

<b>Progressive Cas. Ins. Co. v Morton</b>
2015 NY Slip Op 32945(U)
July 2, 2015
Supreme Court, Dutchess County
Docket Number: 4654/13
Judge: Peter M. Forman
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Court/County: \_\_\_\_\_

Case Title: \_\_\_\_\_

Docket Number: 4654/2013Judge: Peter M. Forman

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF DUTCHESS

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AMY FINNEY, as Administratrix of the Estate  
of ROBERT C. FINNEY, JR., deceased

DECISION AND  
ORDER

Plaintiff,

-against-

Index No. 4654/13

CHRISTOPHER A. MORTON, JR.,

Defendant.

-----X  
FORMAN, J., Acting Supreme Court Justice

On August 26, 2012, decedent Robert C. Finney, Jr.,  
(hereinafter "Finney") and a friend were riding their motorcycles  
northbound on State Route 414 in the Town of Hector, Schuyler  
County. Defendant was driving a pickup truck behind Finney and  
the other rider when his vehicle struck Finney's motorcycle from  
the rear. Finney died as a result of the injuries he suffered in  
this accident.

Plaintiff commenced this action as Administratrix of  
Finney's estate. The court denied Plaintiff's motion for partial  
summary judgment on the issue of liability on January 10, 2014. A  
non-jury trial on the issue of liability and damages was  
commenced on April 27, 2015 and concluded on April 29, 2015. This  
Decision and Order constitutes the Court's decision for purposes  
of CPLR §4213.

## DISCUSSION

On the afternoon in question, the weather was clear, sunny and dry. As Finney and his friend were heading north on Route 414, the lead motorcycle indicated to Finney that they should be turning left soon. The defendant was following Finney at 55 mph (the posted speed limit) approximately two car lengths behind Finney's motorcycle. The defendant testified that he thought that "the rule" was to stay two car lengths behind a vehicle, regardless of what speed one was traveling. The defendant was driving to work after playing softball earlier in the day. There is no allegation that the defendant had consumed any alcoholic beverages or illegal substances before he got behind the wheel. He was alone in the truck and listening to music on the radio at the time of the accident.

The defendant's testimony as to where he made contact with Finney's motorcycle has varied from the DMV hearing (where he stated that he struck Finney's rear tire) to the trial before this court (where he testified that he struck the cycle on the side). At trial, the defendant testified that Finney slowed and headed in the direction of the shoulder, but never left his lane of travel. The defendant attempted to pass Finney as his motorcycle moved toward the shoulder, but struck the motorcycle when Finney abruptly turned left back across the lane of travel.

According to the accident report prepared by the New York State Police, the motorcycle came to a rest approximately 200

feet north of the impact site, on the far shoulder of Route 414. There was no evidence of pre-impact braking by the defendant. His truck left post-impact skid marks for approximately 122 feet. The front license plate belonging to the defendant's truck was entangled in the left side of the motorcycle when it came to a final rest. The defendant was issued a traffic ticket for following too closely (Vehicle & Traffic Law §1129).

The accident was witnessed by Trooper Christopher Shields who was traveling southbound on Route 414 at approximately 3:35 p.m. on the day in question. He was approximately 500 feet away when he observed Finney's motorcycle "stop abruptly" and begin to turn to his left when the pickup truck struck him. He described the impact as a "side impact" as opposed to a straight rear-end impact (as indicated in the accident report). He did not see the truck leave its northbound lane at the time of impact. He also disputed the placement of the motorcycle as facing north at the time of impact. He stated that the motorcycle was at least on an angle facing west at the time of the collision. He testified that he did not see the decedent ride onto the shoulder of the highway prior to impact. The impact forced the motorcycle and the decedent into the air before both landed near Trooper Shields' now-stopped vehicle.

Trooper Shields also stated that the accident took place along a straight-away, and that both vehicles appeared to be

traveling within the posted speed limit (55 mph). Trooper Shields estimated that the defendant's truck was approximately two car lengths behind decedent's motorcycle when he first observed them. Trooper Shields also testified that the truck attempted to take evasive action to avoid impact with the motorcycle by applying his brakes. Trooper Shields' car stopped 200 feet from the gauge marks that were left in the roadway from the collision. Trooper Shields also testified that a diagram prepared by Trooper Cross in his accident report should have depicted the motorcycle as facing west rather than facing north at the moment of impact.

Trooper Cross testified that two car lengths is equivalent to 40 feet. He also testified that a vehicle traveling at 55 miles per hour would move at the rate of 80 feet/second. According to Trooper Cross, an individual traveling at 55 mph would need approximately 1.25 - 2 seconds to react and respond to a vehicle stopping short in front of that person's vehicle, and would require 100-160 feet to stop and avoid contact with that other vehicle. Trooper Cross did not interview the defendant prior to preparing his report, which placed the motorcycle facing due north at impact.

Dr. Thomas Fitzgerald, who holds a Ph.D. in economics from Rutgers University, testified during the damages phase of the trial on behalf of the plaintiff. He was qualified as an expert in the field of evaluating pecuniary loss in wrongful death and personal injury actions. His specialty is valuing economic loss.

[\* 6]

Finney was a diesel mechanic with a local oil delivery firm in Putnam County. He earned approximately \$60,000 in 2012. Dr. Fitzgerald projected his earnings to age 67, when the decedent would be eligible to retire with full social security benefits.

Dr. Fitzgerald testified that there are three categories of economic loss: 1) lost earnings; 2) lost health insurance benefits; and 3) loss of the decedent's household services. Based upon his evaluation, he opined that the total economic loss due to Finney's death was \$1,522,667. He based this opinion on an assumption that the decedent would not have been fired or laid off in the future. There was evidence in the record that Finney was a valuable employee, not in jeopardy of losing his position.

#### HOLDING

Based on the reliable and credible testimony and evidence in this case, the court finds the defendant was negligent in the operation of his truck. The court also finds that defendant's negligence was a substantial factor in causing the accident, and that this accident caused Finney's death. The court also finds that Finney was negligent in his operation of his motorcycle, and that his negligence was also a substantial factor in the accident that caused his death.

The Court finds that defendant's percentage of fault for the accident is 95%. The court also finds that Finney's percentage of fault for the accident is 5%.

As to damages, the court credits and accepts the unrefuted testimony of the plaintiff's expert, Dr. Thomas Fitzgerald who, as previously noted, is an expert in the field of analyzing and valuing economic loss in wrongful death and personal injury litigation. Specifically, the court adopts Dr. Fitzgerald's calculations resulting in a finding that plaintiff has sustained economic loss totaling \$1,522,667.00.

Pursuant to CPLR §4213(b), this total economic loss is based upon the following past and future damages:

Lost earnings prior to verdict:	\$114,068.00
Future lost earnings:	<u>\$951,602.00</u>
Subtotal:	\$1,065,670.00
Lost benefits:	\$87,239.00
Lost household services prior	
to verdict:	\$16,000.00
Future lost household services:	<u>\$353,758.00</u>
Total economic loss:	\$1,522,667.00
Defendant's 95% share:	\$1,446,533.65

These damages can also be broken down as follows:

Total past economic loss:	\$130,377.00
Defendant's 95% share:	\$123,858.15
Total future economic loss:	\$1,392,290.00
Defendant's 95% share:	\$1,322,675.50




[\* 8]

Plaintiff shall file and serve a proposed judgment that is consistent with this Decision and Order, and that complies with the requirements of Article 50-B of the CPLR, within thirty (30) days of the date of this Decision and Order. The Notice of Settlement of that proposed judgment shall provide Defendant with at least three weeks to file any objections or proposed counter-judgment.

The foregoing constitutes the Decision and Order of the court.

Dated: July 2, 2015  
Poughkeepsie, New York

  
\_\_\_\_\_  
Hon. Peter M. Forman  
Acting Supreme Court Justice

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