

Pedestrian Struck by Bus While Crossing City Street

Bus co.: plaintiff also at fault, left ‘position of safety’

\$4.3 million settlement

In November 2001, the 48-year-old plaintiff was crossing a Boston street in the crosswalk with a green traffic light when he was struck by a bus owned and operated by the defendant company.

The defendant’s bus driver had been at a complete stop, awaiting a signal to make a left-hand turn onto the street containing the crosswalk area where the plaintiff was walking. When the green arrow illuminated, indicating that the driver could proceed with his left-hand turn, he observed the plaintiff in the median. However, the driver continued with the turn and struck the plaintiff in the crosswalk.

The impact caused the plaintiff severe head injuries and brain trauma.

At the time of the accident, the plaintiff had a stable work history. Since 1987, he had worked full-time as a landscaper and maintenance worker with the same company. A year prior to the accident, the plaintiff had also obtained part-time employment at a supermarket, regularly working an additional 20 hours per week.

After the accident, the plaintiff’s resulting disabilities rendered him unable to participate in any of his work activities due to his severe physical and cognitive limitations. Moreover, the traumatic brain injury left the plaintiff with ongoing significant impairments that permanently deprived him not only of the ability to work again, but also to live an independent and fulfilling life.

The plaintiff alleged \$566,899 in medical expenses, \$195,000 in lost wages and projected future lost wages of \$739,226.

At trial, the plaintiff expected to call the State Police reconstruction expert, who had initially investigated the accident, as well as a second accident reconstruction expert. Both experts would have testified that the plaintiff was in the crosswalk at the point of impact, and that the driver was negligent in failing to yield to a pedestrian in a crosswalk.

In response, the defendant maintained that the plaintiff ran from his position of safety on the median strip just as the bus driver was making a left-hand turn. As such, a jury could find that there was contributory negligence or that the plaintiff was even wholly responsible for the accident. It was expected that the defendant’s two accident reconstruction experts would also testify that the accident reconstruction performed by the State Police was fatally flawed and filled with unwarranted assumptions and unprovable “facts.”

The defendant further denied that all of the plaintiff's injuries, and therefore his special damages, were causally related to the accident, because the plaintiff suffered falls involving head injuries subsequent to the pedestrian accident. The defendant retained the services of a nationally known neurologist, who was expected to testify that the plaintiff was making excellent progress in his recovery until he suffered a fall seven months after the accident, which caused the plaintiff's condition to deteriorate.

Three mediations over the course of more than a year ensued. In March 2007, the defendant's liability carrier agreed to a structured settlement of \$4.3 million, with a guaranteed payout of \$6.46 million, which was accepted by the plaintiff and defendant as the final settlement.

Type of action: Motor vehicle negligence

Injuries alleged: Traumatic brain injury

Name of case: Withheld

Court/case no.: Suffolk Superior Court, no. withheld

Tried before judge or jury: N/A (settled)

Amount of settlement: \$4.3 million (structured settlement with a guaranteed payout of \$6.46 million)

Date: March 21, 2007

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