IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY

DAWUD MYERS,)	
Plaintiff,)	
v.)	C.A. No. CPU4-12-001206
SHAQUANNA RODRIQUEZ)	
Defendant.)	

Submitted: March 22, 2013 Decided: April 8, 2013

Heather A. Long, Esquire Kimmel, Carter, Roman & Peltz 56 W. Main Street, Fourth Floor Plaza 273 Newark, DE 19702

Shaquanna Rodriguez 27 Booker Circle New Castle, DE 19720

Attorney for Plaintiff Pro Se Defendant

MEMORANDUM OPINION AND ORDER AFTER DAMAGES HEARING

On March 24, 2012, Plaintiff Dawud Myers filed this personal injury action against Defendant Shaquanna Rodriguez for damages sustained in a motor vehicle accident. Ms. Rodriguez received personal service on September 28, 2012, and failed to defend against the action. A default judgment was entered, as to liability only, in favor of Mr. Myers on December 21, 2012. The Court held an inquisition hearing on damages on March 22, 2013. Notice was sent to Ms. Rodriguez and she failed to appear. For the reasons set forth below, the Court finds that \$4,880.00 is a reasonable award for damages suffered by Mr. Myers.

I. Facts

A damages inquisition hearing was held on March 22, 2013 because Mr. Myers did not plead a sum certain in the request for a default judgment. Because Ms. Rodriguez was served notice of the hearing at a new address, the Court checked notice at the beginning of the hearing and confirmed that notice was actually sent to the defendant. During the hearing, Mr. Myers submitted one exhibit with eight sub-parts into evidence, ¹ and was the sole fact witness.

Mr. Myers testified that the accident, which is the subject of the Complaint, occurred on August 17, 2011. Mr. Myers was struck from behind by a vehicle in Wilmington, Delaware. Mr. Myers stated that the driver was a young African American male, and the unidentified driver fled the scene of the accident.² Mr. Myers, however, followed the vehicle and obtained the vehicle's license plate number. The police report and testimony of Mr. Myers indicate that, after investigation, Ms. Rodriguez was identified as the owner of the vehicle that struck Mr. Myers. After the accident, Mr. Myers was transported to the hospital and treated for a headache and neck pain and was released shortly thereafter.

Mr. Myers testified about the pain he suffered during and after the accident. Mr. Myers testified he suffered from neck pain immediately after the accident. A MRI showed that he did not have any soft tissue damage.³ Mr. Myers did not have a back injury and did not receive prescription pain medication. As to residual pain, Mr. Myers testified that he had headaches and neck pain that required physical therapy treatment from NowCare two to three times per week from August 2011 through December 2011. This treatment included neck exercises, UV light

¹ Plaintiff's Exb. #1 consisted of: (1) Plaintiff's Complaint; (2) Police Report of the accident; (3) Christiana Care Medical Records, August 17, 2011; (4) NowCare Medical Records, August 28, 2011 – December 31, 2011; (5) Silverside MRI report; (6) PIP exhaust letter dated September 20, 2011; (7) PIP log; (8) Medical bills from NowCare totaling \$1,380.00.

² The driver of the vehicle was the sole occupant of the vehicle and remains unidentified.

³ Plaintiff's Exb. #1, sub-part (5). MRI report states that there was "no evidence of acute trauma."

therapy, and electric stimulation therapy. Mr. Myers testified that his pain level during this time was at a consistent level of two on scale of ten. The PIP insurance benefits were exhausted and Mr. Myers has a NowCare bill in excess of the PIP benefits in the amount of \$1,380.00.

Mr. Myers also testified that he suffered collateral consequences from the neck injury. He stated that he lost sleep over the past two years since the accident. Additionally, Mr. Myers testified that he lost quality time with his son because of the neck injury. Finally, Mr. Meyers stated that he had planned on going into the Navy, but was unable to enlist due to this injury.

Mr. Myers requests damages of \$1,380.00 for the unpaid medical bill and also requests \$25,000.00 for pain and suffering.

IV. Determination of Damages

The Court must decide two issues. First, whether Mr. Myers should be awarded damages for the outstanding medical bill. Second, what amount, if any, damages award Mr. Myers should receive for pain and suffering derived from the accident. The Court, as fact-finder, must assess the evidence and the credibility of Mr. Myers' testimony.⁴

The principal objective of the Court in awarding damages "is just compensation for the loss or injury." The fact-finder must have a reasonable basis to "estimate with a fair degree of certainty the probable loss which plaintiff will sustain in order to . . . make an intelligent determination of the extent of this loss." The burden of proof is on the plaintiff. In personal injury actions, pain and suffering are common elements that factor into damage awards. The

⁴ Cornell Glasgow, LLC v. LaGrange Properties, LLC, 2012 WL 6840625, at *9 (Del. Super. Dec. 7, 2012).

⁵ Mills v. Telenczak, 345 A.2d 424, 426 (Del. 1975) (citing 2 Harper 8 James, The Law of Torts § 25.1).

⁶ Henne v. Balick, 146 A.2d 394, 296 (Del. 1958).

⁷ *Id*.

⁸ Mills, 245 A.2d at 325 (citing 22 Am. Jur. 2d Damages § 105; 25 C.J.S. Damages § 62).

amount of damages awarded for pain and suffering is determined by the fact-finder. Difficulty or uncertainty in measuring damages does not preclude the fact-finder from determining the value of damages. The Court will now asses the evidence submitted by Mr. Myers.

A. NowCare Medical Bill

The Court finds that Mr. Myers has demonstrated a reasonable basis that he incurred the bill from NowCare for neck therapy by providing documentary evidence. Additionally, Mr. Myers' testimony supports that his neck pain required treatment and that the PIP benefits were exhausted. Therefore, the Court will award Mr. Myers \$1,380.00 for the NowCare medical bill.

B. Pain and Suffering

The more difficult calculation of damages in this case are the damages for pain and suffering. The documentary and testimonial evidence indicate that Mr. Myers' injury and complications were *de minimus*. First, as to initial pain after the accident, Mr. Myers was released shortly after arriving to the hospital and received rather negligible treatment for neck pain. Moreover, the MRI of his neck revealed that there was no soft tissue damage. Second, immediately after the accident, Mr. Myers's pain level was a nine on a scale of ten. Mr. Myers testified that the residual pain he suffered from the accident diminished significantly to a pain level of two on a scale of ten. Third, Mr. Myers presented no medical or expert testimony as to the severity or permanency of the injury.

⁹ Henne, 146 A.2d at 397.

¹⁰ *Id.* at 396.

¹¹ Plaintiffs Exb. #1, sub-part (8).

¹² Mr. Meyers testified that he received instructions to use cold and heat compresses and take Ibuprofen. Plaintiff Exb. #1, sub-part (3). Christiana Care Medical Records instruct Mr. Myers to take Ibuprofen.

¹³ Plaintiff's Exb. #1, sub-part 5, MRI report states that there was "no evidence of acute trauma."

Lastly, the Court finds that Mr. Myers suffered a small degree pain and suffering. This

pain and suffering, however, did not detract substantially from Mr. Myer's life. The limited

factual testimony of Mr. Myers shows that the extent of Mr. Myers' pain and suffering is the

consistent, albeit minimal, neck pain over the past two years. Mr. Myers testified that he was

unable to sleep, unable to enlist in the Navy, and unable to play with his son because of the neck

injury; however, he provided no additional evidence of these claims. After consideration of all

the evidence, the Court finds that a reasonable compensation for Mr. Myers' pain and suffering

is an award of \$3,500.00.

V. Conclusion

Therefore, for the reasons set forth in this Memorandum Opinion and Order, damages are

hereby awarded to Mr. Myers in the amount of \$4,880.00.

IT IS SO ORDERED this 8th day of April, 2013.

John K. Welch,

Judge

/jb

cc: Ms. Tamu White, Chief Civil Clerk, CCP

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