

FEATURED VERDICT

Medical Malpractice

Defense: Patient's amputation not due to therapeutic treatment

Cabarcas v. Gulfo

Orange County Supreme Court

Plaintiffs' Attorneys Thomas P. Giuffra and Thomas P. Valet; Rheingold, Valet, Rheingold, McCartney & Giuffra LLP; New York

Defense Attorneys Carol C. Poles; Steinberg & Symer, LLP; Poughkeepsie, N.Y.; and Robert F. Rich Jr.; Feldman, Kleidman & Coffey LLP; Fishkill, N.Y.

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EDITOR'S NOTE This report is based on information that was provided by plaintiff's and defense counsel.

—Jason Pafundi

MOTOR VEHICLE

Pedestrian — Right Turn

Turning motorist failed to yield, injured pedestrian claimed

VERDICT \$790,000

CASE Rosanell Rankins v. Jose X. Mogrovejo and Juan C. Mogrovejo, No. 300299-KTS-2011
COURT Kings Civil
JUDGE Reginald Boddie
DATE 6/1/2012

PLAINTIFF
ATTORNEY(S) Scott A. Steinberg, Greenberg & Stein P.C., New York, NY

DEFENSE
ATTORNEY(S) Gary R. Novins, Novins and Associates, Melville, NY

FACTS & ALLEGATIONS On Nov. 9, 2006, plaintiff Rosanell Rankins, 46, a community-outreach professional, was struck by a car. The incident occurred on Clifton Place, alongside its intersection at Nostrand Avenue, in the Bedford-Stuyvesant section of Brooklyn. Rankins claimed that she sustained injuries of her back and a knee.

Rankins sued the car's driver, Juan Mogrovejo, and the car's owner, Jose Mogrovejo. Rankins alleged that Juan Mogrovejo was negligent in the operation of his vehicle. She further alleged that Jose Mogrovejo was vicariously liable for Juan Mogrovejo's actions.

Rankins claimed that the impact occurred in a crosswalk of Clifton Place. She contended that a green traffic signal permitted her entrance to the roadway. She also contended that the impact occurred while Jose Mogrovejo was executing a right turn onto Clifton Place, from the left southbound lane of Nostrand Avenue. She claimed that a motorist executing a similar turn from Nostrand Avenue's right southbound lane had stopped and yielded, and her counsel contended that Mogrovejo also should have yielded.

Mogrovejo contended that the impact did not occur in a crosswalk. He also contended that the intersection's traffic signals favored him.

INJURIES/DAMAGES *chondromalacia / chondromalacia patella; closed reduction; effusion; fracture, tibial plateau; herniated disc at L5-S1; knee; physical therapy; radiculopathy; strain, lumbar*

Rankins was placed in an ambulance, and she was transported to The Brooklyn Hospital Center. Rankins reported that she was suffering pain that stemmed from her back and her right knee. Doctors observed that she was suffering a fracture of her right leg's tibial plateau, which is a lower component of the right knee. The fracture was addressed via closed reduction and the application of a cast.

A subsequent MRI scan revealed that Rankins was suffering a herniation of her L5-S1 intervertebral disc, and a doctor diagnosed a chronic strain of the spine's lumbar region, with radiculopathy. Rankins claimed that her right knee also developed chondromalacia, which is a weakening of the cartilage, and effusion, which is a buildup of a joint's lubricating fluid. She contended that the injuries and residual conditions were results of the accident.

Rankins initially underwent physical therapy, but she claimed that the treatment did not relieve her pain. Rankins' doctor recommended arthroscopic surgery that would have addressed the injuries of Rankins' right knee. The New York State Workers' Compensation Board approved the surgery in 2008, but Rankins became incarcerated before the surgery could be performed. The surgery and other diagnostic procedures were offered during Rankins' incarceration, but she declined to undergo the procedures. The surgery was twice scheduled after Rankins was released from her incarceration, but it was postponed each time because Rankins suffers hypertension and thusly was not considered a safe candidate for the procedure.

Rankins claimed that she suffers residual pain and limitations. Rankins' treating orthopedist opined that Rankins' residual effects are permanent. He contended that she may have to undergo fusion of her spine's L4-5 level.

Rankins sought recovery of \$175,000 for future medical expenses, \$350,000 for past pain and suffering, and \$300,000 for future pain and suffering.

The defense's expert orthopedist opined that Rankins' spinal injuries predated the accident, though he also acknowledged that the condition may have been asymptomatic prior to the accident.

Defense counsel also contended that Rankins failed to mitigate her damages. He noted that she refused to undergo surgery, and he claimed that she failed to attend some sessions of the physical therapy that her doctor prescribed.

RESULT The jury found that the defendants were liable for the accident. It determined that Rankins' damages totaled \$790,000.

ROSANELL RANKINS	\$175,000 future medical cost \$315,000 past pain and suffering <u>\$300,000 future pain and suffering</u> \$790,000
DEMAND OFFER	\$100,000 (insurance coverage's limit) \$60,000

INSURER(S) Global Liberty Insurance Company of New York for both defendants

TRIAL DETAILS Trial Length: 9 days
Trial Deliberations: 4 hours
Jury Vote: 6-0
Jury Composition: 4 male, 2 female

PLAINTIFF EXPERT(S) David B. Basch, M.D., orthopedic surgery, Sparta, NJ

DEFENSE EXPERT(S) Michael P. Rafiy, M.D., orthopedics, New York, NY

POST-TRIAL Judge Reginald Boddie denied defense counsel's motion for a new trial. He also denied defense's counsel's motions to set aside and/or reduce the damages awards.

EDITOR'S NOTE This report is based on information that was provided by plaintiff's counsel. Defense counsel did not respond to the reporter's phone calls.

—Jason Pafundi

NEW YORK COUNTY

MOTOR VEHICLE

Pedestrian

Defense: Distracted man walked onto restricted area of road

VERDICT \$200,000
ACTUAL \$10,000

CASE Luis Alcantara v. Eric W. Knight and TMCC, No. 105585/07

COURT New York Supreme

JUDGE Margaret A. Chan

DATE 2/21/2013

PLAINTIFF ATTORNEY(S) Raphael Rybak, Dinkes & Schwitzer, New York, NY

DEFENSE ATTORNEY(S) Paul A. Fino Jr., White, Fleischer & Fino, New York, NY (Eric W. Knight)
None reported (Toyota Motor Credit Corp.)

FACTS & ALLEGATIONS On Jan. 4, 2007, plaintiff Luis Alcantara, 37, a messenger, was struck by a car. The incident occurred on the northbound side of Park Avenue, alongside its intersection at East 33rd Street, in Manhattan.

Alcantara sustained injuries of his back, a leg, several ribs and a shoulder.

Alcantara sued the car's driver, Eric Knight, and the car's owner, Toyota Motor Credit Corp. Alcantara alleged that Knight was negligent in the operation of his vehicle. Alcantara further alleged that Toyota Motor Credit was vicariously liable for Knight's actions.

Toyota Motor Credit was dismissed, and the matter proceeded to a trial against Knight.

Alcantara claimed that the impact occurred in a crosswalk of Park Avenue, and he contended that a green traffic signal permitted his entrance to the roadway.

King contended that the impact occurred north of the crosswalk; near the entrance to a northbound tunnel that separates northbound and southbound traffic. Defense counsel noted that signs clearly indicate that pedestrians are not permitted in that area, and he further noted that fences block access to the area. A witness and a responding police officer agreed that the impact occurred in the area in which foot traffic is prohibited.

King also contended that Alcantara was reading or sending text on a cellular telephone when the impact occurred.

INJURIES/DAMAGES *fracture, L3; fracture, L4; fracture, humerus; fracture, leg; fracture, rib; fracture, shoulder; fracture, tibia; fracture, transverse process; internal fixation; intramedullary fixation; open reduction; pins/rods/screws; trigger finger; unconsciousness*

Alcantara sustained a fracture of the mid-shaft region of his left leg's tibia; a fracture of the proximal region of his right arm's humerus, which is a lower component of the right shoulder; fractures of seven ribs; and fractures of the transverse processes of his spine's L3 and L4 vertebrae. He became unconscious.

Alcantara was placed in an ambulance, and he was transported to Bellevue Hospital Center, in Manhattan. His left leg's fractures were addressed via open reduction and the internal fixation of an intramedullary rod and 11 screws. His hospitalization lasted 32 days, and he subsequently underwent 53 days of inpatient rehabilitation.

On Jan. 23, 2008, Alcantara underwent surgery of two of his left leg's fixation screws, which had broken. On Aug. 20, 2009, he underwent surgical resurfacing of the head of his right arm's humerus.

Alcantara claimed that he developed residual trigger finger. He contended that the condition affected two fingers of his left hand and three fingers of his right hand. On March 13, 2009, he underwent surgical release of the affected fingers of his left hand. On Dec. 11, 2009, he underwent surgical release of the affected fingers of his right hand.

Alcantara further claimed that he suffers residual impairment of his ambulation. He contended that he requires the use of a cane and that he cannot resume work.

Alcantara sought recovery of past and future lost earnings and damages for past and future pain and suffering.