

[Cite as *Baxter v. Ohio Dept. of Transp.*, 2002-Ohio-1716.]

IN THE COURT OF CLAIMS OF OHIO

MARGARET ILENE BAXTER, et al., :
etc.

Plaintiffs

v.

OHIO DEPARTMENT OF
TRANSPORTATION, et al.

Defendants

.....

: CASE NO. 2000-08681
:
: DECISION
:
: Judge Everett Burton
:
:
:

{¶1} On February 7, 2001, defendants filed an admission of liability. The case was subsequently tried to the court on the sole issue of damages, specifically, the personal injury claim of Patricia L. BaxterMoore and the loss of consortium claims of her husband, Earl BaxterMoore, and their two minor children, Danielle and Agapi BaxterMoore.

{¶2} Plaintiff¹ and her husband are both legally blind. In 1996, they started a family business known as Omni Solutions, which provided technical support for and promoted the sale of computer software and hardware specifically engineered to assist the blind. In August 1998, the BaxterMoorees adopted their daughter, Agapi, who is also blind.

{¶3} On October 7, 1998, plaintiff and her family were traveling in their van northbound on I-77. Plaintiff's mother, Margaret Baxter, was driving, Earl was seated in the front passenger seat and Agapi was seated in a child's seat in the captain's chair located directly behind the driver's seat. Danielle and plaintiff were seated on the bench seat in the rear of the van: Danielle in a child's seat on the driver's side, and plaintiff on the passenger side. The captain's chair that was usually located

¹The term "plaintiff" shall be used to refer to Patricia BaxterMoore throughout this decision.

directly in front of plaintiff had been removed for the trip. Everyone was wearing a seat belt. Plaintiff's van was struck in the right front passenger side by a truck from the Department of Transportation, which had pulled out of a construction zone. Plaintiff's vehicle was traveling at approximately 65 mph at the time of the collision.

{¶4} Plaintiff was taken by ambulance to a hospital in Marietta, Ohio where she was seen in the emergency room for a laceration to her right arm.

{¶5} Two days after the collision, plaintiff was seen by Dr. Carol George, her family internist, for complaints of confusion and "going blank." At that time, Dr. George noted some frontal and posterior bruising and swelling of plaintiff's head and scalp. Dr. George ordered a CAT scan of Patricia's head, and x-rays of her skull and cervical spine. All test results were normal. Dr. George diagnosed plaintiff with a mild concussion as a result of the collision and referred her to a neurologist. Although Dr. George continued to treat plaintiff for about a year, no significant improvement was demonstrated.

{¶6} Plaintiff sought treatment from Craig A. Knox, a board-certified neurologist. He first saw plaintiff on June 29, 1999. Dr. Knox ordered an MRI, EEG, skull x-rays and blood work. All test results were normal. Dr. Knox diagnosed plaintiff with post-concussive syndrome that caused memory and attention problems. He testified that plaintiff suffered from a sub-component of major depression. He prescribed medications for headaches and depression. Dr. Knox opined that the post-concussive syndrome was caused by the accident and that the depression was treatable. He further opined that it was difficult to determine whether the depression or concussion caused her cognitive disabilities.

{¶7} Plaintiffs' medical expert, Dr. Robert P. Granacher, testified that he was board-certified in psychiatry, neurology, forensic psychiatry, and clinical psychopharmacology. He examined plaintiff and opined that she suffered a neuro-cognitive disorder and a mood disorder as a result of the collision. He acknowledged that plaintiff suffered a mild concussion and substantial depression. He testified that he made no recommendation for treatment, but stated that depression is generally treatable, although in plaintiff's case the depression would be difficult to treat because it was caused by her brain injury.

{¶8} Plaintiffs also presented the testimony of Dr. Jack Sink, a life-care planner. He testified that plaintiff will incur medical and related expenses for the rest of her life in the sum of \$2,504,111, including the need for a home-care attendant for at least seventy hours per week.

{¶9} Dr. William Baldwin, an economist, testified that plaintiff would have been able to earn \$1,152,337 from the date of the accident until her retirement age of sixty-seven years if it were not for the accident.

{¶10} Plaintiffs presented testimony regarding property that was damaged in the collision, which amounts to \$19,081.91. (Plaintiffs' Exhibit 15.)

{¶11} Earl Baxter Moore testified that he left his employment at the University of Kentucky in order to care for his wife and children. He stated that following the accident, plaintiff became depressed, forgetful, impatient and incapable of caring for their children as she had done previously. He further stated that she was unable to be left alone and was no longer capable of operating the computer software for Omni Solutions. He testified that the net income for Omni Solutions in 1998 was \$23,599.

{¶12} Defendants' expert, Dr. Dawn Bouman, a licensed clinical psychologist, examined plaintiff. Dr. Bouman stated that, during the examination, plaintiff experienced major depression and significant difficulty with memory and attention. She further testified that an individual with a mild traumatic brain injury would not experience the attention and memory difficulties of the magnitude that plaintiff experienced. Dr. Bouman opined that the extent of plaintiff's difficulties was caused by depression and anxiety. Dr. Bouman opined that, with treatment, plaintiff would be able to perform her daily activities, take care of her children, return to gainful employment and would not be in need of attendant care.

{¶13} Plaintiffs' medical expert, Dr. Granacher, opined that a SPECT scan of plaintiff's brain provided objective diagnostic evidence of diminished brain activity. However, both Drs. Knox and Bouman stated that the area of plaintiff's brain that showed diminished activity did not correspond to the attention and memory deficits of which plaintiff complained. In addition, Dr. Granacher conceded that all of plaintiff's problems could not have been caused by the motor vehicle accident.

{¶14} Based upon the evidence presented at trial, the court finds that the collision proximately caused a puncture wound to plaintiff's right arm and a mild concussion. The court further finds that the testimony of Dr. Bouman was more persuasive than that of Dr. Granacher, and that plaintiff's condition could improve if she were to follow recommendations for treatment that were made by Dr. Bouman.

{¶15} Accordingly, damages shall be awarded in favor of plaintiffs as follows:

{¶16} (1) Property damage in the amount of \$19,081.91;

{¶17} (2) Loss of income as a result of injuries in the amount of \$25,000;

{¶18} (3) Patricia BaxterMoore's noneconomic damages, including physical pain, anxiety, mental distress, loss of enjoyment of life, inability to perform ordinary activities and physical impairment in the amount of \$30,000;

{¶19} (4) Earl BaxterMoore's loss of spousal consortium, in the amount of \$20,000;

{¶20} (5) Danielle BaxterMoore's loss of parental consortium, in the amount of \$5,000;

{¶21} (6) Agapi BaxterMoore's loss of parental consortium, in the amount of \$5,000.

EVERETT BURTON
Judge

Entry cc:

Frank A. Ray
Brian G. Miller
175 South Third Street
Suite 350
Columbus, Ohio 43215

Attorneys for Plaintiffs

Joseph C. Savage
141 N. Broadway
Lexington, KY 40507

Michael J. Valentine
John P. Reichley
65 East State St., 16th Fl.
Columbus, Ohio 43215

Assistant Attorneys General

HTS/cmd

Case No. 2000-08681

- 3 -

JUDGMENT ENTRY

Filed 4-10-2002
Jr. Vol. 701, Pgs. 3-4
To S.C. reporter 4-15-2002