

Blair v Coleman

2018 NY Slip Op 34455(U)

March 23, 2018

Supreme Court, Queens County

Docket Number: Index No. 701416/2015

Judge: Leslie J. Purificacion

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NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE LESLIE J. PURIFICACION IA Part 39

Justice

-----X

JAMES BLAIR,

Plaintiff,

Index

Number 701416/2015

- against-

Motion Seq. No. 5

DEONA COLEMAN, NEW YORK CITY
TRANSIT AUTHORITY and MTA BUS
COMPANY,

Defendants.

-----X

FILED

APR -2 2018

COUNTY CLERK
QUEENS COUNTY

The following papers numbered 1 to 8, read on this motion by defendant pursuant to CPLR 4404(a) and CPLR 5501 to, inter alia, set aside a jury verdict and directing judgment in favor of defendant.

	<u>Papers Numbered</u>
N.M. - Affidavit - Exhibits - Service	1-4
Opp. - Affidavit -- Service	5-6
Reply - Service	7-8

Upon the foregoing papers it is ordered that the motion is determined as follows:

On this application, defendants move for an order pursuant to CPLR 4404(a) and CPLR 5501 to set aside the verdict and directing judgment be entered in favor of defendants, or in the alternative, directing a new trial on the ground (1) the jury verdict was against the weight of the credible evidence, (2) that the jury's finding that plaintiff's negligence was not a substantial factor is inconsistent and against the weight of the credible evidence; (3) that the court's charge and limiting the testimony of defendant's liability expert were improper; (4) that the court improperly declined to charge NYC Department of Transportation Traffic Rules 4-03(a)(1-4). Defendants also assert that the jury's award for past and future pain and suffering was excessive.

On the issue of liability, the jury voted unanimously that defendants Deona Coleman and New York City Transit Authority were negligent and that their negligence was a substantial factor in causing the accident. The jury also rendered an unanimous verdict that plaintiff James Blair was negligent and a 5 to 1 verdict that his negligence was not a

substantial factor in causing the accident. On the issue of damages, the jury rendered an unanimous verdict awarding plaintiff \$300,000.00 for "past" pain and suffering and \$840,000.00 for future pain and suffering.

The jury was presented with a relatively uncomplicated set of alleged facts. The accident at issue involved defendants' left-turning vehicle at an intersection controlled by traffic signals and plaintiff's vehicle traveling straight through the intersection. The jury heard the testimony of the bus driver Deona Coleman and that of plaintiff. The jury also heard the testimony of another bus driver who was traveling behind Coleman and on behalf of defendants the testimony of an accident reconstruction expert. The jury also viewed black and white video footage taken from the defendants' bus, which purportedly showed the status of the traffic lights at the time of the accident.

It is well-settled that a jury verdict should not be set aside as against the weight of the evidence unless the jury could not have reached its verdict on any fair interpretation of the credible evidence (see Obey v City of New York, 29 NY3d 958; Killon v Parrotta, 28NY3d 101). "Furthermore, in reviewing the record to ascertain whether the verdict was a fair reflection of the evidence, great deference is accorded to the fact-finding function of the jury, as it is in the foremost position to assess the witnesses' credibility" (McDonagh v. Victoria's Secret, Inc., 9 AD3d 395, 396).

LIABILITY

The jury heard the testimony of defendant driver Coleman, who testified that she proceeded to make the left turn on a green left turning arrow signal. The jury also heard her testimony that she did not see the plaintiff's vehicle at any time prior to the impact. The jury also had an opportunity to view the video footage that purportedly supported her testimony that she proceeded on a green arrow. The jury also heard the testimony of defendants' witness Eric Champion, another bus driver, who testified that he did not witness the accident, but at a deposition testified that he saw the impact. As well, the jury heard defendants' expert witness, who was permitted to give his opinion with respect to the speed of plaintiff's vehicle leading up to the accident. The jury heard plaintiff's testimony that he had a green light when he proceeded into the intersection and he attempted to stop his vehicle when he saw the bus turning into the intersection.

Defendants contend the court improperly precluded the testimony of its "liability expert" who would have testified that the traffic signals were operating properly, and that if Coleman had a green arrow to proceed, then plaintiff must have had a red stop signal. Defendants assert that the expert should have been permitted to "clarify the correct objective interpretation of the bus video...and the inferences that were to be readily drawn from this demonstrative evidence." Defendants assert that the "jury would have had to find that the traffic light was operating improperly and that both Mr. Blair and Ms. Coleman had a green light therefore, there would be no substantial factor for either or that both were a substantial factor and negligent."

Contrary to defendants' assertion, the jury could have found that Coleman did not have a green arrow to proceed, but that plaintiff had a green light. The jury heard the testimony of the witnesses on this issue and, during deliberations, requested to view the video footage again. The jury was instructed that a green arrow is an invitation to proceed, and that the driver who has a green light or arrow has the right to assume that the light is red for cross-traffic and that the other driver will stop for the red light. The issue of who had the green light was apparently a central issue of debate in the jury room and, apparently, after assessing the testimony on this point and viewing the video footage again, the jury determined Coleman was 100% at fault for causing the accident. With respect to the proffered expert testimony, the defendants failed to convince the court that the expert's opinion regarding the color of the traffic lights was necessary to assist the jury in assessing the evidence or that the jury required the expert's assistance regarding any "readily drawn" inferences from the demonstrative evidence.

Defendants further assert that a new trial is warranted because the court failed to charge Sections 4-03(a)(1)(2)(3)(4) of the NYC Traffic Rules and Regulations under Pattern Jury Instruction 2:26 as requested. The court notes that PJI 2:26 applies to violations of the New York State Vehicle and Traffic Law, and that such violations constitute negligence *per se*. The proper request would have been to request charging the NYC Traffic Rules and Regulation under Pattern Jury Instruction 2:29, violation of which constitutes *some evidence of negligence*. In any event, the state statute and city rule and regulation are consistent with respect to the meaning of the exhibited color and a driver's obligation thereunder.

Based upon the testimony and exhibits, the court cannot conclude that the jury's liability verdict was not supported by a fair interpretation of the credible evidence. The jury could have reasonably concluded that Coleman proceeded to make a turn without ascertaining it was safe to do so and/or that the video footage did not support defendants' contention that the turn signal was in Coleman's favor. In addition, although the jury could have accepted the expert's opinion that plaintiff was driving in excess of the speed limit, the jury could also have believed that plaintiff had a green light. Moreover, they could have reasonably concluded from the testimony that although plaintiff was driving 7 miles per hour over the speed limit that was not a proximate cause of the accident.

DAMAGES

On the issue of damages, on behalf of plaintiff the jury heard the testimony of plaintiff and that of Phillip Rafiy, M.D., an orthopedic surgeon. On behalf of defendants, the jury heard the testimony of Naunihall S. Singh, M.D., a neurologist and Joseph Stubel, M.D., an orthopedic surgeon.

Defendants assert that "the award rendered by the jury on damages specifically as to future damages is excessive." Defendants assert that the jury award should be reduced or a new trial on damages should be granted.

In this case, the evidence established that plaintiff sustained a "Lisfranc" fracture of his right foot requiring surgery. The plaintiff described his rehabilitation efforts and how the injury has affected him since the accident and its continuing effect. In addition, the jury heard that plaintiff also sustained a fractured sternum, clavicle and rib.

"It is well settled that the amount of damages to be awarded for personal injuries is primarily a question of fact for the jury" (Schare v Welsbach Electric Corporation, 138 AD2d 477). On this record, the court does not conclude that the jury award was not supported by the credible medical evidence and plaintiff's testimony.

The motion is denied.

This is the decision and order of the court.



Hon. Leslie J. Purificacion, J.S.C.

Dated: March 23, 2018

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