SUPERIOR COURT
OF THE
STATE OF DELAWARE

E. SCOTT BRADLEY
JUDGE

1 The Circle, Suite 2
GEORGETOWN, DE 19947

February 25, 2015

Edward C. Gill, Esquire
16 North Bedford Street
Georgetown, DE 19947

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RE: *Etienne v. Penawell*
C.A. No: S12C-05-002(ESB)

Dear Counsel:

This is my decision on Defendant Anthony Penawell's Motion for a New Trial and/or Motion for Remittitur and Plaintiff Elissaint Etienne's Motion for Additur in this personal injury case that arose out of a two car accident on Route 113 a few miles north of Georgetown, Delaware. The Plaintiff and Defendant were both traveling northbound on Route 113. The Plaintiff testified that he was traveling in the left-hand lane when the traffic light in front of him turned red. The Plaintiff stopped for the red light. The Plaintiff testified that as he started to move forward when the light turned green, the Defendant's car ran into the back of his car. The Defendant testified that he was going 55 miles per hour and that he and the Plaintiff were both in the right-hand lane and that his car was about two car lengths behind the Plaintiff's car. The Plaintiff, according to the Defendant, suddenly turned into the left-hand lane.

When the Plaintiff did this, the Defendant saw a school bus in front of him which he avoided by swerving into the left-hand lane. The Defendant testified that the Plaintiff drove through the intersection and, for no apparent reason, stopped in the road, leaving the Defendant with no choice but to run into the back of the Plaintiff's car. The Plaintiff went to the hospital emergency room one day after the accident complaining of low back and neck pain. The Plaintiff was diagnosed with (1) a local injury affecting his low back, (2) a cervical sprain, (3) a lumbar strain/sprain, and (4) a muscle strain. The Plaintiff was given a prescription for medications for pain relief and muscle relaxation. The Plaintiff went to a chiropractor and received treatment. The Plaintiff also had an MRI, which showed that he had a bulging disc at L4-L5. The Plaintiff also saw an orthopedic surgeon, Richard P. DuShuttle, M.D. Dr. DuShuttle put the Plaintiff on "permanent medium duty work," meaning that the Plaintiff can not lift more than 50 lbs and can not carry more than 25 pounds. The Plaintiff works as a line leader in a poultry plant. The Plaintiff will have to live with his bulging disc and lifting restrictions for 38.1 more years. The Plaintiff's other problems have resolved. The Plaintiff's medical testimony established that all of the Plaintiff's injuries were caused by the accident. The Defendant offered no medical testimony. The jury found that the Defendant was negligent and awarded the Plaintiff $40,000 for his injuries.

The Defendant argues that he should get a new trial because the Plaintiff, whose first language is not English, had trouble understanding defense counsel's questions regarding the details of the accident, particularly the location of the cars before, during, and after the accident. Pursuant to Superior Court Civil Rule 59(a), a new trial may be granted as to all or any of the parties on all or a part of the issues of the action in which there has been a trial for any of the reasons for which new trials have heretofore been granted in the Superior Court. In analyzing a motion for a new trial, there is a presumption that the jury's verdict is correct. In order to be set aside, the jury's verdict must be "against the great weight of the evidence or the verdict shocks the Court's conscience."[1]

The Plaintiff, in my view, spoke and understood English quite well. The Plaintiff did have trouble understanding some of defense counsel's questions. However, I have concluded that this had more to do with the manner in which defense counsel posed his questions than with the Plaintiff's understanding of English. When examining witnesses about where cars were at before, during, and after an accident, I have found that it is most helpful to a clear understanding of the matter if the attorneys allow the witness to graphically demonstrate where the vehicles were located. Some attorneys will use maps to show the roadway in question

[1] *Rodas v. Davis*, 2012 WL 1413582, at *1 (Del. Super. Jan. 31, 2012).

and ask the witnesses to identify where their cars were at the relevant times. Defense counsel chose not to do this, making a relatively simple motor vehicle accident more complicated than it had to be. In any event, I am satisfied that ultimately the Plaintiff adequately answered defense counsel's questions. I note further that when the Plaintiff went to the emergency room after the accident, his emergency room chart indicated that there was "no language barrier." Therefore, I have denied the Defendant's Motion for a New Trial.

The jury awarded the Plaintiff $40,000 for his injuries. The Plaintiff argues that this is too little. The Defendant argues that this is too much. I have concluded that it is just right. The jury's verdict must be given "enormous deference," and will be "set aside only in the unusual case where it is 'clear that the award is so grossly out of proportion to the injuries suffered as to shock the Court's conscience and sense of justice.'"[2] Faced with a motion for remittitur or additur, the trial court must evaluate the evidence and decide whether the jury award falls within a supportable range.[3] In doing so, the court still defers to the jury and reduces the jury's award to the absolute maximum amount that the record can support (in the case of remittitur) and increases the award to the absolute minimum amount that the record requires (in the case of

[2] *Young v. Frase*, 702 A.2d 1234, 1236-37 (Del. 1997)(quoting *Mills v. Telenczak*, 345 A.2d 424, 426 (Del.1975)).

[3] *Id.* at 1237.

additur).[4]

The Defendant argues that the jury's award of $40,000 is too much for the Plaintiff's strain and sprain injuries that lasted for a relatively short period of time. The Plaintiff argues that it is too little for those injuries that are permanent and will last for 38.1 more years. Both the Plaintiff and Defendant have failed to properly understand the nature of the Plaintiff's injures. The Plaintiff did have, as the Defendant points out, some injuries that were relatively minor and resolved in a fairly short period of time. However, as the Plaintiff points out, the Plaintiff has a bulging disc and lifting limitations that are permanent. But, while permanent, these injuries do not substantially impair the Plaintiff's ability to work and enjoy the other aspects of living. Quite simply, there is nothing about the jury's award of $40,000, one way or the other, that shocks my conscience. The Plaintiff's and Defendant's Motions for Additur and Remittitur, respectively, are denied.

IT IS SO ORDERED.

Very truly yours,

/s/ E. Scott Bradley

E. Scott Bradley

ESB/sal
oc: Prothonotary

[4] *Carney v. Preston*, 683 A.2d 47, 56 (Del. Super. 1996).