

NORTH CAROLINA INDUSTRIAL COMMISSION

I.C. No. TA-25966, CHRISTOPHER KEY, Plaintiff v. GUILFORD COUNTY BOARD OF EDUCATION, Defendant.

DECISION AND ORDER, by J. BRAD DONOVAN, Deputy Commissioner.

Filed: 8/31/18

This matter was heard before the undersigned on 5 April 2018, in Durham, North Carolina. Upon receipt of the parties' written contentions, the record in this matter was duly ordered closed on 21 June 2018.

APPEARANCES

Plaintiff: James M. Roane, III, Attorney, Greensboro, North Carolina, Counsel of Record.

Defendant: The Honorable Josh Stein, Attorney General, Department of Justice, Raleigh, North Carolina; Special Deputy Attorney General, Christina Hayes, Counsel of Record.

* * * * *

The undersigned finds as fact and concludes as matters of law the following, which were entered into by the parties as:

STIPULATIONS

1. The North Carolina Industrial Commission has subject matter jurisdiction over the plaintiffs' claims against the defendant, pursuant to N.C. Gen. Statute § 143-291, *et seq.*

ISSUES

1. Whether plaintiff was injured as a result of the agent of defendant?
2. If so, whether plaintiff's claim is barred due to his own contributory negligence?

* * * * *

The following documents were proffered as evidence and admitted into the record as:

EXHIBITS

STIPULATED EXHIBITS

1. Stipulated Exhibit #1: Pre-trial Agreement
2. Stipulated Exhibit #2: Trial Notebook with crash report, bill summary, medical bills, W-2s, medical records, Dr. Stern deposition, Dr. Handy deposition, Agretta Scott deposition excerpt, vehicle photos

PLAINTIFFS' EXHIBITS

1. Plaintiff's Exhibit #1: Dr. Stern deposition
2. Plaintiff's Exhibit #2: Dr. Handy deposition

DEFENDANT'S EXHIBITS

1. Defendant's Exhibit #1: Scott deposition
2. Defendant's Exhibit #2: Accident report

* * * * *

The competent evidence of record engenders the following:

FINDINGS OF FACT

1. On 15 October 2015, at approximately 6:33 a.m., plaintiff was driving his motorcycle in a southerly direction on NC 61, approaching Crescent Rd. (SR 3062) near Greensboro, North Carolina.
2. At that same time, Agretta Locklair Scott, a school bus driver for defendant, was driving a school bus in a northerly direction on NC 61, also approaching Crescent Rd. in the lane of travel approaching plaintiff. The area the parties were traveling is a straightaway. There were

no trees, signs, vehicles or anything else in front of her to block Ms. Scott's view. The speed limit is 50 mph in both directions.

3. As the school bus approached Crescent Rd., Ms. Scott began to slow the bus in preparation to make a left turn across traffic and onto Crescent Rd. After checking for oncoming traffic but failing to see plaintiff on his motorcycle, Ms. Scott began to execute the left turn onto Crescent Rd.

4. As Ms. Scott pulled out in front of plaintiff, he was unable to stop and impacted the bus. The accident report prepared by the Highway Patrol indicates plaintiff was travelling at 50 mph per hour in accordance with the speed limit, and Ms. Scott was found to be at fault and charged with failure to yield.

5. In the Accident Report prepared by defendant's investigator, Daisy Williams, and filed with the Office of the Attorney General, plaintiff's estimated speed at the time of the accident was 35 mph, following his attempt to break in front of the bus. Skid marks showed plaintiff began to break approximately 80 feet prior to impact. Again, the report indicated Ms. Scott failed to see plaintiff approaching prior to her beginning her turn and was the cause of the collision.

6. Based on the greater weight of the evidence, the undersigned finds as fact that plaintiff was not in any manner responsible for the accident, which was entirely due to the negligent failure of Ms. Scott to properly ensure a clear path of travel prior to executing her left hand turn across the highway. In doing so, Ms. Scott breached a duty owed to plaintiff as the motorist with the right of way.

7. As a result of the collision, plaintiff incurred a concussion, epidural hematoma, C5-6 transverse process fractures, right first rib fracture, right scapular fracture, right acetabular fracture and a large open laceration to the right knee. Plaintiff underwent multiple surgeries including an open reduction internal fixation procedure of the right posterior wall acetabular fracture, open treatment of dislocation with capsular repair, irrigation and debridement of his right knee with removal of foreign material and closure of the wound. Plaintiff received follow up treatment with Orthopedic Trauma Specialists for his acetabular fracture, knee injury and development of significant atrophy to the right shoulder from a complete brachial plexus denervation and a drop foot.

8. Plaintiff underwent months of physical therapy and still cannot use his right arm or walk properly. Plaintiff was taken out of work for approximately seven months following the wreck, and he was forced to give up a promotion as a result of his inability to complete necessary job requirements.

9. Stipulated medical records indicate plaintiff will more than likely require a complete hip replacement. Further, Dr. Handy opined that plaintiff will suffer an increased risk of arthritis in his hip. Plaintiff will be required to wear an ankle-foot orthosis for the remainder of his life to assist with his drop foot condition.

10. As a result of the complete tearing and denervation of the brachial plexus, plaintiff is unable to use his dominant, right arm. An EMG showed an upper trunk plexopathy, which Dr. Handy described as affecting “basically the upper, middle, and lower trunk of the brachial plexus... he had no function from the upper trunk, which is oftentimes- is the result of an avulsion or a complete disruption of that part of the brachial plexus.” He noted plaintiff’s

nerves were completely severed, “the musculocutaneous, axillary, radial and median nerves as well as absent lateral antebrachial cutaneous sensory response. So those are basically the parts of the nerves that were damaged. And that’s a pretty extensive injury.” Physical examination revealed “atrophy and profound weakness in supraspinatus and deltoid and also his biceps.” Despite multiple therapies, plaintiff’s nerves did not regenerate at all. A repeat EMG was performed more than six months later that showed “no significant change. So, basically no improvement in function.”

11. Stipulated records indicate plaintiff incurred medical bills of \$97,974.00.

12. The year before the date of injury, plaintiff made \$99,560 as an airplane mechanic. Plaintiff did not work the rest of 2015 following the accident, resulting in a loss from the previous year of \$15,679. In 2016, plaintiff was able to work some and used sick time and holiday pay to make \$55,387, resulting in a loss of \$44,173. In 2017, plaintiff was able to return to work full-time as an inspector instead of a mechanic and made \$93,343 resulting in a loss of \$6,217. The total lost wages from this wreck is \$66,069.

* * * * *

Based upon the foregoing Findings of Fact, the undersigned hereby enters the following:

CONCLUSIONS OF LAW

1. Under North Carolina law, to recover on a civil claim for negligence, a claimant must prove (1) the existence of a duty to him; (2) a breach of that duty by the defendant (the named employees thereof in a tort claim); (3) injury sustained; and (4) as a proximate result of the breach of duty. *Pulley v. Rex Hosp.*, 326 N.C. 701, 392 S.E.2d 380 (1990). “[U]nder the Tort Claims Act: ‘the burden of proof as to negligence is on the plaintiff.’” *Drewry v. N.C.*

Dep't of Transp., 168 N.C. App. 332, 337, 607 S.E.2d 342, 346 (2005), *review denied*, 359 N.C. 410, 612 S.E.2d 318 (2005) (quoting *Bailey v. N.C. Dep't of Mental Health*, 2 N.C. App. 645, 651, 163 S.E.2d 652 (1968)). “[T]he plaintiff must affirmatively, and by the greater weight of the evidence, prove that the defendant was negligent and that it proximately caused him injury.” *Miller v. Henry*, 270 N.C. 97, 99, 153 S.E.2d 798, 800 (1967).

2. On 15 October 2015, defendant’s school bus driver owed a duty to plaintiff to operate the school bus in a reasonably safe manner. N.C. Gen. Stat. §143-291, *et seq.*; *Pulley v. Rex Hospital*, 326 N.C. 701, 392 S.E.2d 380 (1990).

5. In the instant case, all investigative records indicate plaintiff was lawfully operating his motorcycle and the time of the accident and place the responsibility for the collision on the negligent operation of the school bus by Ms. Scott. Therefore, the undersigned concludes as a matter of law that Ms. Scott breached the duty owed to plaintiff.

6. There is no evidence to show that plaintiff was in any manner contributorily negligent. All investigative records indicate plaintiff was travelling within the speed limit and in a safe manner. The mere fact that plaintiff was unable to successfully brake in time to avoid the collision does not provide a sufficient basis upon which to conclude he was contributorily negligent in the collision of 15 October 2015.

7. The negligent operation of defendant’s school bus on 15 October 2015, was the proximate cause of plaintiff’s motorcycle collision and of plaintiff’s related personal injuries. N.C. Gen. Stat. §143-291, *et seq.*; *Pulley v. Rex Hospital*, *supra*, 326 N.C. at 701, 392 S.E.2d at 380. The record contains stipulated medical records documenting the extensive medical

treatment plaintiff was required to receive as a result of the injuries sustained in the accident at a cost of \$97,974.00.

8. Pain and suffering, both physical and mental, are compensable injuries under North Carolina law. *Bullock v. Newman*, 93 N.C. App. 545, 549, 378 S.E.2d 562, 564 (1989). One injured by another’s negligence is entitled to “a reasonable satisfaction . . . for loss of those bodily and mental powers, or for actual suffering, both of the mind and the body, which are the immediate and necessary consequences of the injury.” *Id.* at 549, 378 S.E.2d at 564 (*quoting Ledford v. Lumber Company*, 183 N.C. 614, 616, 112 S.E. 421, 423 (1922)).

9. Combining plaintiff’s medical costs of \$97,974.00. and lost wages in the amount of \$66,069.00, totals \$164,043.00 in actual damages incurred as a result of defendant’s negligence. The undersigned concludes as a matter of law that plaintiff is entitled to an award for projected future medical costs in the amount of \$50,000.00. Further, the undersigned concludes as a matter of law that plaintiff is entitled to an award for pain and suffering incurred as a result of defendant’s negligence in the amount of \$400,000.00. Accordingly, plaintiff is entitled to be compensated in the total amount of \$614,043.00 for damages incurred in this matter.

* * * * *

Based upon the forgoing Findings of Fact and Conclusions of Law, it is therefore:

ORDERED

1. Defendant shall pay the sum of \$614,043.00 to plaintiff in damages resulting from the negligent acts of its employee on 15 October 2015.

2. Defendant shall pay hearing costs in the amount of \$120.00 to the Commission upon receipt of this Order.

IT IS FURTHER ORDERED that this case be REMOVED from the Durham docket.

This the 31st day of August 2018.



J. BRAD DONOVAN
DEPUTY COMMISSIONER

NORTH CAROLINA INDUSTRIAL COMMISSION
DOBBS BUILDING
430 NORTH SALISBURY STREET
RALEIGH, NORTH CAROLINA 27611

N.C. Gen. Stat. § 143-292 TORT CLAIMS

ATTACHED HERETO IS A COPY OF THE DECISION AND ORDER IN YOUR CASE PREVIOUSLY HEARD BY THE COMMISSION. THE LAW (G.S. § 143-292) ALLOWS ANY PARTY FIFTEEN (15) DAYS FROM THE DATE OF RECEIPT OF THIS OPINION AND AWARD WITHIN WHICH TO APPEAL IN WRITING FOR REVIEW IN RALEIGH, NORTH CAROLINA, BY THE FULL COMMISSION.

THE NOTICE OF APPEAL IS TO BE FILED WITH THE COMMISSION VIA ELECTRONIC DOCUMENT FILING PORTAL PURSUANT TO 04 NCAC 10A .0108.

PARTIES WHO DO NOT HAVE LEGAL REPRESENTATION MAY MAIL THE NOTICE TO THE ATTENTION OF THE CLERK'S OFFICE, NORTH CAROLINA INDUSTRIAL COMMISSION 1240 MAIL SERVICE CENTER, RALEIGH, NORTH CAROLINA 27699-1240.

SHOULD AN APPEAL NOT BE FILED WITH THE COMMISSION WITHIN THE TIME PRESCRIBED BY LAW, THE ATTACHED OPINION AND AWARD SHALL BE FINAL AND BINDING.

THE ABOVE NOTICE ALSO APPLIES TO A DECISION AND ORDER OR ORDER OF DISMISSAL WITH PREJUDICE.

**NORTH CAROLINA INDUSTRIAL COMMISSION
Deputy Commissioner Section
Certificate of Service**

Date: 31 August 2018

I.C. No. TA-25966, CHRISTOPHER KEY, Plaintiff v. GUILFORD COUNTY BOARD OF EDUCATION, Defendant.

THIS IS TO CERTIFY that on the date above a copy of the attached document was sent to the following parties and persons in the manner specified below. When sent by mail, the document was sent by certified mail, return receipt requested, to the specified address. When sent by email, the document was sent to the specified email address.

Plaintiff:

'jamesroane@roane-law.com; chayes @ncdoj.gov

Certified by:

Thim Campbell