

Docket No. No. 37-2009-00057259-CU-PO-NC

San Diego Superior Court, Vista Branch

Vasquez v. Atkins Nursery

Trial Type: Jury

Judge: Jacqueline M. Stern

Verdict/Judgment Date: February 17, 2011

Length: 6 days

Jury Deliberations: 2 ½ hours

Vehicle Negligence

Motor Vehicle v. Motor Vehicle/Van

Verdict: \$179,488

In this stipulated liability, alleged brain damage case arising from a rear-end collision, the only issue to be determined was damages. Plaintiff's counsel asked the jury to award damages of over **\$3,700,000**. Defendants' counsel argued for no more than \$225,000 total, even if the jury adopted plaintiff's argument he had mild traumatic brain injury and permanent symptoms.

The jury verdict consisted of \$47,488 in past medical specials, \$57,000 in future medicals, \$50,000 past general damages and \$25,000 in future general damages.

Counsel

Plaintiff:

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Defendants: Bob Tyson and Mark T. Petersen, Tyson & Mendes, LLP,
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Facts/Contentions

Plaintiff Jorge Vasquez, a 39 year-old landscape/construction business owner, was involved in a collision with a van driven by an employee of defendant Atkins

Nursery in March 2009. Defendant's van struck the rear of plaintiff's pickup truck at approximately 25 miles per hour.

Defendants Atkins Nursery and its owner, Victor Gonzalez, admitted liability. However, they disputed causation and the scope of plaintiff's claimed damages.

Shortly before trial, plaintiff withdrew his claim for lost earnings and lost earnings capacity. He also withdrew the controversial MEG scan results, which purported to show brain injury.

Claimed Injuries

Plaintiff claimed mild traumatic brain injury as the result of allegedly striking his head on the "B" pillar of his pickup truck during the collision. Plaintiff also claimed whiplash-type injuries, with complaints of pain to his neck and lower back. Plaintiff claimed chronic headaches, forgetfulness, suicidal ideation, and permanent cognitive defects continuing almost two years post-accident. Plaintiff claimed his cognitive impairment was permanent and plaintiff would never be the same again for the rest of his life.

All x-rays and a brain MRI were negative. However, plaintiff underwent a PET scan which allegedly showed brain injury. Plaintiff complained his MTBI injuries were constant and debilitating.

Claimed Damages

Defendants stipulated to \$47,488 in past medical damages. Plaintiff sought over \$1.1 million in future medical damages and over \$2.6 million in past and future non-economic damages.

Prior Settlement Discussions

Plaintiff demanded the \$750,000 policy limit. The demand expired.

Defendants offered \$400,000.

Plaintiff subsequently refused to accept the insurance policy limits of \$750,000.

Plaintiff did offer shortly before trial to enter a High/Low settlement where the defense would waive the insurance policy limits and all appeal rights. Plaintiff offered to have the jury verdict capped as follows: Either \$750,000 low and \$2,500,000 high or a settlement of \$500,000 low and \$3,000,000 high.

Defendants refused this offer.

Insurance Carrier

Unitrin, Inc.

Experts

Plaintiff: Michael Lobatz, M.D., neurologist; Don Stevens, accident reconstruction; Voyko Banjac, Ph.D., biomechanical engineer; Ronald Ruff, Ph.D., neuropsychologist; Leonard Matheson, Ph.D., vocational rehabilitation; Monte Buchsbaum, M.D., radiologist (PET scan); Ronald Lee, M.D., neuroradiologist (MEG scan); Robert Wallace, economist.

Defendants: Jonathan Schleimer, M.D., neurologist; Jack Debes, Ph.D., accident reconstruction/biomechanical engineer; Thomas Wegman, Ph.D., neuropsychologist; Roger Thrush, Ph.D., vocational rehabilitation; Donald Sutherland, M.D., neuroradiologist (MEG scan); Paul Zimmer, economist.

Expert Key Testimony

Plaintiff's medical experts testified plaintiff suffered mild traumatic brain injury in the accident and continued to suffer residual cognitive and physical issues almost two years post-accident. Plaintiff introduced undisputed, objective evidence, namely the MEG scan, that showed plaintiff had a traumatic brain injury. Plaintiff's biomechanical engineer testified plaintiff struck the "B" pillar in his vehicle and the forces involved in the accident were sufficient for a concussion.

Defense experts testified plaintiff did not suffer mild traumatic brain injury, or at most, he had a mild Grade I concussion that should have resolved within weeks to several months post-accident. Defendants' biomechanical engineer testified plaintiff did not strike the "B" pillar in his vehicle and the forces involved in the accident fell below the threshold for expected concussion.

Comments

The jury did not believe Plaintiff suffered a brain injury.

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