

JURY VERDICT

Blanco v. Medina, et al
Supreme Court, Bronx County
Index #22617/143
Hon. Justice Rodriguez
Verdict: 4/15/19
Defense Attorney: John J. Nicolini

This lawsuit arose out of an accident which occurred on 6/15/11. Our client, Jerome Avenue Car Wash, allowed an unmanned car to roll down the car wash driveway and across the street striking plaintiff's vehicle. Plaintiff was situated at the back of the vehicle retrieving items at the time of the accident and she was thrown to the ground.

Plaintiff alleged various injuries to the neck and lower back including a disc herniation at the level of C5-6 which required fusion surgery.

Liability was conceded and the case proceeded to trial on damages only. Plaintiff's counsel requested the jury return the following awards: \$1,300,000 for future medical expenses; \$1,500,000 to \$2,000,000 for past pain and suffering; and \$2,500,000 to \$3,000,000 for future pain and suffering. The jury returned a verdict in favor of the defense concluding that the plaintiff did not sustain a serious injury as defined under Insurance Law §5102.

Prior to trial, a high/low agreement was entered into with parameters of \$25,000/\$1,500,000.

INJURIES/DAMAGES

Plaintiff was 38-years old on the date of loss. Plaintiff did not have a prior history of any injury or treatment to her neck or lower back. Immediately following the accident, the plaintiff had complaints of pain to her neck and lower back with radiation into her upper and lower extremities. She was transported on a back board via ambulance to Lincoln Hospital where she made similar complaints. The following day, she came under the care of Bruckner Medical where she received physical therapy for approximately six months.

In 2012, she received chiropractic treatment. She then had a gap in treatment but resumed treating in 2015 when she consulted with orthopedic surgeon, Dr. Vadim Lerman.

In June of 2011, the plaintiff did undergo a cervical MRI which the radiologist read as unremarkable. In July 2011, she underwent a lumbar MRI which noted a disc bulge at the level of L5-S1. Dr. Lerman ordered updated MRI's which showed disc herniations at numerous levels in her cervical and lumbar spine including the level of C5-6.

In July of 2016, Dr. Lerman performed fusion surgery at the level of C5-6. Following the surgery,

the plaintiff continued to treat with Dr. Lerman periodically. She also treated with pain management physician, Dr. Elbaz, who did prescribe a course of epidural injections to her neck and lower back. Plaintiff was still treating with Dr. Elbaz at the time of the trial and Dr. Elbaz testified that she would require additional extensive medical treatment in the future which total approximately \$1,300,000 over the course of her lifetime.

Plaintiff's experts were extensively cross-examined particularly involving the claim that the disc herniation at C5-6 was caused by this accident. It was Dr. Lerman's position that although the MRI from 2011 did not depict a disc herniation, the MRI was either inaccurate or there were slight micro tears in the disc which grew over time. In his operative report, it was noted that he observed a lateral disc herniation with impingement on the nerve root. The doctor was extensively cross-examined particularly on his narrative report attributing numerous disc herniations to the cervical and lumbar spine areas, which it was argued could not possibly have occurred from such a relatively minor impact to the plaintiff.

Dr. Elbaz was also extensively cross-examined concerning his findings, particularly his claim that the plaintiff would undergo significant medical treatment in the future. The basis for this cross-examination was the fact that the plaintiff had received a relatively modest amount of treatment prior to the trial and the doctor's assessment concerning future medical treatment was unrealistic and designed to increase the verdict.

Testifying on behalf of the defense was IME orthopedic surgeon, Dr. Jeffrey Klein. Dr. Klein testified that he reviewed the original MRI films which showed disc bulges at certain levels which he opined were pre-existing and not due to trauma. He further testified that none of the disc abnormalities, including the disc bulge at C5-6, impinged upon the nerve root and Dr. Lerman's decision to perform surgery at this level was "unclear" to Dr. Klein. He opined that the Plaintiff had sustained soft tissue type strains and sprains and had recovered.

Also testifying on behalf of the defense was radiologist, Dr. Mark Decker. Dr. Decker reviewed side-by-side comparison of the cervical and lumbar MRI films from 2011 and 2015 and offered an opinion that there were bulges at three levels in the cervical spine and two levels in the lumbar spine, which were depicted in the 2011 films. It was his opinion that these were degenerative in nature, rather than caused by trauma. As far as the 2015 films, he testified that progression of the underlying disc disease was shown and the plaintiff had disc herniations at two levels, but not involving the level of C5-6. He further testified that there was no nerve impingement depicted on any of the films.

VERDICT

As set forth above, plaintiff's counsel argued to the jury that it is reasonable to conclude that the disc abnormalities depicted on the 2015 films were due to the accident for the following reasons: the plaintiff was a relatively young woman at the time of the accident occurred; she did sustain documented trauma to her body by virtue of being thrown to the ground in the accident; her symptoms from immediately after the accident moving forward (i.e. pain in the neck and lower back with radiation) were consistent with disc abnormalities and radiculopathy; and the fact that the plaintiff had undergone cervical fusion at the level of C5-6 wherein the operative report documented a disc herniation.

In closing argument, on behalf of the defense, it was advocated that plaintiff sustained, at best, sprain and strain of the neck and lower back and did not sustain any structural damage to the spine. These arguments were generally buttressed by the following facts: plaintiff did have some credibility issues concerning contradictions between her deposition and trial testimony concerning the severity of the accident as well as other issues; although the plaintiff was only 38-years old at the time of the accident, it is not uncommon to find degenerative changes in the spine at that age; the MRI from 2011 in regards to the neck and lower back, depicted minor age-related degenerative changes as opposed to any disc herniations due to trauma; although Dr. Lerman's operative report noted a disc herniation at the level of C5-6, there were no intra-operative films introduced and there was no way to independently verify the veracity of this finding.

The jury returned a verdict concluding that the plaintiff had not sustained a significant injury as defined under the Insurance Law, thus resulting in a verdict in favor of the defense. By operation of the high/low agreement, plaintiff is entitled to the sum of \$25,000.

The trial judge, Judge Rodriguez, granted plaintiff's request to file any post-trial motions on or before 5/20/19.