



THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS

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DATE	COMM	ACTION
11/27/02	SM	Fav/3 amendments
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November 27, 2002

The Honorable James E. "Jim" King, Jr.
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 48 (2003)** – Senator Alex Diaz de la Portilla
Relief of Asbel Llerena, individually and as personal representative of the estate of
Maria de Jesus Llerena, and Wendy Guzman, individually

SPECIAL MASTER'S FINAL REPORT

THIS IS AN EQUITABLE CLAIM FOR \$200,000 BASED ON A SETTLEMENT AGREEMENT IN WHICH THE CITY OF HIALEAH AGREED TO COMPENSATE THE CLAIMANTS FOR PERSONAL INJURIES AND THE WRONGFUL DEATH OF MARIA DE JESUS LLERENA THAT OCCURRED AS A RESULT OF A CITY EMPLOYEE'S NEGLIGENT DRIVING.

FINDINGS OF FACT:

The Accident

On July 11, 1999, shortly after 4:00 p.m., an emergency call was dispatched by the Hialeah Police Department requesting the assistance of any available officers in apprehending a fleeing suspect. Numerous officers responded to the dispatch, including Officer Alexis Castenada.

When proceeding to the call, Officer Castenada drove southbound on West 8th Avenue with his lights and sirens on toward the intersection of West 8th Avenue and West 29th Street. As he approached the intersection, he saw Asbel Llerena, who was driving westbound on West 28th Street, begin to cross the intersection. Officer Castenada immediately applied his brakes, but was unable to stop.

Ultimately, Officer Castenada's car skidded into the right side of Mr. Llerena's car.

Paramedics were immediately called to the accident scene. Mr. Llerena was transported by ambulance to Jackson Memorial Hospital, where doctors found that he suffered multiple bruises and abrasions, and shoulder, neck, back, and knee injuries as a result of the accident. Mr. Llerena was released from the hospital on the evening of the accident.

Mr. Llerena's wife, Maria de Jesus Llerena, who had been seated in the right front passenger seat of the car, was airlifted from the accident scene to Jackson Memorial Hospital. Physician reports indicated that she suffered multiple abrasions, fractures, and internal injuries to her lungs, liver, and brain as a result of the accident. Physicians pronounced Mrs. Llerena dead at 5:01 p.m. on the day of the accident. The cause of death was multiple blunt trauma injuries.

At the time of her death, Mrs. Llerena was 45 years old. She is survived by her husband, Mr. Llerena, to whom she had been married for 13 years, by her daughter, Wendy Guzman, who was 27 years of age at the time of the accident, and by her grandson.

At issue in this case was whether Officer Castenada or Mr. Llerena had a green light when they proceeded through the intersection of West 8th Avenue and West 29th Street. Subsequent to the accident, police and state attorney investigations were conducted and numerous police statements and depositions were obtained from witnesses and experts in accident reconstruction.

In his deposition, Officer Castenada indicated that the traffic light for his southbound lane of traffic at the intersection of West 8th Avenue and West 29th Street turned yellow approximately forty feet before he would have crossed the stop bar for the lane. He stated that the traffic light was not red at any time before his car crossed the stop bar and entered the intersection.

Civilian witness Tomas Puentes stated in a deposition that he was stopped at a red light in the eastbound lane of West 29th Street where it intersects with West 8th Avenue.

Mr. Puentes saw Officer Castenada driving south on West 8th Street toward the intersection. Mr. Puentes could not see Officer Castenada's traffic light for the intersection; however, he believed the officer's light was green because Mr. Puentes's light was red at the time of the accident.

Mr. Llerena stated in his deposition that he entered the intersection on a green light. Mr. Llerena could not remember the exact speed at which he traveled through the intersection.

Civilian witness Tania Samuell stated in a deposition that she was with her grandmother at the Amoco station on the corner of the West 8th Avenue and West 29th Street intersection. Ms. Samuell saw that the traffic light for Officer Castenada was red at the time Officer Castenada was approximately four car lengths away from the traffic light. Further, the light remained red when Officer Castenada proceeded into the intersection.

Civilian witness Elena Alpizar, who was at the Amoco station with her granddaughter, Ms. Samuell, stated in a deposition that she saw that the traffic light was red when Officer Castenada approached the intersection.

Civilian witness Alberto Diaz, who was driving south on West 8th Avenue at the time of the accident, stated in a deposition that he saw Officer Castenada proceed into the intersection against a red light.

Several other civilian witnesses offered statements regarding their version of events. Their statements, however, were inconclusive on the issue of which party had the red or green traffic light.

Betran Morrow, an accident reconstructionist retained by the claimants, was unable to provide an opinion as to the color of the traffic lights for either Officer Castenada or Mr. Llerena at the time of the accident. Mr. Morrow did state, however, that he estimated the speed of Officer Castenada's car at 43.8 miles per hour and of Mr. Llerena's car at 28.7 miles per hour at the time of impact.

Likewise, Kenneth Bynum, the accident reconstructionist retained by the City of Hialeah, could not independently

verify the color of the traffic lights for either Officer Castenada or Mr. Llerena at the time of the accident. Mr. Bynum estimated the speed of Officer Castenada's car at 45 to 50 miles per hour and of Mr. Llerena's car at 35 miles per hour at the time of impact.

The police investigation report, dated August 13, 1999, found that: (1) the speed limit for both West 8th Avenue and West 29th Street is 30 miles per hour; (2) Officer Castenada was traveling at the speed of 47 miles per hour on West 8th Avenue when he entered West 29th Street on a red light; (3) Mr. Llerena was traveling at the speed of 41 miles per hour on West 29th Street when he entered West 8th Avenue on a green light; and (4) Officer Castenada slowed to 37 miles per hour at the point of impact. The report noted that Officer Castenada was permitted by s. 316.072, F.S., to exceed the speed limit and proceed past a red light when responding to an emergency so long as the officer did not endanger life or property. The report concluded that Officer Castenada, by being in the accident, failed to exhibit due regard for the safety of all persons in violation of s. 316.072(5)(c), F.S., and s. 316.126(5), F.S. Further, the report concluded that Mr. Llerena contributed to the crash by speeding in violation of s. 316.189(1), F.S., and by failing to yield the right away to an emergency vehicle in violation of s. 316.126(1), F.S.

The State Attorney's Office for the 11th Judicial Circuit issued an investigation memorandum on February 7, 2000, which found that Officer Castenada should be charged with careless driving and running a red light. The report stated that there was insufficient evidence of reckless driving to warrant a charge of vehicular homicide. The court dismissed the charge of running a red light; however, on the charge of careless driving, the court entered a withhold of adjudication and required Officer Castenada to pay a fine and to do community service.

The state attorney did not charge Mr. Llerena with speeding. Mr. Llerena was charged only with failure to yield the right away to an emergency vehicle. The court entered a withhold of adjudication on this charge and required Mr. Llerena to pay a fine and to do community service.

Legal Proceedings

On January 26, 2000, Mr. Llerena, filed suit, on behalf of himself and as personal representative of Mrs. Llerena's estate, against the City of Hialeah. Additionally, Ms. Guzman, the daughter of Mrs. Llerena, was named a party to the suit in her individual capacity. Prior to trial, the parties entered into a settlement agreement, which provided for a total of \$400,000 in compensation to Mr. Llerena and Ms. Guzman.

The release dated August 31, 2001, provided that the City of Hialeah would pay the claimants \$200,000 immediately, and indicated that the city would not oppose a claim bill seeking \$200,000, in exchange for the claimants' release of all claims arising from the accident. On September 19, 2001, the Circuit Court in Dade County entered an order dismissing the claimants' suit against the city with prejudice.

The initial \$200,000 settlement payment was disbursed as follows: (1) \$50,000 for attorney's fees; (2) \$26,179.01 in costs; (3) \$5,071.43 for medical liens; and (4) \$118,749.56 to Mr. Llerena and Ms. Guzman. By letter dated September 30, 2002, the claimants stipulated that Ms. Guzman's claims in this case had been satisfied and discharged with the initial settlement payment. The only claimant with an interest in this claim bill is Mr. Llerena. Further, Mr. Llerena's attorney has represented that Mr. Llerena and Ms. Guzman split the balance of the initial settlement payment equally between themselves.

CONCLUSIONS OF LAW:

Liability

Notwithstanding a settlement agreement, as there is here, every claims bill must be based upon facts sufficient to meet the preponderance of the evidence standard. In order for the claimants in this case to prevail, it is necessary for them to show that Mr. Llerena's personal injuries and Mrs. Llerena's death were proximately caused by the negligence of Officer Castenada, a City of Hialeah employee, while he was acting within the course and scope of his employment. Negligence may be demonstrated by showing that Officer Castenada breached his duty, pursuant to s. 316.072(5)(c), F.S., to drive with due regard for the safety of all persons.

In this case, there is no question that Mr. Llerena's injuries and Mrs. Llerena's death were proximately caused by the collision with Officer Castenada's car. Further, there is no question that Officer Castenada was acting within the course and scope of his employment at the time of the collision. The only question on the issue of liability in this case is whether Officer Castenada or Mr. Llerena had the green light when proceeding through the intersection.

Although one eye witness's statements supported Officer Castenada's version of events that the light was yellow at the time he proceeded through the intersection, numerous other eye witnesses stated that the officer's traffic light was red. Given the greater number of eyewitnesses who testified in support of Mr. Llerena's version of events and the fact that neither expert could dispute the possibility that Mr. Llerena had the green light, a jury could have reasonably found that Officer Castenada breached his duty to drive with due regard for the safety of others by proceeding through the intersection in excess of the speed limit on a red light.

Accordingly, each element of liability has been demonstrated to the Special Master's satisfaction.

Damages

Mr. Llerena claimed damages for medical costs due to his permanent physical injuries resulting from the accident, as well as damages for pain and suffering, disability, loss of capacity to enjoy life, and loss of earnings due to those injuries. Physicians have indicated that Mr. Llerena suffered a 14% permanent impairment of his body as a whole, which represents a 7% impairment of his cervical spine and 7% impairment of his left knee. Additionally, Mr. Llerena suffers from episodes of nervousness and depression as a result of the accident.

To date, Mr. Llerena has incurred \$14,910 in medical costs, which have been paid by his automobile insurance and initial settlement proceeds. Additionally, it is expected that he will need future knee surgery as a result of the accident, which will cost approximately \$60,000. Mr. Llerena does not have health insurance and his automobile insurance benefits are exhausted. As a result, Mr. Llerena will be personally responsible for these future medical expenses.

Regarding the wrongful death of Mrs. Llerena, the following additional damages were alleged by Mrs. Llerena's estate, pursuant to s. 768.21, F.S:

1. \$12,000 for Mrs. Llerena's funeral expenses;
2. an estimated \$143,272 for Mrs. Llerena's lost earnings; [Mrs. Llerena was working for her husband's furniture business at the time of her death. This figure represents the present value of her estimated future earnings if Mrs. Llerena had continued to be employed until age 70 for 40 hours per week at the minimum wage rate of \$5.15. This figure is based upon monthly payments with a discount rate of 8% and an inflation rate of 2.5 percent. This figure was not reduced by the amount of Mrs. Llerena's expected consumption.]
3. an unspecified amount for lost spousal companionship and protection;
4. an unspecified amount for Mr. Llerena's pain and suffering; and
5. an unspecified amount for Mrs. Llerena's lost support and services to Mr. Llerena and Ms. Guzman.

The only collateral source in this case was automobile insurance. Mr. Llerena's personal injury protection benefits were limited to \$10,000, and this amount has been exhausted in partial payment of his medical expenses to date. The insurance policy also provided a death benefit for Mrs. Llerena in the amount of \$5,000, which was applied as partial payment of Mrs. Llerena's funeral costs.

Pursuant to the settlement agreement with the City of Hialeah, Mr. Llerena and Ms. Guzman received \$118,749.56, the balance remaining after deduction of \$50,000 for attorney's fees, \$26,179.01 for costs, and \$5,071.43 for Mr. Llerena's medical expenses from the initial \$200,000 settlement. This balance was split into two equal shares, i.e., \$59,374.78 each, between Mr. Llerena and Ms. Guzman. Ms. Guzman's claims in this case were satisfied with this initial settlement payment.

If this claim bill is enacted into law, Mr. Llerena will receive an additional \$200,000 less attorney's fees and costs. After deduction of attorney's fees, the balance remaining will be

\$150,000. The total amount of costs is indeterminable at this time.

In summary, Ms. Guzman has received total compensation in the amount of \$59,374.78 in this case in full satisfaction of her claim. The estimated total compensation in this case for Mr. Llerena if this claim bill is enacted is \$229,446.21, which represents the total of \$15,000 from automobile insurance proceeds, \$5,071.43 from the initial settlement for payment of medical bills, \$59,374.78 from the initial settlement, and \$150,000 in claim bill proceeds.

The total of specified economic damages to Mr. Llerena as a result of the accident is \$230,182, which represents the total of \$14,910 in past medical expenses, \$60,000 in future medical expenses, \$12,000 in funeral expenses, and \$143,272 in Mrs. Llerena's lost earnings. This figure does not include any amounts for Mr. Llerena's pain and suffering, disability, loss of earnings, loss of capacity to enjoy life, loss of spousal companionship and protection, and loss of Mrs. Llerena's support and services.

Conclusion

Because settlement agreements are sometimes entered into for reasons that may have very little to do with the merits of a claim or the validity of a defense, stipulations or agreements between the parties to a claim bill are not necessarily binding on the Legislature or its committees, or on the Special Master assigned to the case by the Senate President. However, all such agreements must be evaluated, and if found to be reasonable and based on equity, they may be given effect, at least at the Special Master's level of consideration.

I find that the settlement agreement between the City of Hialeah and Mr. Llerena is both reasonable and equitable. Sufficient evidence was presented that would have allowed a jury to reasonably find the City of Hialeah liable for Officer Castenada's negligent driving. Damages have also been established by a preponderance of the evidence. The settlement amount of \$200,000 when combined with Mr. Llerena's portion of the initial \$200,000 settlement payment will provide Mr. Llerena with adequate reimbursement for his economic losses, as well as provide some compensation for his non-economic losses. Finally, it

should be noted that the \$200,000 payment by the City of Hialeah would not result in the elimination of any city program nor require a tax increase.

ATTORNEYS FEES:

The claimants' attorney has provided documentation indicating that attorney fees are capped at 25 percent in accordance with s. 768.28, F.S.

RECOMMENDATIONS:

I recommend that Senate Bill 48 be amended to specify that Mr. Llerena is the only claimant with an interest in this claim bill, as Ms. Guzman's claim was fully satisfied with the initial settlement payment.

Accordingly, I recommend that Senate Bill 48 be reported FAVORABLY, AS AMENDED.

Respectfully submitted,

Tina White
Senate Special Master

cc: Senator Alex Diaz de la Portilla
Faye Blanton, Secretary of the Senate
House Subcommittee on Claims