

Plaintiff's complaints of pain and lack of mobility are, for the most part, sincere;

3) Plaintiff suffers from other serious pre-existing medical conditions including significant coronary artery disease and diabetes. Plaintiff has had three heart attacks. He was using a cane on the day of the accident due to a pre-existing toe injury. These medical conditions seriously limited plaintiff's physical abilities and negatively impacted his enjoyment of life well prior to the accident;

4) Plaintiff's medical expenses related to the accident have been paid for and were provided by plaintiff's custodian, defendant herein;

5) Plaintiff was convicted of the murder of his step-daughter in 1995 and is currently serving a lengthy prison term for that conviction. Although plaintiff is eligible for parole in the year 2010, given plaintiff's prior conviction for killing his wife in 1969, his age and his poor health, plaintiff will likely spend the rest of his natural life as an inmate in the care and custody of defendant. Consequently, plaintiff will suffer no damages in the form of lost wages or unreimbursed medical expenses;

6) The medical experts concur that plaintiff will require a total left hip replacement in the future. Plaintiff testified that he did not want to undergo such a procedure because of the pain and risk involved. However, plaintiff has and will continue to endure moderate to severe pain in his left hip and leg for the remainder of his life;

7) Plaintiff suffered some mild pain as a result of his elbow injury, but the pain completely disappeared in a matter of weeks;

8) Medications available to plaintiff have not resulted in a significant reduction in pain.

* * * * *

Based upon the facts found above, the court renders the following conclusions of law:

1) Plaintiff has not sustained any lost wages as a direct and proximate cause of defendant's negligence and will not sustain any such loss in the future;

2) Plaintiff has not sustained any damages in the form of unreimbursed medical expenses as a direct and proximate result of defendant's negligence and he will not sustain any such damages in the future;

3) Plaintiff has endured and will continue to endure pain and suffering as a direct and proximate result of defendant's negligence. Plaintiff is entitled to recover the sum of \$45,000 from defendant as compensation for past and future pain and suffering;

4) Plaintiff has sustained damages in the form of loss of enjoyment of life as a direct and proximate result of defendant's negligence. Plaintiff is entitled to recover the sum of \$5,000 from defendant as compensation for this loss.

Accordingly, judgment is rendered in favor of plaintiff in the amount of \$50,000.

RUSSELL LEACH

Case No. 99-01721

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DECISION

Judge

LP/cmd

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