

[BREVARD COUNTY]

MOTOR VEHICLE

Carpet installer claimed disc will require surgery

Mixed Verdict \$451,985

Case XXXXXXXX v.XXXXXXXX, No. 05-2002-CA-009693

Court Brevard County Circuit Court, 18th

Judge Larry Johnson

Date 6/24/2004

Plaintiff

Attorney(s)

David J. Gorewitz, Law Offices of David J. Gorewitz, Melbourne, FL

Defense

Attorney(s)

XXXXXXX, Fisher, Rushmer, Wenenrath, Dickson, Talley & Dunlap, Orlando, FL

Facts & Allegations

On Sept. 11, 2000, plaintiff XXXXXXXX, 50, a carpet installer, was driving a Chevrolet van on Baytree Road in Viera. His van struck a Honda Civic driven by defendant XXXXXXXX, who was stopped at a stop sign on an intersecting side street. Her car was hit when she attempted to cross the intersection. XXXXXX sued XXXXXXXX, claiming she was negligent because she drove into the path of Roseman's right of way from a stop sign. O'Neal claimed that Roseman was at fault for not paying attention and for driving too fast for conditions. Defense also noted that it was a minimal impact accident. Roseman went to the hospital that day complaining of neck pain

Injuries/Damages

herniated disc at C3-C4 Roseman suffered a herniated disc at C3-4 that he claimed would eventually require surgery. He claimed that the injury hindered his ability to perform his job as a carpet installer and caused significant pain. He was able to work after the accident, however he claimed the injury slowed down his pace and reduced his hours he could work per day because of the pain. He claimed past lost wages of \$40,000 and lost future earnings of \$110,000. He claimed past medical costs of \$31,984.55 and future medical costs of \$75,000. He claimed past and future pain and suffering. He claimed that after the accident he never felt like doing any recreational activities because of the pain. His wife testified that in the four years since the accident he only went to the movies once because he never felt like going out anymore. Defense contended that Roseman's herniated disc was a preexisting condition that was caused by the aging process.

Result

The jury found for the plaintiff five percent negligent and the defendant 95 percent negligent and awarded the plaintiff \$451,984.55.

Plaintiff(s)

XXXXXXX

\$31,985 past medical cost
\$65,000 future medical cost
\$40,000 past lost earnings
\$110,000 future lost earnings
\$130,000 past pain and suffering
\$75,000 future pain and suffering
\$451,985 plaintiff's total award

Demand \$40,000

Offer \$10,000

Insurer(s)

USAA Insurance Company (for O'Neal)

Trial Details

Trial length: 3 Days

Jury Deliberations: 3 Hours

Jury Poll: None reported

Jury Composition: 5 women, 1 man

Plaintiff

Expert(s)

Richard Hynes, M.D., orthopedic surgery, Melbourne, FL

Gregory Priest, M.D., chiropractic, Melbourne, FL

Christopher Prusinski, M.D., neurology, Melbourne, FL

Defense

Expert(s)

Anthony Mancuso, M.D., neuroradiology, Gainesville, FL

Reginal Tall, M.D., orthopedic surgery, Orlando, FL

Post-Trial

Plaintiff filed a motion for costs and fees pursuant to his \$40,000 proposal of settlement. Defense filed a motion for a new trial. Subsequently the case settled for \$440,000.

Editor's Note

None reported

Plaintiff(s)

Demographics

Clarence Roseman

Age: 50 Years

Occupation: Carpet installer

Gender: Male

Married: Yes

Children: Yes

Children Description: 3 adult children

Written By -Jeff Skruck