

JURY VERDICT

Bass v. Zuckerberg

Supreme Court, Bronx County

Index #300513/13

Hon. Justice Guzman

Verdict: 6/20/18

Defense Attorney: John J. Nicolini

SLIP AND FALL ACCIDENT ON DEFENDANT'S EXTERIOR STAIRCASE RESULTING IN JURY VERDICT OF 60% FAULT AGAINST THE PLAINTIFF AND 40% FAULT AGAINST THE DEFENDANT, INVOLVING AN ANKLE FRACTURE REQUIRING OPEN REDUCTION AND INTERNAL FIXATION SURGERY RESULTING IN A TOTAL JURY VERDICT OF \$50,000 WITH A NET AWARD TO THE PLAINTIFF OF \$20,000

FACTS

This action arose from a slip and fall accident which occurred on 10/29/11 on the exterior stairs of defendant's home/dental office. Plaintiff, 48-years old on the date of loss, was a *per diem* dental hygienist who alleges to have slipped and fallen while exiting the office after work. At the time of the accident, there was a snow storm in progress. Plaintiff testified that the accident occurred as she was stepping from the last step of the staircase onto the adjacent roadway when she slipped and fell.

Plaintiff pursued a theory that the staircase was in a dangerous and defective condition in that the last step sloped downward from right to left, from the perspective of someone descending the stairs, and also sloped downward toward the road. On this issue, plaintiff relied upon expert engineer, Robert Schwartzberg, who testified that this deviated from well and accepted safe building practice.

Plaintiff did not rely upon a theory of negligent snow removal given that there was a storm in progress and no duty existed against the defendant-owner to remove snow.

In defense on liability, it was argued that the design of the step was reasonable under the circumstances, as the steps sloped downward to conform with the topography of the adjacent roadway.

Plaintiff was extensively cross-examined and it was established that she did not look down at the step as she was stepping, she was wearing open-heeled shoes despite the weather conditions, and she was not holding onto the adjacent handrail.

INJURIES/DAMAGES

As a result of the accident, the plaintiff sustained a fractured distal fibula which required surgery involving insertion of a plate. The plate was still present in plaintiff's ankle at the time of trial.

Testifying on behalf of the plaintiff was examining orthopedic surgeon, Dr. Leonard Harrison. Dr. Harrison testified based upon a review of medical records and a physical examination of the plaintiff. He testified that the plaintiff has a "bone on bone" arthritic condition which is permanent and will cause difficulty throughout her life. The defense did not call any doctors.

Dr. Harrison was extensively cross-examined on the basis that he earns a substantial income testifying on behalf of injured individuals and it was further established that he did not obtain the records of plaintiff's surgeon, Dr. Ellis, nor did he have the plaintiff examined beyond the one examination which occurred in 2016.

VERDICT

Liability and damages were tried at the same time before the jury. On liability, the jury found that the defendant was negligent but concluded that the plaintiff was also comparatively at fault. The liability split was 60% fault against the plaintiff and 40% against the defendant.

On damages, the jury awarded plaintiff \$50,000 for past pain and suffering, but made no award for future pain and suffering. Thus, the net award to the plaintiff is \$20,000.

Plaintiff has served a post-trial motion challenging the dollar amount of the verdict as being insufficient. The motion is still pending.