

SUPERIOR COURT
of the
State of Delaware

William L. Witham, Jr.
Judge

Kent County Courthouse
38 The Green
Dover, Delaware 19901
Telephone (302) 739-5332

Submitted: June 18, 2004
Decided: June 22, 1004

Scott E. Chambers, Esquire
Schmittinger and Rodriguez, P.A.
414 South State Street
Dover, Delaware 19901

Ms. Jane Blackburn
8837 Newport Gap Pike, Apt. 3
Avondale, Pennsylvania 19311

Re: ***Robert R. and Tymone Banks v. Jane M. Blackburn***
Civil Action No. 03C-11-002 WLW
Inquisition Hearing Held June 18, 2004

This letter will serve as the Court's decision on the issue of damages sustained by Robert and Tymone Banks arising from an automobile accident which occurred between Mr. Banks and Jane Blackburn. Default judgment was entered by this Court on the issue of liability against Ms. Blackburn after she failed to answer or defend the case. Defendant did not appear at the inquisition hearing.¹ Upon consideration of the evidence presented at the hearing and a review of the medical records and bills submitted by the Plaintiffs, it appears to the Court that Mr. Banks is entitled to

¹ However, Defendant did mail a letter to Scott Chambers, counsel for Plaintiffs, requesting that the inquisition hearing be delayed. Mr. Chambers submitted the letter to the Court, but because no such request was sent to the Court the hearing proceeded as scheduled.

\$46,852.29 in total damages and Mrs. Banks is entitled to \$1,500.00 in damages for her loss of consortium claim.

The automobile accident between Mr. Banks and Ms. Blackburn occurred on May 15, 2002. As a result of the accident, Mr. Banks sustained injuries to his left knee and left shoulder for which he sought medical treatment at Milford Memorial Hospital Emergency Room immediately following the accident. Because he previously had knee reconstruction surgery while in the military in 1993, Mr. Banks sought treatment and a second opinion at the Veterans' Administration Hospital. The doctors at the VA Hospital referred him to Richard P. DuShuttle, M.D., for additional treatment.

Dr. DuShuttle began treating Mr. Banks on June 27, 2002. An MRI of his left knee revealed a meniscus tear. On July 24, 2002, Mr. Banks underwent arthroscopic surgery on his left knee to repair the tear. Following the surgery, Mr. Banks continued to experience pain and swelling of his left knee. After a course of conservative treatment with medication and activity restrictions, another MRI was performed on April 10, 2003. The MRI again revealed a meniscus tear and Mr. Banks underwent additional arthroscopic surgery on his knee. Mr. Banks was last treated by Dr. DuShuttle on July 17, 2003, at which time he indicated that he was feeling much better and was able to return to full-time work.

Dr. DuShuttle indicated in his report that the medical treatment through July 17, 2003, was reasonable, necessary and related to the May 15, 2002, accident. In addition, Dr. DuShuttle concluded that Mr. Banks would continue to require conservative treatment, including medications estimated at a cost of \$50.00 to \$75.00

per year and office visits at an estimated cost of \$140.00 per year.

During the inquisition hearing, Mr. Banks testified that he experienced significant pain from the injuries to his shoulder and his knee. His shoulder injury healed quickly, but he had to undergo extensive treatment for his knee. As a result of the automobile accident, Mr. Banks underwent 2 knee surgeries and lost 39 days of work. When he returned to work, prior to the second surgery, he was limited to light duty only. Mr. Banks testified that his knee is “fine” now, and he is working full-time in his regular duty as a letter carrier for the United States Postal Service.

Mrs. Banks testified that she has been married to Mr. Banks for five years and that they were married at the time of the accident. She has four children who reside with them, ranging in age from six to eleven years. She testified regarding the impact the accident and injury had on her relationship with Mr. Banks. Specifically, she stated that she missed one week of work because Mr. Banks was unable to care for the children due to his injury. Their marital relationship was strained because Mr. Banks was irritable due to the pain he was experiencing. Mrs. Banks stated that after the second surgery, when Mr. Banks began to feel better, their marital relationship returned to normal.

The Plaintiffs introduced Mr. Banks’ medical bills and records as exhibits. According to the bills from the hospitals and Dr. DuShuttle, Mr. Banks’ past medical expenses, beyond his PIP limits, total \$7,842.65. His lost wages total \$4,487.64. In addition, future medical expenses are expected to total \$190.00 per year. Based upon a life expectancy of 23.8 years, future medical expenses total \$4,522.00.

This Court finds that the medical bills submitted by Mr. Banks are reasonable

and related to the injury he received as a result of the motor vehicle accident on May 15, 2002. In addition, the Court finds that the days Mr. Banks missed from work were also related to the accident. Finally, it appears that the future medical expenses are also appropriate. Therefore, special damages totaling \$16,852.29 will be awarded to Mr. Banks. In addition, based upon the pain, suffering, and inconvenience Mr. Banks experienced from the injuries and the two knee surgeries, the Court finds an award of \$40,000.00 for general damages to be appropriate. This award takes into consideration the fact that the injury was essentially resolved within 14 months of the accident.²

The testimony by Mrs. Banks presented little to establish her loss of consortium claim. However, based on her testimony that the accident caused a strain in the marital relationship, an award of \$1,500.00 appears to be appropriate.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.

WLW/dmh
oc: Prothonotary
xc: Order Distribution
File

² The Court has also considered the impact of the preexisting reconstructive surgery on the damaged knee.