Douglas J. Del Tondo, Esq.
12424 Wilshire Boulevard, Ste. 1120
Los Angeles, California 90025
(310) 207-8337

Arbitrator

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

SUSAN R, Plaintiff, vs. CAROLYN H, Defendants.	CASE NO. SC 007517 **DECISION OF ARBITRATOR** Date: June 30, 1992 Time: 4:00 p.m. Place: 12424 Wilshire Blvd, Ste. 1120, Los Angeles.

LIABILITY

The plaintiff contends that on November 9, 1990 she pulled out across southbound Robertson from Gregory and stopped to make a left turn onto northbound Robertson. As she was preparing to make her turn, she heard a loud noise and then was hit shortly afterward by plaintiff's vehicle that unquestionably was speeding.

I conclude that defendant was a negligent cause of this accident. Despite defense counsel's argument that his client had the right-of-way, liability is not usually determined as a matter-of-law on who had the right of way. Laymanv. Simpson, 225 Cal. App. 2d 50, 54, 36 Cal. Rptr. 859 (1964). For example, the favored driver cannot arbitrarily rely on a right-of-way and proceed to hit a car when it could try and stop to avoid an accident. The favored driver must use due care notwithstanding having the right-of-way. *See Malone v. Perryman*, 226 Cal. App. 2d 227, 234, 37 Cal. Rptr. 864 (1964).

Thus, even assuming for the moment that defendant had the right of way (which, for reasons stated later is not accepted), the plaintiff met her burden of proof as to the negligence of defendant Hudson. Veh. Code § 22352 (b) says that the basic speed in a business district is 25 mph unless posted limits allow a greater speed. The photographs of the scene clearly depict a business district. Thus, defendant H could not travel greater than 25 mph unless evidence was adduced of a greater posted limit. None was produced. While defendant H told the police that she was travelling at 25 mph at the time, independent witnesses estimated her speed at between 45 and 60 mph. I judicially noticed from the DMV manual stopping distances, and concluded that her speed was reduced by 42 mph at point of impact.[1] According to the police report, after impact Ms. H then pushed the plaintiff vehicle another 31 feet, which generally means, by the same DMV formula, that defendant was going about 20 mph hour (10 mph for every 15 feet of stopping/pushing distance), or a total of 62 mph when she first commenced to break her vehicle. While driving at excessive speed is not per se negligence (BAJI 3.45, 5.30, 5.31), the totality of circumstances shows H was negligent. The photographs of the scene show that there are parked cars that block the view of persons entering from Gregory Street and there is only a stop sign as a traffic control. I will judicially notice that there are other such side-streets in the area. The photos show that the street has a very narrow two lanes in each direction. Also, this accident took place mid-day on a Friday in a business district where pedestrians darting out from the sidewalks is an everyday hazard. Thus, it was negligent for defendant to be driving at 62 mph at the time of this accident when cars or pedestrians could dart out. And this finding of negligence is despite assuming, as defendant claims, that defendant had the right of way.

I further find that H's negligence was a proximate cause of harm. At the point the skids were created, defendant laid down enough skids to stop completely without making any contact had she been going only 42 mph. Thus, had Hudson been driving within the speed limit, Hudson would have probably entirely have avoided this accident. Hence, I conclude defendant was a negligent cause of this accident.

[1] Skidmarks were 66 feet.

I also conclude the plaintiff was not a negligent cause of harm to herself in this accident. Plaintiff's uncontradicted testimony was that when she pulled out into the intersection, there were no cars within a dangerous distance on southbound Robertson. She saw a vehicle traveling southbound very far away that could be the defendant's vehicle (she cannot say for sure), but it was a block-and-a-half away and looked like a 'toy.' Plaintiff did not form any opinion about its speed because it was so far away.[2] Then she focused on traffic on northbound Robertson, which was appropriate and prudent given that she intended to turn onto northbound Robertson. She did not have to keep a look-out for southbound Robertson traffic because she had taken the right of way, and assumed, as is ordinarily proper, that all southbound traffic would comply with the law, and yield to her. (Veh. Code § 21804; *Rodabaugh v. Tekus*, 39 Cal. 2d 290, 294, 246 P.2d 828 (1952).[3] Opinions of witnesses in the police report that question whether "maybe" plaintiff should have not entered the intersection are inadmissible and hence irrelevant. But, as said before, even though plaintiff had the right-of-way, liability is not usually determined as a matter-of-law on who had the right of way. *Laymanv. Simpson*, 225 Cal. App. 2d 50, 54, 36 Cal. Rptr. 859 (1964). Plaintiff could still be partly at fault.

In this regard, defendant's counsel tried to attribute fault after the time that plaintiff had, as I found, taken the right of way. He questions why the plaintiff, once seeing the traffic clear

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[2] I am convinced that plaintiff's eyesight was not faulty sufficiently to explain her observation of southbound Robertson traffic. She was 79 at the time of the accident. Ms. R testified that soon before this accident that she had her eyes checked, and at no time thereafter was the prescription increased. The DMV tested her in October 1991 and gave her a new license, requiring wearing prescription glasses. Ms. R says this was no greater in strength than at the time of the accident. Hence, if the DMV concludes that her sight is strong enough today, and the witness explains that it was the same prescription on the day of the accident when she was wearing her glasses, I must conclude that she was not driving with faulty vision or that had she better sight that she could have seen something other than what she claims she saw.

[3] Had Ms. R seen the defendant's vehicle far away and concluded it was going very fast, then she would not be entitled to presume defendant would obey the law and drive at a safe speed and yield. (*Koenig v. Coe*, 163 Cal. App. 2d 429, 432, 329 P.2d 721 (1958). Where there is no notice of the unsafe conduct by the other vehicle, however then one is entitled to presume the other driver will obey the law. *Stephens v. Hatfield*, 214 Cal. App. 2d 140, 142, 29 Cal. Rptr. 436 (1963).

in northbound traffic when she had made her third stop, did not proceed forward and clear the intersection. The suggestion implied by this theory is that plaintiff had the last clear chance to avoid this accident, and this is a form of negligence. However, Ms. R testified that she heard a large noise just a second after stopping for the third time and then was hit a moment later. She testified that she was alarmed by the sound and looked about, and was just about to look left when she was hit. These facts do not support finding plaintiff could have avoided this accident. There are two reasons for this conclusion. First, Ms. R says she did not in fact look left by the time of impact, and did not have a duty to do so until the loud noise alerted her to danger. Second, since she had every right to rely upon southbound Robertson traffic stopping for her, Ms. R could expend her attention where it belonged — on northbound Robertson traffic, and not look left as defense counsel suggests. This duty changed when the noise happened, but since Ms. R was hit a second later, Ms. R did not have time to react to the danger. Or she should be regarded as being in an emergency situation where, even if she had enough time to avoid the accident, she could not be expected to act as a reasonable person and accelerate forward even if she now knew there was no longer any danger from entering northbound Robertson.

Thus, I find the plaintiff was without fault for this accident.

DAMAGES

Plaintiff suffered more than a mere soft tissue injury. The police report notes she suffered cuts and scrapes, and bleeding. Her shoes were filled with blood coming from her ankles. Ms. R had hematomas in her left leg which are still visible today, a year-and-a-half later. The January 1991 x-rays of her pubic bone of her pelvis confirmed definitely the diagnosis of her doctor of a fracture. Ms. R had pain in the groin area for the first time in her life after the accident. While the November 1990 x-ray at the hospital of her pelvis did not reveal the same fracture, given either the possibility that a preliminary x-ray probably did not take the specific view that the doctor in early 1991 sought to confirm his theory or that thin fractures require weeks to calcify to become detectible, I find that the later doctor's report along with the witness' testimony confirms a fracture to the pubic bone did occur in this accident. I also find that the 1989 x-rays of the pelvic area are

not conclusive that this groin condition pre-existed this accident. The diagnosis accompanying the 1989 x-ray charge refers to lower back radiculitis, and x-rays of the pelvis properly related to that diagnosis.

Due to injuries to her leg and knee, Ms. R says she had to walk 3 months with a cane. Occasionally, she still does. There was no detectable exaggeration in this plaintiff's claim. She admitted no neck pain ever was caused by this accident. She admits that she only had minor aggravation of pain in her lower back.

Ms. R was impeached in some ways regarding her denial of having made complaints to doctor's about pain walking up stairs prior to the accident, but the one instance from 1987 to contradict this, does not sufficiently counter the credibility that her testimony, taken as a whole, appears to deserve.

Ms. R's continuing injuries are not altogether insignificant. They include left leg pain – apparently an aggravation of what she had before the accident, although she contends it is very different than her previous sciatica. In the past six months, she had swelling and pain in her ankles. Climbing stairs still hurts her knees, but this appears partly due to her prior arthritic conditions. Her groin still hurts her if she stands long periods of time. Also, every night, her leg's shin bone hurts her. Plaintiff still suffers fear of driving, which has deterred her from enjoying visits to her family within Los Angeles although they are only 30 minutes away by car.

Plaintiff's counsel asked for $45,000 for pain and suffering, emotional distress, and past medical bills. Given her injuries, I award the plaintiff $45,000.

DATED: June 30, 1992

By: _____

Douglas J. Del Tondo
Arbitrator

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