

Res Judicata

By Arlene Zalayet, Esq.

A sedentary life is the real sin against the Holy Spirit. Only those thoughts that come by walking have any value.

-Nietzsche

What could be more natural than going out for a walk? Whether strolling for leisure or dashing off to work, walking is the most basic form of locomotion. Walking provides a perfect opportunity to let thoughts run wild. These days, however, a plethora of perils confront the pensive pedestrian. This month's column provides an insight into two instances in which a tranquil traverse turned out to be a dangerous outing.

Elimiligy v Cohen

United States District Court,
Eastern District of New York
May 1990

Verdict: \$99,000.00

This lawsuit arose from an accident which occurred at the intersection of Coney Island Avenue and Avenue L in Brooklyn, New York. The plaintiff, a 25 year old male pedestrian, contended that while crossing the street, he was stationary on a safety island waiting for northbound traffic to subside before he crossed the street, when he was struck by the defendant's motor vehicle which was proceeding southbound. Plaintiff claimed that the point of contact was within the safety island. Defendant alleged that the plaintiff was running across the street and came in contact with the defendant's car located in the left turn lane. Eyewitnesses were produced on behalf of plaintiff. The eyewitnesses corroborated with the plaintiff's testimony. Plaintiff alleged to have sustained the following personal injuries: Fractured left trochanter of the left hip; herniated discs at levels L-2-3, L-3-4, L-4-5; post-traumatic stress order and depression; post-concussion syndrome and scar on the bridge of the nose. Plaintiff further claimed two years of lost earnings and diminution of future lost earnings over 37 years at approximately \$18,000.00 per year. Defendant conceded the fractured left trochanter but contested all other injuries. The trial was bifurcated. At the conclusion of the liability aspect, the jury found the defendant 17% negligent and the plaintiff 83% contributorily negligent. At the conclusion of the damage aspect of the trial, the jury awarded a total verdict of \$99,000.00 (\$75,000.00 for past and future pain and suffering and \$24,000.00 for past lost earnings. No award was made for future lost earnings). The \$99,000.00 was reduced by 83%, the proportion of the plaintiff's culpable fault. The resultant verdict was slightly less than \$17,000. NOTE: Information provided by Elliott C. Winograd, Esq., attorney for the defendant.

Poulos V. Tribuzio

Supreme Court, Nassau County



Arlene Zalayet

Before: Hon. Justice Joseph Colby
May, 1990

Defendant's Verdict

This case arose from an alleged pedestrian knockdown. The matter was tried in a unified trial inasmuch as the plaintiff, a 35 year old male, contended to have amnesia regarding the occurrence. The plaintiff called, as a witness, the police officer who arrived at the scene after the accident occurred. The police report was admitted into evidence. The accident description portion of the report indicated that the defendant "while driving struck a pedestrian". The defendant-driver testified that he did not know whether or not he came into contact with the plaintiff. He stated that he was driving in heavy traffic when he saw the plaintiff in front of his vehicle. The defendant applied the car brakes but did not see or hear an impact take place. The plaintiff's medical testimony involved an injury to his lower leg. The plaintiff alleged to have sustained traumatic thrombo phlebitis. He received emergency room treatment for this condition immediately after the accident. Plaintiff testified to constant swelling and pain of the lower leg from his ankle to his knee. Dr. Sheflin testified on behalf of the plaintiff. His testimony, in essence, was that the thrombo phlebitis condition was traumatically caused by the auto accident. He further testified that the condition would become more severe in the future and that the damage to the veins in that portion of the leg is permanent in nature. The defense produced Dr. Barry Jupiter. He testified that although there is swelling presently in the plaintiff's lower extremity, the swelling is not caused by thrombo phlebitis. The plaintiff did not return to work as a truck driver for approximately one year following the accident. The jury found that the defendant was not negligent. NOTE: Information provided by Patrick Hackett, Esq., attorney for the defendant.

Arlene Zalayet, a senior editor of the Nassau Lawyer, a director of the Bar Association, Assistant Dean of the Nassau Academy of Law, chairperson of the Legislation Committee, is an adjunct professor of law at Touro Law School, and has her offices located in Jericho, New York.