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Judge Denies Motion for New Trial on $1.2M Broken Arm Verdict

KATHERYN HAYES TUCKER

A $1.2 million verdict for a broken arm suffered in a truck crash appears bound for appeal.

Judge Jeannette Little of Troup County State Court last week denied a defense motion for a new trial arguing that she issued insufficient jury instructions and wrongly prevented testimony from a Georgia State Patrol officer that the crash was not the defendant's fault.

"The verdict is strongly against the weight of the evidence" and is excessive, defense counsel Daniel Prout Jr. of Waldon Adelman Castilla Hiestand & Prout argued in the motion. He said the plaintiff's documented medical costs for treatment and surgeries on the broken arm totaled under $100,000.

Ben Brodhead

John Disney

The verdict was initially $2 million, but it was reduced by $800,000 because the jury found a nonparty driver 40 percent at fault. "While reasonable minds may indeed differ as to whether negligent conduct was shown" by the defendant and whether the plaintiff "continues to suffer," Prout wrote, "reasonable minds cannot differ as to the impropriety of the jury's verdict far in excess of the amount of damage done."

Prout said by email that he "cannot comment on the merits of the case" because it is being appealed.

Prout did allow that plaintiff's counsel Ben Brodhead of Brodhead Law "tried an excellent case and has a history of obtaining very favorable results for his clients."

Brodhead argued in his answer to the motion for new trial that the verdict was not excessive and was supported by the evidence because it included "an element of pain and suffering."

The plaintiff, Tisha Tucker, was 18 at the time of the injury in April 2011. She was a passenger in the 1988 Toyota driven by the defendant, Tammy Brown, who was "doing Tisha a favor" by giving her a ride home, Brodhead said.

While blinded by sunlight, Brown crashed into a flat-bed tractor-trailer parked on the side of a Troup County road. Tucker suffered a broken arm that required surgery. She later had another operation to remove plates and screws from the first surgery because they were causing her pain.

While Tucker acknowledged recovering the range of motion in her arm, she continues to suffer pain and weakness, Brodhead said. "The verdict is not excessive considering the traumatic event" and the "injuries she will have to deal with for the rest of her life," Brodhead wrote in the plaintiff's answer to the motion for new trial.

The hotly contested arguments over the motion for a do-over reflect the tone of the two-week trial in LaGrange and the transactions leading up to it. The plaintiff was "forced to trial" because the defense refused every settlement offer, Brodhead said. Those offers started with an initial demand for the limit of the defendant's insurance policy held by Omni Insurance Co., $25,000, pursuant to the 1992 decision in *Southern General Ins. Co. v. Holt,* 262 Ga. 267. The decision holds that insurance companies can be subjected to bad faith claims for verdicts in excess of coverage if they fail to meet policy limit demands.

Brodhead said Omni did agree to pay the limit, but wanted his client to sign a general release, which he opposed because it would have prevented his client from collecting her own uninsured motorists benefits, and a resolution of all claims, which would have required her to pay back far more in medical bills than she would have recovered. Brodhead said the terms constituted a counteroffer, which he rejected.

Brodhead said he made increasingly higher settlement offers, but all were refused. Meanwhile, his client was able to collect $50,000 from her underinsured motorist coverage, which he said helped her through a difficult time.

The defense argued at trial that the wreck was entirely the fault of the driver of the tractor-trailer parked on the side of the road, partly in Brown's lane of travel. Brown couldn't see the truck parked there because she had rounded a curve and was blinded by the sun, according to the defense summary written for the court.

That argument had some sway with the jury, as shown by it placing 40 percent of the fault on the driver of the tractor-trailer.

The plaintiff contended the tractor-trailer driver did not cause the crash and was not at fault at all. Brown could have easily avoided the truck if she had seen it, Brodhead argued. He said that Brown was negligent because she did not pull down her sun visor, hold up her hand to block the sun or put on her sunglasses, according to the plaintiff's summary.

The case is *Tucker v. Brown,* No. 13-CS-094.

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