## [Cite as Gillman v. Ohio Dept. of Rehab. & Corr., 2001-Ohio-1852.] IN THE COURT OF CLAIMS OF OHIO

:	
:	CASE NO. 99-01721
:	DECISION
:	Judge Russell Leach
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This case was tried to the court on the sole issue of damages. Defendant was found liable in a prior decision for injuries that plaintiff sustained as a result of the negligent operation of a bicycle by defendant's employee.

Based upon the evidence submitted at the trial, the court makes the following findings:

 Plaintiff sustained a minor fracture of the left elbow and a serious fracture of his left hip as a direct and proximate result of defendant's negligence. Plaintiff's left elbow was treated with immobilization, and it has healed completely.
However, plaintiff underwent a surgical procedure for his hip known as a hemi-arthroplasty, meaning the ball of his left hip was removed and replaced with a steel ball and steel pin inserted into plaintiff's left femur;

2) Although the surgery was reasonably successful, plaintiff continues to suffer a great deal of pain in his hip and leg when standing or walking. Flexion and extension in plaintiff's left hip have been significantly reduced despite plaintiff's efforts at rehabilitation. Plaintiff rarely walks without a cane or walker and he frequently uses a wheelchair. Case No. 99-01721

-2-

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;

 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 stepdaughter 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;

DECISION

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

-3-

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

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

 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.

Case No. 99-01721

- 4 -

DECISION

Judge

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MITCHELL E. GILLMAN	:	
Plaintiff	:	CASE NO. 99-01721
v.	:	JUDGMENT ENTRY
DEPARTMENT OF REHABILITATION AND CORRECTION	:	Judge Russell Leach
Defendant	:	

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This case was tried to the court on the sole issue of plaintiff's damages. The court has considered the evidence, and for the reasons set forth in the decision filed concurrently herewith, judgment is rendered in favor of plaintiff in the amount of \$50,025 which includes the filing fee paid by plaintiff. Court costs are assessed against defendant. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

> RUSSELL LEACH Judge

Entry cc:

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