF TENNESSEE
MIDDLE DIVISION

FILED
TENNESSEE CLAIMS COMMISSION
CLERK'S OFFICE
2014 DEC 23 A 10:18

ANNETTE BILBREY,)
) Claim No. T20131033
 Claimant.)
v.)
)
STATE OF TENNESSEE)
) Regular Docket
 Defendant;)

FINAL JUDGMENT FOR CLAIMANT

This claim came on for a bench trial before Robert N. Hibbett, Commissioner and Trial Judge of the facts and law. The Claimant, Annette Bilbrey, seeks damages arising from an automobile accident with a Tennessee Department of Transportation (TDOT) truck. The TDOT truck pulled across her lane of traffic without warning which caused the accident. The claim was tried on November 6, 2014 in the Mount Juliet City Courtroom. Mr. William A. Cameron, Esq. appeared for Mrs. Bilbrey. Assistant Attorney General Dawn Jordan, Esq. represented the State of Tennessee. The Trial Transcript was filed on December 3, 2014.

The Claims Commission has jurisdiction of this matter under Tenn. Code Ann. § 9-8-307(a)(1)(A), relative to negligent operation of a motor vehicle.

STIPULATIONS

The parties have stipulated and agreed that the State is completely liable for the accident involving the State TDOT truck and the Claimant. The parties have further stipulated that the medical expenses of \$7,649.43 incurred by the Claimant from the accident were reasonable and necessary. The State would not stipulate to the expense incurred from her mammogram in the amount of \$657.00. The parties further stipulated that the Claimant incurred lost wages of \$1,282.56 because of the accident.

Pursuant to Tenn. Code Ann. § 9-8-403(i), the Tribunal makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

Testimony of Annette Bilbrey

Mrs. Bilbrey is a married fifty-five year old receptionist at the Bank of Putnam County. On January 24, 2013, she was on her way to work driving on Highway 111 and was following a TDOT salt truck that was in the right lane. She attempted to pass the TDOT truck in the left lane. Without warning, the TDOT truck made a U-turn across the Claimant's lane of traffic causing an accident.

After the wreck, her left arm was misshapen and hurt badly. Her chest, right arm, hand, right foot, left knee, and lower stomach were causing pain. She thought her car was on fire, but realized the smoke was from the airbags. She could not move her left arm so she used her right hand and unlocked her car door. The EMT helped her out of her vehicle. She had seatbelt bruising on her chest and waist. She was in unbelievable pain.

She was transported to Cookeville Regional Medical Center where she was treated by Dr. Greg Roberts. She underwent x-rays and other diagnostic testing to determine her condition. Her stomach was only bruised, and her left knee was not broken, just bruised. Her left hand was deformed and broken. Dr. Roberts manipulated her hand into the correct shape and placed it in a soft cast. It was not placed into a hard cast until three weeks had passed, due to swelling. She was discharged the same day from the hospital.

After she was discharged, she did not sleep the night of the wreck. She would constantly brace herself and hold her breath. Her lower stomach hurt and was covered with bruises. Her right breast looked horrible from bruising. Her right arm was covered with bruises. Her ribs and neck hurt. She did not sleep the following night. She would toss, turn, and then start crying. She had

muscle spasms in her left arm and her chest and lower stomach were hurting. She was unable to bathe herself or fix her hair.

On January 30, 2013, she had an appointment with Dr. Roberts. She had a knot on top of her right hand and he placed a splint on it. She continued to have flashbacks about the wreck and was still in much pain. The next day she still could not get any sleep because she could not get the wreck off her mind. On February 1, she still could not sleep. She went to have an MRI and continued to experience pain. The next day she slept better but was still in much pain; her right foot especially hurt.

The next several days she did not sleep well and was in pain. She could not determine whether the pain was better or worsening. At this point, her ribs were very painful. The sleeplessness and the pain continued until she went back to work on February 11, 2013. The bank made accommodations for her in that she only answered the phones and was the receptionist. Before the accident, it was her responsibility to unlock and lock the door in the morning and afternoon. Because of the injury to her wrist, she could not accomplish this task.

The first night she slept well was February 12. The next day Dr. Roberts placed a hard cast on her wrist and it was painful. She also experienced pain in

her ribs. On February 15, she had a bad night and her whole body hurt. On February 23, she bathed herself for the first time. However, pain continued for seven months after the accident until her ribs healed.

She went to Knoxville to have her yearly mammogram. She always makes an appointment a year in advance for planning purposes. She had knots and hematomas in her breast that she believed were from the accident.

Today, her left arm seems to be a little weaker than it was before. She is not able to pick up an iron skillet with that hand. She can no longer wear a watch on her left arm. She can no longer sleep on her stomach because she still has pain in her left elbow. She continues to have pain from her elbow down into the wrist and her left little finger. Currently, on a ten scale, she rates her pain in her left extremity as a two. The Tribunal accredits and believes the testimony of the Claimant.

Testimony of Jackie Bilbrey

Jackie Bilbrey has been married to the Claimant for thirty-five years. After the accident, he believed his wife was in constant pain. She could not be comfortable sitting or lying down. She cried and told him she was hurting badly. At first, he had to help her do everything including dressing, bathing and using the restroom. After they obtained another automobile, his wife did

not want to drive because she was afraid. He also had to cook, vacuum, do laundry, wash dishes, mop floors and dust the house.

Today, she can do everything she normally did except opening jars, lifting skillets and things of that nature. He now carries the groceries into the house for her. The Tribunal believes and accredits the testimony of the witness.

Testimony of Dr. Gregory J. Roberts, M.D., by deposition

Dr. Roberts is a board certified orthopedic surgeon. When the Claimant was presented to him at the emergency room on January 24, 2013, she had tenderness and deformity at her distal radius, which is at the left wrist. After x-rays and diagnostic films were taken, they revealed a displaced left distoradial fracture. Her hand was broken just behind the wrist joint in the radius, which is the main bone in the wrist. He treated the fracture by sedating the Claimant, numbed her fracture and pulled the bone back into position.

He found that her knee was bruised. Sometime later, she complained about her right wrist and he had an MRI performed. However, the right wrist was not fractured. Because of her pain and trouble breathing, he told her that she had a fractured rib. That was treated through pain control. He diagnosed

her with a cervical strain which can be a painful injury. He referred her to physical therapy.

He set her left wrist with a sugar-tong splint in the emergency room. Later he put her in a regular cast just up to the elbow. She made a fairly good recovery from her injuries. She continued to have some pain on the times he saw her after the accident.

On February 26, 2014, she complained of left elbow pain, a little wrist pain and some left fifth finger pain, which is the little finger. They discussed possible surgery to better align the place in her wrist where the fracture was, but he did not recommend it. He told her he could cut the bone, reposition it, and lengthen it back out. However, her pain was mild and he did not recommend it. She may need the surgery in the future, but he thinks that it will get better in time. Overall, she had an average result from the accident. She had a significant injury, but the fracture lined up well and she recovered well from it.

Dr. Roberts did not believe he ordered her examination at the Breast center. All of Dr. Roberts' opinions were given within a reasonable degree of medical certainty. The Tribunal finds that his expert testimony was extremely probative and aided the Tribunal in applying the facts to the law.

CONCLUSIONS OF LAW

The Claims Commission's jurisdiction over this action is set forth in Tenn. Code Ann. § 9-8-307(a)(1)(C), which states:

The commission or each commissioner sitting individually has exclusive jurisdiction to determine all monetary claims against the state based on the acts or omissions of "state employees," as defined in § 8-42-101(3), falling within one (1) or more of the following categories:

* * *

(A) The negligent operation or maintenance of any motor vehicle or any other land, air, or sea conveyance....

Because the State has admitted liability, the only issue before the Tribunal is the proper measure of damages.

I. Economic Damages

The past economic damages in this case are uncomplicated to ascertain. The parties have stipulated to the medical expenses of \$7,649.43 and the Tribunal so finds and approves of the amount. The State did not stipulate to the breast exam expense of \$657.00. The Claimant did not prove through her testimony and the testimony of Dr. Roberts that the exam was necessary for the treatment of her injuries. It was, in fact, a regularly scheduled exam. Therefore, this expense shall not be awarded.

The parties have stipulated to past lost wages of \$1,282.56. The Tribunal approves the amount. The Claimant has not requested future loss of earning capacity; therefore, the Tribunal shall not award damages for this category.

II. Non-Economic Damages

In deciding pain and suffering, permanent injury, and loss of enjoyment of life, the law prescribes no definite standard or method of calculation. *See 8 Tenn. Prac. Pattern Jury Instr. T.P.I. Civil 14.01 (2011)*. The Trier of fact shall use calm and reasonable judgment in fixing just and reasonable damages in light of the evidence. *Id.* The Court of Appeals in its all-encompassing opinion on compensatory damages, *Overstreet v. Shoney's, Inc.*, 4 S.W.3d 694 (Tenn. App. 1999), gives guidance as to the Trier of fact in the determination of non-economic damages.

It will be helpful at the outset to define each of the non-economic damages that the jury awarded – pain and suffering, permanent impairment and/or disfigurement, and loss of enjoyment of life – both past and future. Although conceptually they all can be encompassed within the general rubric of pain and suffering, each of these types of damages are separate and distinct losses to the victim. *Id.* at 715.

With this directive firmly in mind, the Tribunal will adjudicate each loss with a distinct amount.

In the matter of past physical pain and mental suffering in light of both the Claimant's, her husband's and Dr. Roberts' testimonies, the Tribunal awards \$20,000.00. In the matter of future pain and suffering in light of the mild pain in her elbow, wrist and finger, the Tribunal awards \$10,000.00.

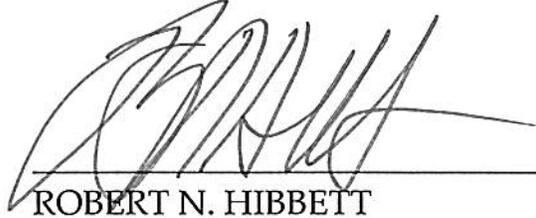
For past loss of capacity for enjoyment of life, \$5,000.00 is allowed to the Claimant. In determining future loss of capacity for the enjoyment of life, the Tribunal must consider the Claimant's inability to lift heavy objects. It appears that this will be her state for some time in the future although this may eventually resolve itself. For this, the Tribunal finds \$5,000.00 is reasonable compensation. Therefore, non-economic damages total \$40,000.00 with the grand total of compensatory damages being \$48,931.99.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED:

1. That the State of Tennessee, based on the stipulation, is found to be the sole legal and proximate cause of the incident involving the Claimant, Annette Bilbrey, and the cause for her injuries and damages.
2. That the Claimant, Annette Bilbrey, is awarded the sum \$48,931.99 in compensable damages.
3. That each party is responsible for their own discretionary costs.
4. That the court costs, if any, are taxed to the State of Tennessee.

5. This is a final judgment.

ENTERED this 22 day of December, 2014.

A handwritten signature in black ink, appearing to read 'R. Hibbett', is written over a horizontal line.

ROBERT N. HIBBETT

Claims Commissioner

Sitting as the Trial Court of Record

CERTIFICATE OF SERVICE

This is to certify that a true and exact copy of the foregoing document has been served upon the following parties of record:

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This 23rd of Dec., 2014.



PAULA SWANSON
Administrative Clerk
Tennessee Claims Commission