



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

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DATE	COMM	ACTION
2/24/17	SM	Fav/1 amendment
03/22/17	JU	Fav/CS
	CA	
	RC	

February 24, 2017

The Honorable Joe Negrón
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **CS/SB 300** – Judiciary Committee and Senator Victor Torres
HB 6509 – Civil Justice and Claims Subcommittee
Relief of Robert Allan Smith by Orange County

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED CLAIM IN THE AMOUNT OF \$2,813,536 AGAINST ORANGE COUNTY FOR INJURIES AND DAMAGES SUFFERED BY MR. SMITH WHEN THE MOTORCYCLE HE WAS DRIVING WAS STRUCK BY AN ORANGE COUNTY VEHICLE ON SEPTEMBER 7, 2006.

FINDINGS OF FACT:

This claim arises out of a motor vehicle crash involving a motorcycle and a county-owned van which occurred on September 7, 2006, in Orlando, Florida, at the intersection of DePauw Avenue and Orlando Street. The intersection has a stop sign posted for vehicles traveling on Orlando Street. There is no stop sign on DePauw Avenue, which is a residential cross-street. The speed limit on both streets is 25 miles per hour.

The Accident

The accident occurred at approximately 1:43 p.m. Mr. Smith was driving his motorcycle from his residence on DePauw Avenue northbound toward Orlando Street. While at the same time, an Orange County employee, Mr. Godden, was traveling westbound on Orlando Street toward DePauw Avenue. Upon approaching DePauw Avenue, Mr. Godden stopped at the stop sign and looked to the left and to the right on DePauw

Avenue. Mr. Smith testified that he visibly saw the van slow down as it approached the stop sign and, therefore, believed that it was safe to travel through the intersection. Mr. Godden proceeded from the stop sign into the intersection and the front of the van collided with the right side of the motorcycle.

At the time of the accident there were two properly parked vehicles on DePauw Avenue; these cars may have obstructed the view of Mr. Godden and Mr. Smith, and possibly caused Mr. Smith to travel down the center of the lane on DePauw Avenue.

The crash was witnessed primarily by one individual, Mr. Dean. Mr. Dean was outside in close proximity to the accident, but his sight of the impact was obstructed by a large tree. Mr. Dean testified that he had witnessed the motorcycle traveling northbound on DePauw Avenue and the van stopped on Orlando Street. Mr. Dean testified that he watched as the van proceeded straight into the intersection and witnessed Mr. Smith attempt to avoid the van by swerving into the left side of the road. While his vision was obstructed, Mr. Dean heard the sound of the impact.

The van hit Mr. Smith on the right side, causing his right leg to be partially torn from his body. On impact, Mr. Smith was not ejected from the motorcycle, but rather, remained on the motorcycle. The force of the impact shifted the motorcycle to the left, and the left peg of the motorcycle was damaged and the motorcycle continued forward until it made impact with a curb. Upon impact with the curb, Mr. Smith was ejected from the motorcycle and landed in the grass between the sidewalk and the curb.

Mr. Smith suffered extensive injuries including:

- A right leg above-the-knee amputation;
- A left leg dislocation and fracture;
- Lacerations on his face and right hand;
- A broken pelvis and sacrum; and
- Damage to his rectum and internal organs.

At the time of the accident, Mr. Smith was a motorcycle mechanic at Harley Davidson. Since the accident, Mr. Smith has received a bachelor's degree in computer design. He has been looking for employment, but has been unable to secure

a full-time position, in large part, due to his physical impairments as a result of the accident.

Traffic Citation

Mr. Godden was cited with a violation of s. 316.123(2), F.S., for failure to yield from a stop sign. A violation of which is a noncriminal infraction, punishable as a moving violation. The citation, however, was subsequently dismissed.

Civil Suit

The case was first tried in November of 2011, but a mistrial was declared because of issues relating to the jury. The case was retried in July of 2012, and the jury returned a verdict in favor of Mr. Smith for damages totaling \$4,814,785.37.

However, the jury found Mr. Smith to be comparatively negligent. Mr. Smith was found to be 33 percent at fault and Mr. Godden to be 67 percent at fault for the accident, so the damages were reduced accordingly. The verdict amount was also reduced due to collateral sources, which left a net verdict of \$2,913,536.09.

Section 768.28, F.S., limits the amount of damages that can be collected from a local government as a result of its negligence or the negligence of its employees. Funds in excess of this limit may only be paid upon approval of a claim bill by the Legislature. Thus, Mr. Smith will not receive the full amount of the judgement unless the Legislature approves this claim bill authorizing the additional payment.

CLAIMANT'S ARGUMENTS: Mr. Smith argues that Orange County is liable for the negligence of its employee, Mr. Godden, when he failed to yield at a stop sign in violation of s. 316.123(2), F.S.

RESPONDENT'S ARGUMENTS: Orange County argues that Mr. Smith was driving his motorcycle at speeds in excess of the posted speed limit. Therefore, Orange County argues that the claim bill should be denied because Mr. Smith's comparative fault for the accident was greater than Mr. Godden's.

CONCLUSIONS OF LAW: The claim bill hearing was a *de novo* proceeding to determine whether Orange County is liable in negligence for damages suffered by the Claimant, and, if so, whether the amount of the claim is reasonable. This report is based on evidence

presented to the Special Master prior to, during, and after the hearing.

In a negligence action, a plaintiff bears the burden of proof to establish the four elements of negligence: duty, breach, causation, and damages. *Charron v. Birge*, 37 So. 3d 292, 296 (Fla. 5th DCA 2010).

Mr. Godden, as an operator of a motor vehicle, had a reasonable duty of care to operate his vehicle at all times with proper care. A motorist's duty to use reasonable care includes a responsibility to enter intersections only upon a determination that it is safe to do so under the prevailing conditions. *Williams v. Davis*, 974 So. 2d 1052, 63 (Fla. 2007).

Section 316.23, F.S. requires drivers after having stopped at a stop sign to yield the right-of-way to any vehicle which is approaching so closely as to constitute an immediate hazard during the time when the driver is moving across or within the intersection. While a violation of a statute governing motor vehicles does not constitute negligence per se, it does constitute prima facie evidence of negligence. *Gudath v. Culp Lumber Co.*, 81 So. 2d 742, 53 (Fla. 1955).

Where a statute governing motor vehicles prohibits specific conduct that likely to cause harm to others and the same conduct is alleged in a civil action as negligent conduct causing injury to another, the statute becomes a minimum standard of care as to that conduct, and a violation of such constitutes some evidence of negligence. *Estate of Wallace v. Fisher*, 567 So. 2d 505 (Fla. 5th DCA 1990).

Mr. Godden was acting within the course and scope of his employment with Orange County at the time of the accident. Orange County, as the employer of Mr. Godden, is liable for his negligent actions. See *Mercury Motors Express v. Smith*, 393 So. 2d 545, 549 (Fla. 1981).

Based on a preponderance of the evidence, it is established that Mr. Godden breached his duty to exercise reasonable care by failing to yield the right-of-way after having stopped at the stop sign in violation of s. 316.123(2), F.S. Mr. Godden by accelerating into the intersection before making sure it was safe to proceed breached his duty of care.

Mr. Smith's extensive injuries, including the loss of his right leg, were a natural and direct consequence of Mr. Godden's negligence. See *Railway Exp. Agency v. Brabham*, 62 So. 2d 713 (Fla. 1952). The accident would not have occurred but for Mr. Godden's negligence.

As a result of Mr. Godden's negligence, Mr. Smith suffered bodily injury and resulting pain and suffering, impairment, disability, mental anguish, and loss of earnings.

Collateral Sources

Under s. 768.76, F.S., damages owed by a tortfeasor can be reduced by the amount of collateral sources which have been paid to compensate the claimant. In this case, the jury's award was reduced by \$55,638 due to past Social Security Disability Income benefits and by \$325,865.58 due to amounts received by the Florida Department of Education, Medicaid, and the Veteran's Administration.

Comparative Negligence

Section 768.81, F.S., Florida's comparative negligence statute, applies to this case because both Mr. Godden and Mr. Smith were at fault in the accident.

Mr. Godden's Negligence

A stop sign that is established and maintained by lawful authority at an intersection of a street represents a proclamation of danger and imposes upon the motorist the duty to stop and look before proceeding into the intersection. *Tooley v. Marquillies*, 79 So. 2d 421, 22 (Fla. 1955).

The proximate cause of the accident was Mr. Godden's negligence in proceeding into the intersection in front of Mr. Smith's approaching motorcycle at such a time where it may have been impossible for Mr. Smith to avoid the collision.

Mr. Smith's Negligence

Mr. Smith as an operator of a motor vehicle also has the duty to exercise reasonable care. Such duty includes a responsibility to enter intersections only upon a determination that it is safe to do so under the prevailing conditions. *Williams v. Davis*, 974 So. 2d 1052, 63 (Fla. 2007).

The verdict amount after the reduction of collateral sources and the reduction of \$84,720 in future medical expenses which was agreed to by the parties is \$4,348,561.79. This adjusted verdict amount was further reduced due to the jury's assessment of comparative negligence against Mr. Smith. The jury in the civil suit found Mr. Godden 67 percent at fault and Mr. Smith 33 percent at fault. Therefore, the net verdict is \$2,913,536.09.

Orange County has paid the \$100,000 statutory cap on liability. Mr. Smith requests that the remaining sum of \$2,813,536.09 be approved in this claim bill.

After consideration of all the facts presented in this case, I conclude that the amount of this claim bill is appropriate.

LEGISLATIVE HISTORY:

This is the first claim bill presented to the Senate on this matter.

ATTORNEY FEES:

Mr. Smith's attorney has agreed to limit his fees to 25 percent of any amount awarded by the Legislature in compliance with s. 768.28(8), F.S. The bill provides that the total amount paid for lobbying fees, costs, and other similar expenses relating to the claim are included in the 25 percent limit.

OTHER FEES:

The bill essentially requires that expenses for lobbying fees, costs, and similar expenses be deducted from the funds that may be used to pay attorney fees. However, a recent opinion of the Florida Supreme Court limits the authority of the Legislature to restrict fees beyond the restrictions in s. 768.28, F.S.¹ As such, the bill should be amended to remove these fee limits in conformity with the Court's opinion.

FISCAL IMPACT:

Orange County at the time of the accident maintained a self-insured retention in the amount of \$1,000,000 with a \$10,000,000 excess liability policy. Orange County has stated that if the county is required to pay out any amount of this claim bill, there will be adverse impacts to the county's financial position as the funds would come from charge backs to various departments and, thereby, restrict each department's ability to provide services and conduct programs.

¹ *Searcy, Denney, Scarola, Barnhart & Shipley v. State*, 2017 Fla. LEXIS 234 (Fla. 2017).

RECOMMENDATIONS:

For the reasons set forth above, the undersigned recommends that Senate Bill 300 (2017) be reported FAVORABLY, AS AMENDED.

Respectfully submitted,

Ashley Istler
Senate Special Master

cc: Secretary of the Senate

CS by Judiciary:

The committee substitute provides for the payment of outstanding Medicaid liens, makes a minor change to the facts stated in the whereas clauses of the bill, and does not include limits on the amount of lobbying fees, costs, and similar expenses which may be paid from the proceeds of the bill.