

NEW YORK

QUEENS COUNTY

MOTOR VEHICLE

Pedestrian — Motor Vehicle — Left Turn

Verdict Defense

Case Phyllis Approo v. Ellis S. Maitland and Elizabeth Seemungal, No. 4857/2012

Court Queens Civil

Judge Maureen A. Healy

Date 10/7/2016

Plaintiff

Attorney(s)

Michael Butler, Shaevitz, Shaevitz & Kotzamanis, Jamaica, NY

Defense

Attorney(s)

John R Ferretti Sr., Nicolini, Paradise, Ferretti & Sabella, PLLC, Mineola, NY

Facts & Allegations

On September 15, 2011, plaintiff Phyllis Approo, 59 and unemployed, claimed she was struck by a motor vehicle while she was crossing the street. Approo claimed injuries of the spine, knee and shoulder.

Approo sued the Ellis Maitland, the owner of the motor vehicle, and Elizabeth Seemungal, the driver of the motor vehicle, for negligence in the operation of the automobile.

Approo claimed that she was walking from the east corner to the west corner of the intersection of 115th Street and Liberty Avenue, located in the South Richmond Hill section of Queens, when she was struck by a motor vehicle which was travelling east on Liberty Avenue and half-way through navigating a left turn onto 115th Street. Plaintiff, who was walking in the marked crosswalk, claimed that she was struck on the left side of her body with the front bumper on the driver's side of the defendant's pickup truck. She claimed that she was propelled to the ground and that her clothing was torn. Defendant claimed that initially she did not see the plaintiff, but then noticed her and stopped short of striking her. Defendant further claimed that she stopped approximately one foot from the pedestrian, noticed the pedestrian standing for five seconds and then witnessed her dropping to the ground. An eyewitness corroborated the defendant's story, except that the eyewitness claimed the car stopped five centimeters from the plaintiff without contacting her.

Injuries/Damages

meniscus, tear; rotator cuff, injury (tear); anterior cruciate ligament, tear; herniated disc at C3-4; herniated disc at C4-5; herniated disc at C5-6; herniated disc at C6-7; bulging disc, lumbar; herniated disc at L4-5

Plaintiff was placed in an ambulance, and she was transported to Jamaica Hospital Medical Center. She sustained disc herniation at the C3-4, C5-6m C6-7 and L4-5 levels, in addition to disc bulges at the L1-2, L2-3 and L5-S1 levels. She also sustained a left shoulder rotator cuff tear and left knee partial anterior cruciate ligament tear. On January 27, 2012, plaintiff underwent arthroscopic knee surgery, which was followed by three to four months of physical therapy. On June 22, 2012, plaintiff underwent arthroscopic shoulder surgery, which was also followed up with three to four months of physical therapy. Plaintiff also underwent 15 trigger point injections in the months immediately following the accident.

Result

The jury rendered a defense verdict.

The jury in a 5-1 vote did not believe that the defendant's vehicle made contact with the plaintiff.

Damages were set at \$150,000 if contact was proven.

Plaintiff(s)

Phyllis Approo

Demand \$75,000

Offer \$0

Insurer(s)

State Farm (policy of \$250,000) for both defendants.

Trial Details

Trial Length: 3 Days

Jury Deliberations: 15 Minutes

Jury Poll: 5-1 on the question of whether or not the defendant was negligent.

Jury Composition: 3 female/3 male

Plaintiff

Expert(s)

None reported

Defense

Expert(s)

None reported

Post-Trial

None reported

Editor's Note

None reported

Plaintiff(s)

Demographics

Phyllis Approo

Age: 59 Years

Occupation: not employed

Gender: Female

Married: No

Children: No

Children Description: injured party

Written By –Christine Barcia