

STATE OF RHODE ISLAND

PROVIDENCE, SC.

SUPERIOR COURT

(FILED: August 18, 2022)

STEPHEN A. ARIAS
Plaintiff,

v.

LUIS GOMEZ and JEAN C. RUIZ
Defendants.

:
:
:
:
:
:
:

C.A. No. PC-2018-7480

DECISION

LANPHEAR, J. This matter is before the Court for decision following a non-jury trial in a negligence case resulting from an alleged motor vehicle collision. The trial is completed, and each party has submitted post-trial memoranda. For the reasons that follow, this Court finds for the Plaintiff, Mr. Arias.

I

Findings of Fact

The facts, as determined from all the evidence presented at trial, are found as follows:

On July 7, 2018 at about 1:00 p.m., Mr. Arias was driving north on Interstate Route 95 in Providence, nearing the State House exit. At that time, Mr. Gomez was driving a motor vehicle northbound on Route 10 in Providence and merging onto Route 95. Mr. Gomez’s vehicle was owned by Jean C. Ruiz. Mr. Arias was driving in the lane second from the left. Mr. Gomez merged onto Route 95, into the fourth lane from the left. As they approached the State House and Route 146 exit ramp, the Gomez car abruptly crossed leftward, over two lanes, to attempt to get into the second lane from the left. This avoided a backlog of traffic on the right side which was backed up at the exit ramps. When the Gomez car pulled left over two lanes, it became

perpendicular in Mr. Arias' lane. Mr. Arias swerved sharply left into an empty lane to avoid contact, bringing the vehicles more parallel. However, the Gomez vehicle pulled over so quickly that it brushed the side of the Arias vehicle. Mr. Arias had a clear view of the events immediately to his right and could track the car carefully. When Mr. Gomez moved quickly into Mr. Arias' lane, portions of Mr. Gomez's left side and wheelbase came into contact with the right (passenger) side of Mr. Arias' vehicle. In stop and go traffic, the two cars were able to maneuver into the right breakdown lane. The state police were contacted, and an officer appeared within fifteen minutes. Mr. Arias' vehicle was damaged as shown in Exhibits F, G, H, I, and J.

There was some damage to the Gomez vehicle. Mr. Arias was going nearly fifty mph in stop and go traffic. The Court concludes that Mr. Gomez was 90 percent negligent for the motor vehicle collision, and Mr. Arias was 10 percent negligent.

Property damage is not contested before the Court, though Mr. Arias testified that his car was a total loss.

Mr. Arias is claiming personal injuries. He received no treatment on the day of the collision. He went to Primary Medical Center and Walk-In in East Providence on the following day where he complained of neck tightness, right shoulder and upper back pain, and right thigh pain. He claimed his head struck the windshield but the glass was intact. He was given pain relief medication, prescribed x-rays, and referred to physical therapy. X-rays taken the same day appeared normal.

Within a week, Mr. Arias was treated by Dr. Kenneth Morrissey in Cranston. He was seen three times in the following month, and Mr. Arias acknowledges he was referred to Dr. Morrissey by counsel. Dr. Morrissey found the collision to be the cause of Mr. Arias' injuries and ordered him out of work for July 2018 and to go for physical therapy. By August 7, 2018, he had returned

to work, was taking only Motrin, and was continuing with more limited physical therapy. Mr. Arias was discharged at his own request on August 22, 2018 with tightness in his shoulders, stiffness in his neck, and headaches occasionally occurring.

The Court finds that Mr. Gomez's negligence was a proximate cause of Mr. Arias' injuries and damages.

Mr. Arias incurred medical bills for injuries and treatment resulting from the motor vehicle collision which total \$3,955. He lost no time at work and claims no lost wages. The Court finds no future medical treatment has been established.

Mr. Arias testified that he did not lose any pay. Although Dr. Morrissey's report indicates that he was keeping him out of work, Mr. Arias was working from home, even though the doctor did not want him to return to work in July 2018. *See* Exhibit 4. The physical therapist's report states that Mr. Arias was still treating through August 22, 2018 (Exhibit 5) and was continuing home exercises to supplement therapy with tightness and discomfort in his neck. Mr. Arias testified that he was completely recovered at the time of trial.

The Court sets a value for pain and suffering at \$6,400. Compensatory damages are therefore \$10,355.

II

Presentation of Witnesses

Mr. Arias testified at trial. He subjected himself to a full cross-examination. Counsel agreed to the submission of the deposition transcripts of each of the parties as full exhibits. Mr. Gomez testified only through a deposition. The Court could not see Mr. Gomez as he did not appear in Court and, having only testified once, self-inconsistencies were limited.

Mr. Arias was specific about how the incident occurred, and his version was quite consistent with the narrative given to the police and his deposition testimony. In earlier discovery, Mr. Arias was incorrect about the exact make and color of the car which struck his car several years ago, but each of the parties acknowledged that they pulled into the breakdown lane and talked to one another. Frankly, Mr. Arias' description of the event seems logical. Just after the Route 10 onramp, Route 95 was congested. A car from the far right suddenly pulled over two lanes to avoid the traffic, becoming perpendicular in Mr. Arias' lane. Mr. Arias swerved sharply left into an empty lane to avoid contact. As a result, the Gomez vehicle brushed the side of the Arias vehicle. Mr. Arias would have had a clear view of the events immediately to his right and would have tracked the car carefully. Mr. Arias admitted that he was driving at a high rate of speed in the busy traffic. A male in his mid-thirties, he was forthright but seemed reluctant to discuss his injuries, treatment, or any incapacity. During the trial, he was cooperative with both attorneys, responded directly, and was respectful, significantly consistent, and clear. The Court found him very credible.

Mr. Gomez completely denies that his vehicle was in contact with Mr. Arias' vehicle. He did not appear at trial and, by agreement, his deposition was placed into evidence. While the Court never had the opportunity to see Mr. Gomez testify, at the deposition he suggested that he was staying in the same lane, to take the busy State House exit to get to McDonald's on Branch Avenue, even though the Branch Avenue exit on Route 146 (or the one on Route 95) would have been more direct. Oddly, he claimed a desire to travel the city streets to get to the McDonald's, though he was already on Route 95, a few feet from the Route 146 exit. If he pulled over two lanes, Mr. Gomez would not have had a clear view of the cars behind him after he crossed their paths. When he stopped and looked at the damage, he made sure to take photos. He claims he never had the opportunity to talk to the state police officer, although he gave the officer his license and

registration, received them back, and Mr. Arias spoke with the officer. Gomez Dep. 19:1-18, May 13, 2021. Mr. Gomez claimed there was no damage to his car, using photographs which were taken at some unknown time at a point other than the collision; although, the police officer reported that the Gomez car had “[f]unctional [d]amage,” Ex. 1, at 3A. Mr. Gomez acknowledged he was taking photographs of the two cars at the scene. Gomez Dep. 20:16-21:3, May 13, 2021. No photographs of the condition of the Gomez vehicle at the scene were placed in evidence. The Court could not find Mr. Gomez to be consistent and must question his credibility, particularly the condition of his vehicle at the scene.

III

Analysis

Rule 52(a) of the Superior Court Rules of Civil Procedure provides that “[i]n all actions tried upon the facts without a jury . . . the court shall find the facts specially and state separately its conclusions of law thereon. . .” Super. R. Civ. P. 52(a). In such a case, “[t]he trial justice sits as a trier of fact as well as of law.” *Hood v. Hawkins*, 478 A.2d 181, 184 (R.I. 1984). “Consequently, he [or she] weighs and considers the evidence, passes upon the credibility of the witnesses, and draws proper inferences.” *Id.* “The task of determining the credibility of witnesses is peculiarly the function of the trial justice when sitting without a jury.” *State v. Sparks*, 667 A.2d 1250, 1251 (R.I. 1995) (quoting *Walton v. Baird*, 433 A.2d 963, 964 (R.I. 1981)). “It is also the province of the trial justice . . . to draw inferences from the testimony of witnesses . . .” *Walton*, 433 A.2d at 964; *see also Rodriques v. Santos*, 466 A.2d 306, 312 (R.I. 1983) (noting that the question of who is to be believed is one for the trier of fact).

Here, Mr. Arias bears the initial burden of proof. Proof, to be sufficient in a case of this type, must be by a fair preponderance of the evidence. In order to prevail on a negligence claim,

“a plaintiff must prove by a fair preponderance of the evidence not only a defendant’s duty of care, but also a breach thereof and the damages actually or proximately resulting therefrom to the plaintiff.” *Macera Brothers of Cranston, Inc. v. Gelfuso & Lachut, Inc.*, 740 A.2d 1262, 1264 (R.I. 1999).

While the photographs of Mr. Arias’ vehicle demonstrate that his vehicle was damaged, the Court is unable to conclude that the absence of significant damage to Mr. Gomez’s vehicle (if indeed, there was no damage) demonstrates the absence of any contact by the car. Mr. Arias testified that the wheel of Mr. Gomez’s vehicle caused the harm to his own vehicle. The Arias car slowed before contact and presumably Mr. Gomez’s car could withstand *some* force before showing damage, particularly if its painted body did not make contact. More significantly, neither party produced any testimony concerning the amount of force needed to show damage to Mr. Gomez’s vehicle.

Mr. Arias has met his burden on negligence, proximate cause, and damages; however, the Court finds that Mr. Gomez has sufficiently established that Mr. Arias was comparatively negligent for 10 percent, which reduces the \$10,355 in compensatory damages to \$9,319.50.

IV

Conclusion

Judgment shall enter for Mr. Arias against Mr. Gomez and Jean C. Ruiz jointly and severally for the sum of \$9,319.50 plus interest and costs. Mr. Arias shall submit an appropriate judgment form within fifteen days.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: Arias v. Gomez, et al.

CASE NO: PC-2018-7480

COURT: Providence County Superior Court

DATE DECISION FILED: August 18, 2022

JUSTICE/MAGISTRATE: Lanphear, J.

ATTORNEYS:

For Plaintiff: Anthony J. Gianfrancesco, Esq.
 Shannon V. McKenna, Esq.

For Defendant: Jeffrey P. Finan, Esq.