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Motor Vehicle

Plaintiff's injuries preexisted car crash, defense contended

Verdict: Defense

Case Type: No-Fault Case, Motor Vehicle - Rear-ender, Motor Vehicle - Multiple Vehicle, Civil Practice - Summary Judgment

Case: Thomas Alverson & Lisa Alverson v. Alexis Polanco & Thelma Polanco, No. 23160/04

Venue: Kings Supreme, NY

Judge: Lawrence Knipel

Date: 10-17-2008

PLAINTIFF(S)

Attorney:

- Justin Varughese; Edelman, Krasin & Jaye, PLLC; Carle Place, NY, for Thomas Alverson, Lisa Alverson

Expert:

- Jay Simoncic M.D.; Orthopedic Surgery; Great Neck, NY called by: Justin Varughese

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DEFENDANT(S)

Attorney:

- Robert S. Ondrovic; Boeggeman, George & Corde, P.C.; White Plains, NY, for Alexis Polanco, Thelma Polanco

Expert:

- Maurice Carter M.D.; Orthopedic Surgery; New York, NY called by: Robert Ondrovic

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Insurer:

- New York Central Mutual Fire Insurance Co. for both defendants

Facts:

At about 7 p.m. on Dec. 30, 2003, plaintiff Thomas Alverson, 45, a mechanic, was driving on the westbound side of the Cross Bronx Expressway, in the Bronx. His vehicle's rear end was struck by a trailing vehicle that was being driven by Alexis Polanco. Alverson claimed that he sustained injuries of his back, a knee, his neck and a shoulder.

Alverson sued Polanco and the owner of Polanco's vehicle, Thelma Polanco. Alverson alleged that Alexis Polanco was negligent in the operation of her vehicle. He further alleged that Thelma Polanco was vicariously liable for Alexis Polanco's actions.

Alverson's counsel moved for summary judgment of liability, and the motion was granted. The trial addressed damages.

Injury:

Alverson claimed that he sustained herniations of his C5-6, C6-7, L1-2 and L2-3 intervertebral discs; derangement of his right knee; a tear of his right knee's medial meniscus; and an injury that produced impingement of his left shoulder. He also claimed that he developed a bulge of his L5-S1 disc. Alverson's treating doctor opined that Alverson's herniations were products of the accident.

Alverson underwent two arthroscopic surgeries that addressed the injuries of his right knee. He contended that the knee's injuries impaired his ambulatory ability and that, as a result, he developed derangement of his left knee.

Alverson claimed that he cannot resume his mechanic's duties. He sought recovery of his past and future loss of earnings and damages for his past and future pain and suffering. His wife presented a derivative claim.

Defense counsel contended that Mr. Alverson did not sustain a serious injury, as defined by the no-fault law, Insurance Law § 5102(d). He noted that Alverson had sustained a prior herniation of his C6-7 disc, that Alverson had sustained prior injuries of his back and neck, that Alverson's right knee's anterior cruciate ligament and medial meniscus were torn during a 1999 skiing accident, and that the skiing accident's injuries were repaired via surgery prior to the instant accident.

During cross-examination, Alverson's treating doctor acknowledged that he was not aware of Alverson's prior injuries. As a result, the doctor contended that he could not determine the origin of Alverson's herniations. He also acknowledged that Alverson's torn meniscus was a degenerative injury.

The defense's expert orthopedic surgeon opined that Alverson's knee injuries were congenital injuries and/or degenerative injuries that stemmed from the skiing accident. Thus, he contended that the arthroscopic surgeries were not causally related to the instant accident.

During cross-examination, Alverson acknowledged that he began performing only supervisory work about a year prior to the accident and that, as such, he was not performing heavy labor at the time of the accident. He also acknowledged that he resumed work March 4, 2004, and he admitted that he performs the same work duties that he performed prior to the accident.

Verdict Information The jury found that Alverson does not suffer permanent consequential limitation of use of a body organ or member. It also found that he did not suffer significant limitation of use of a body function or system. Thus, it concluded that Alverson did not sustain a serious injury.

Post-Trial: Judge Lawrence Knipel denied plaintiffs' counsel's motion for a new trial.

Editor's Comments This report is based on information that was provided by plaintiffs' and defense counsel.