

[Cite as *Kennebeck v. Ohio Dept. of Transp.*, 2019-Ohio-5484.]

GREG KENNEBECK

Plaintiff

v.

OHIO DEPARTMENT OF
TRANSPORTATION

Defendant

Case No. 2019-00535AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

{¶1} Greg Kennebeck (“plaintiff”) filed this claim against the Ohio Department of Transportation (“ODOT”), to recover damages which occurred when his 2015 Volkswagon Jetta struck a pothole on January 25, 2019, while he was traveling on Interstate Route (“IR”) 70 West in Franklin County, Ohio. This road is a public road maintained by ODOT. Plaintiff request damages in the amount of \$790.97, of which \$340.79 represents the cost to replace the left driver window power mechanism and fix the tire pressure monitoring system. Plaintiff submitted the \$25.00 filing fee.

{¶2} Defendant submitted the Investigation Report expressing its willingness to settle this claim for \$475.18, to cover the costs of the actual damage to plaintiff’s vehicle caused by pothole impact, plus the \$25.00 filing fee.

{¶3} Plaintiff submitted a response to defendant’s Investigation Report requesting an additional \$350.00 to cover the cost of hiring a consultant to prove the damage to his left driver’s window and pressure monitoring system as a result of striking the pothole. Plaintiff maintains the pothole was the cause of these additional damages.

{¶4} In order for plaintiff to recover damages for the damages to his window mechanism and pressure monitoring system, plaintiff must prove, by a preponderance of the evidence, that defendant owed him a duty, that defendant breached that duty, and that defendant's breach proximately caused his damages. *Armstrong v. Best Buy Company, Inc.*, 99 Ohio St.3d 79, 2003-Ohio-2573, 788 N.E.2d 1088, ¶ 8 citing *Menifee*

v. Ohio Welding Products, Inc., 15 Ohio St.3d 75, 77, 472 N.E.2d 707 (1984). As a necessary element of his particular claim, plaintiff was required to prove proximate cause of his damage by a preponderance of the evidence. See e.g. *Stinson v. England*, 69 Ohio St.3d, 451, 1994-Ohio-35, 633 N.E.2d 532. This court, as trier of fact, determines questions of proximate causation. *Shinaver v. Szymanski*, 14 Ohio St.3d 51, 47 N.E.2d 477 (1984).

{¶5} After reviewing the evidence submitted by plaintiff, the court is not persuaded that defendant's negligence was the proximate cause of plaintiff's damaged window mechanism and pressure monitoring system. Plaintiff's vehicle was serviced for the damaged tires on February 11, 2019, seventeen days after the incident occurred. According to the documentation provided by plaintiff regarding the driver's window mechanism and the pressure monitoring system, plaintiff serviced his vehicle for the window on April 2, 2019, over two months after this incident occurred. Plaintiff serviced his vehicle for the pressure monitoring system on April 19, 2019, almost three months after the damage causing incident occurred. Plaintiff has the burden of proving his damages were caused by his vehicle striking the pothole on January 25, 2019. In order to recover, plaintiff must prove his damages by a preponderance of the evidence. Plaintiff has not met this burden.

{¶6} Therefore, judgment is rendered in favor of plaintiff in the amount of \$450.18 plus \$25.00 for reimbursement of the filing fee pursuant to the holding in *Bailey v. Ohio Department of Rehabilitation and Correction*, 62 Ohio Misc.2d 19, 587 N.E.2d 990 (Ct. of Cl. 1990).

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ENTRY OF ADMINISTRATIVE
DETERMINATION

Having considered all the evidence in the claim file, and for the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of the plaintiff in the amount of \$475.18, which includes reimbursement of the \$25.00 filing fee. Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk

CC:

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Sent to S.C. Reporter 2/13/20