

[Cite as *Lemon v. Ohio State Hwy. Patrol*, 2004-Ohio-1471.]

IN THE COURT OF CLAIMS OF OHIO

JESSYCA LEMON	:	
Plaintiff	:	CASE NO. 2002-09471
		Judge J. Warren Bettis
v.	:	
		<u>DECISION</u>
OHIO STATE HIGHWAY PATROL	:	
Defendant	:	
.....	:	

{¶1} On August 29, 2003, the parties filed a stipulation wherein defendant admitted liability. On February 26, 2004, the case came before the court for trial on the issue of damages.

{¶2} This claim concerns an automobile accident that occurred on November 10, 2001, when an employee of defendant directed plaintiff to make a left turn into the path of an another vehicle. As a result, plaintiff's model year 2000, Oldsmobile Alero was struck in the rear passenger side by a Ford F150 truck. Plaintiff's 15- month-old son was with her in the vehicle at the time.

{¶3} Plaintiff did not request medical attention at the scene of the accident and was able to drive away in her vehicle. However, she stopped within a short distance when she realized that the power steering had stopped working and she was unable to turn the vehicle off the roadway. Plaintiff then called for assistance and abandoned the vehicle; it was towed for repairs the following day. The repairs were paid by plaintiff's insurance carrier less the \$500 deductible that was paid by her mother. Plaintiff did not have medical coverage through her auto insurer or her employer.

{¶4} Plaintiff offered her own testimony and that of David Leone, D.C. in support of her claims. Dr. Leone, one of plaintiff's medical treatment providers, testified by way of

videotaped deposition. According to plaintiff, she sustained injury to her neck and back as a result of the accident but she did not seek medical care until March 2002, for the reason that she did not have insurance coverage until that time. However, all of her medical expenses were subsequently denied due to the fact that they were related to the injury that pre-existed her new insurance coverage.

{¶5} Dr. Leone testified that plaintiff was initially diagnosed with a cervical/lumbar sprain and strain, and that when she later continued to have mid and low back pain, neck pain and headaches, he ordered an MRI of those regions. The test revealed that plaintiff had disk bulges in seven areas of her back, ranging in severity from minimal to diffuse.

{¶6} From the time plaintiff began treatment for her injuries, to the time when she discontinued therapy in August 2003, (because she was eight months pregnant with her second child), she accumulated medical bills totaling \$15,056.30. (Plaintiff's Exhibits 1 and 2.) Her treatment included physical therapy, chiropractic care, medications, and trigger-point injections. Part of the expense, \$223.30, was incurred for x-rays when plaintiff initially sought treatment; \$808 was incurred for the MRI. Plaintiff did not incur any work loss associated with the accident or from her treatment.

{¶7} In response to plaintiff's claims, defendant presented the videotaped deposition testimony of its expert witness, Dr. Dan Shamir. Based upon that testimony, defendant argued that plaintiff sustained a mild, soft tissue injury; that both the degree of her alleged pain and the relationship of her treatment to the accident were suspect, based on the length of time that she waited before seeking medical care; that some of her back pain and other symptoms may have been related to her second pregnancy; and that some of her injuries may have been related to a prior accident in which plaintiff was involved years earlier, in 1998.

{¶8} This case must be determined on the credibility of witnesses. As this court has frequently stated, the factors to be considered in assessing credibility are:

{¶9} "The appearance of [the] witness upon the stand; his manner of testifying; the reasonableness of the testimony; the opportunity he had to see, hear and know the things about which he testified; his accuracy of memory; frankness or lack of it; intelligence,

interest, and bias, if any; together with all facts and circumstances surrounding the testimony.” *Adair v. Ohio Dept. of Rehab. & Corr.* (1998), 96 Ohio Misc.2d 8, 11; see, also, 1 Ohio Jury Instructions (1994), Section 5.30.

{¶10} Based upon the testimony and the evidence presented, and applying the factors set forth above, the court concludes that \$20,025 is appropriate compensation to be paid in this case. Such amount includes the \$500 automobile insurance deductible; the \$15,056.30 in medical expense, which the court finds to be proximately related to the November 10, 2001, accident; and the \$25 filing fee that was paid to commence this action. The remainder represents compensation for past and future pain and suffering.

{¶11} Accordingly, judgment shall be rendered in favor of plaintiff in the amount of \$20,025.

{¶12} This case was tried to the court on the issues of damages. The court has considered the evidence and, for the reasons set forth in the decision filed concurrently herewith, judgment is hereby rendered in favor of plaintiff in the amount of \$20,025, which includes the filing fee paid by plaintiff. Court costs are assessed against defendant. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

J. WARREN BETTIS
Judge

Entry cc:

Thomas C. Loepp
Stratford Place
3580 Darrow Road
Stow, Ohio 44224

Attorney for Plaintiff

James P. Dinsmore
Assistant Attorney General
150 East Gay Street, 23rd Floor
Columbus, Ohio 43215-3130

Attorney for Defendant

LH/cmd

Filed March 10, 2004

To S.C. reporter March 25, 2004