



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

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DATE	COMM	ACTION
12/1/03	SM	Favorable
02/04/04	ED	Fav/ 1 amendment
	FT	

December 1, 2003

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

Re: **SB 6 (2004)** – Senator Al Lawson
Relief of Bronwen Jane Dodd

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED EXCESS JUDGMENT CLAIM IN THE AMOUNT OF \$240,999.75 IN FUNDS OF ESCAMBIA COUNTY TO COMPENSATE BRONWEN JANE DODD FOR INJURIES SHE SUSTAINED IN A COLLISION BETWEEN HER CAR AND AN ESCAMBIA COUNTY SCHOOL BUS. THE FINAL JUDGMENT IN THE UNDERLYING COURT LITIGATION IS BASED ON AN AWARD MADE BY BINDING ARBITRATION, NOT A JURY VERDICT.

FINDINGS OF FACT:

Claimant, Bronwen Jane Dodd, was involved in a collision at approximately 4 p.m. on March 24, 1997, at the intersection of Summit Boulevard and Goya Drive in Pensacola, Florida. She was a high school senior who had turned eighteen just prior to the accident. She was wearing her seat belt when the accident occurred.

Summit Boulevard runs through a residential neighborhood in a generally east-west direction. It is a wide two-lane road with the lanes separated by a 21-foot wide planted median. Each lane is approximately 21-feet wide, with a 13-foot wide travel lane and an 8-foot wide parking lane next to the outside curb. The travel lane and the parking lane are separated by a solid white line 8 feet from the curb. This

white lane marking tapers off toward the curb as Summit approaches its intersection with Goya Drive. The speed limit on Summit was 35 mph. There were no traffic control devices impeding traffic on Summit; there were stop signs on Goya.

The weather was clear and dry at the time of the accident. The claimant was driving east on Summit in a 1988 Honda Civic. At the same time, a 66-passenger school bus owned and operated by the Escambia County School Board was traveling west on Summit before making a left turn onto Goya. The bus was driven by a School Board employee who had 21 years of experience as a bus driver.

The bus was stopped on Summit for at least a minute while waiting for oncoming traffic to clear before turning left (south) onto Goya. Another vehicle, driven by David Benson, was traveling east on Summit and stopped facing the bus at the same intersection, waiting to turn left (north) onto Goya. Benson's vehicle was partially in the eastbound travel lane and partially in the paved median where Goya cut through the planted median. There was insufficient room for both vehicles to proceed through the intersection at the same time, so Benson motioned to the bus driver to proceed first. There were no cars between claimant's vehicle and Mr. Benson's vehicle as she approached the intersection, but neither the bus driver nor Mr. Benson saw her.

The bus driver checked for traffic behind Mr. Benson and did not perceive claimant's vehicle or any other oncoming traffic. She then drove into the paved median and checked oncoming traffic again as she continued her turn. As the front of the bus neared the southwest corner of the intersection, it collided with claimant's Honda, severely damaging the Honda and causing life-threatening injuries to Ms. Dodd. The impact area was in the right front corner of the bus and the left front area of the Honda.

Any oncoming traffic would have been visible to the school bus driver for approximately 600 feet from the point where she was stopped prior to beginning her turn. Likewise, the school bus was visible to oncoming traffic for approximately 600 feet. This conclusion is based upon careful review of photographs and a "special purpose survey" of the accident site. The survey and one set of photographs were made a

significant time after the accident. These photographs were compared with background scenery in other photographs made at the time of the accident, and consideration was given to testimony that the physical characteristics of the scene had not changed in the interim.

The greater weight of the evidence indicates that claimant was traveling at approximately 35 mph as she drove down Summit, and there is no indication that she slowed prior to impact. This speed estimate is based upon testimony of the driver of a trailing vehicle who indicated that he was keeping pace with claimant's vehicle at 35 mph. The driver testified that he had checked his speedometer because he knew that police often stopped speeders in the area. An accident reconstruction expert hired on behalf of the bus driver and the School Board calculated that the Honda was traveling 41 mph when the collision occurred. However, this figure is inherently imprecise because of uncertainty as to the exact point of impact and the necessity of estimating values for certain variables.

Based upon expert testimony offered at the traffic infraction hearing and in a deposition taken by claimant's attorney in the civil action, the bus traveled 58 feet from the point where it was stopped on Summit to the point of impact. Using the conservative acceleration figures presented by the School Board's expert, it took 8.5 seconds for the bus to move from its stopped position to the point of impact. A vehicle moving at 35 mph travels 51.3 feet per second, so claimant was approximately 436 feet from the point of impact when the bus started to move. Thus, the driver of each vehicle should have been able to see the other at the time the bus began to move. However, the bus driver stated that she did not see any oncoming vehicles behind Mr. Benson; unfortunately, claimant's head injuries left her with no recollection of the accident.

The bus driver testified that she checked for oncoming traffic again before the front of the bus entered the traffic lane on Summit. The expert witness calculated that the bus had traveled for 6.5 seconds to reach this point. During these 6.5 seconds, claimant would have traveled 333 feet toward the intersection. Thus, claimant's vehicle was approximately 103 feet from the point of impact at the time the bus driver rechecked for traffic and continued to drive in front of

Mr. Benson's car and across Summit Boulevard. The bus driver testified that she did not see claimant's vehicle.

Perception/reaction time is the time from which a person sees an event to the time of appropriate reaction to the event – in this case, stepping on the brakes. There is a wide variation in perception/reaction times, dependent upon such factors as age, experience, fatigue, and anticipation of the triggering event. The expert witness testifying on behalf of the bus driver used an average perception/reaction time of 1.4 seconds in making calculations; the expert testifying on behalf of claimant used 2.5 seconds. Both variables have support in the scientific literature.

Once the driver has perceived the hazard and reacted by applying the brakes, the vehicle must decelerate to a stop. Using the formula applied by the School Board's expert, but with a speed of 35 mph, it would have taken 58 feet for the Honda to come to a stop after braking.

If claimant had begun braking as soon as the front of the bus entered the traffic lane from the median, the Honda's total stopping distance would have been between 130 feet (using the 1.4 second reaction time) and 187 feet (using the 2.5 second reaction time). Since the Honda and the bus were approximately 103 feet apart at the time the bus entered the traffic lane, claimant could not have stopped unless she had extraordinarily fast reflexes or had anticipated that the bus would continue into her path. However, there is no evidence that she tried to stop.

After investigation of the accident by the Pensacola Police Department, the bus driver was cited for a violation of §316.122, F.S.: "The driver of a vehicle intending to turn to the left within an intersection or into an alley, private road, or driveway shall yield the right-of-way to any vehicle approaching from the opposite direction which is within the intersection or so close thereto as to constitute an immediate hazard. A violation of this section is a non-criminal traffic infraction." Claimant was not charged.

The bus driver contested the traffic violation and was represented by counsel at an evidentiary hearing held on August 12, 1997. Escambia County Judge G.J. Roark, III found that she had failed to yield the right of way but

withheld adjudication of guilt and imposed a \$250 fine. He did not assess points against her license, require her to attend defensive driving school, or suspend her license. Judge Roark indicated that he normally suspended a traffic violator's drivers license in such cases, but would not do so in this case because of the "wave-through factor" and the possibility that the Honda contributed to the accident somewhat. He noted that the traffic violation hearing was not the forum to determine to what extent, if any, Ms. Dodd had contributed to the accident.

Claimant suffered severe and extensive injuries as a result of this accident, including a closed-head injury with loss of consciousness; basilar skull, temporal and sinus fractures; a fractured jaw; cranial nerve injury; significant dental injuries; bilateral pneumothoraces; a punctured lower lip and lacerated tongue; multiple lacerations to her arm, face, and lower extremities; and optical and auditory damage.

The parties have stipulated that claimant incurred \$129,678.32 in past medical bills. I find that the medical records and billing statements submitted by claimant are for treatment of injuries sustained in this accident and that the damages are reasonable and supported by the record.

Claimant filed a law suit against the School Board on September 10, 1998. After unsuccessful attempts at mediation and settlement, the parties agreed to participate in binding arbitration. The arbitrators awarded claimant damages in the amount of \$275,000 for pain and suffering and future medical bills. This figure was adopted by the court in its final judgment, and I find it to be reasonable given the serious injuries suffered by claimant. The arbitrators also found that claimant was 20 percent negligent, and this claim bill reflects reduction of her award by that amount.

CONCLUSIONS OF LAW:

This claim bill is not based upon a jury verdict, but upon the decision of a three-person arbitration panel at the conclusion of voluntary binding arbitration. Regardless of whether a claim bill originates from a jury verdict, arbitration award, or some other source, in negligence cases a Special Master must determine whether a state agency or subdivision was negligent and, if so, whether and to what extent the claimant was also negligent. In making this determination, the four

elements of duty, breach, causation of injury, and damages must be considered.

Escambia County School Board's Negligence

I conclude that the school bus driver was negligent, and find as a matter of law that her negligence is imputed to the School Board as her employer and as owner of the school bus.

The bus driver clearly had a general duty to drive reasonably under the circumstances. Furthermore, she had a statutory duty to yield the right of way to oncoming traffic "within the intersection or so close thereto as to constitute an immediate hazard." Section 316.122, F.S.

Although the bus driver testified that she acted cautiously, she breached her duty to use due care by failing to register and react to the presence of claimant's approaching vehicle. I also agree with the traffic court judge that she violated §316.122, F.S., by failing to yield the right of way to a vehicle that was so close to the intersection as to constitute an immediate hazard.

Mr. Benson testified that he looked in his rear view mirror, did not see any cars behind him, and then waved for the bus driver to proceed. I do not find this to be compelling because of uncertainty as to the amount of time involved. Moving at 35 mph, claimant's vehicle would have been approximately 436 feet from the point of impact at the time the bus started moving if it took 8.5 seconds for the bus to move to the point of impact as the School Board's expert calculated. It is reasonable to assume that it would have taken a few seconds for Mr. Benson to look in his mirror, wave to the bus driver, and for the bus driver to react and start moving. It is entirely possible that claimant's vehicle, moving at 35 mph, could not be seen in the limited view of Mr. Benson's rearview mirror when he checked the road behind him.

The bus driver testified that she looked down Summit after Mr. Benson waved at her to turn in front of him. She did not see claimant's approaching vehicle, which would have been well within her 600 foot range of visibility. When the bus driver checked again before leaving the paved median, claimant's vehicle would have been traveling at 35 mph

approximately 100 feet away from the point of impact. Even if claimant had been traveling at 41 mph, as estimated by the School Board's expert, her Honda would have been only 120 feet away from the bus. Although I accept the bus driver's testimony that she did not perceive claimant's approaching vehicle, there is no doubt that it was no further than 100 to 120 feet away.

If the bus driver had perceived the presence of claimant's approaching vehicle, she would have been faced with the decision of stopping or continuing her turn. Included in this process would have been a determination of whether she could reasonably assume that claimant would slow down or stop behind Mr. Benson's vehicle rather than passing him on his right. However, she did not see claimant's vehicle and her continuation across the intersection proximately caused the accident which resulted in claimant's injuries.

It is undisputed that the accident caused extensive injuries to claimant, resulting in significant medical expenses and great pain and suffering.

Claimant's Negligence

I conclude that claimant was also negligent, and that her negligence contributed to the accident and to her injuries. However, her negligence did not rise to the level of being an efficient intervening cause of the accident so as to relieve the School Board of liability.

Like the bus driver, claimant had a generalized duty to use due care in operating her motor vehicle and to anticipate and react to the actions of other vehicles. Because she chose to pass on the right of Mr. Benson's vehicle, she also had a statutory duty to pass “. . . only under conditions permitting such movement in safety.” Section 316.084(2), F.S.

Claimant was driving at or slightly above the speed limit, but there is no evidence that she slowed down or applied her brakes prior to impact. However, I do not find that the movement of the school bus from its stopped position on Summit Boulevard into the paved median was sufficient to cause her to assume that the bus would continue across the intersection. The bus driver and other witnesses testified that it was common and accepted practice for cars to pass to the right of cars turning left off of Summit. Therefore, it was

not unreasonable for claimant to expect the school bus to stop in the paved median while she proceeded around Mr. Benson's stopped vehicle. However, claimant should have been alert to the possibility that the bus would proceed across the intersection and should have anticipated a need to stop. If she had been on alert, her perception/reaction time would undoubtedly have been quicker and the accident might have been avoided or the damage lessened. Claimant's apparent failure to anticipate and brake may be attributed in part to her relative lack of driving experience, but nonetheless was a breach of her duty to use due care.

Claimant's breach of the duty to use due care was a contributing cause of her injuries and resulting damage.

Apportionment of Damages

Because Florida applies the doctrine of comparative negligence, it is necessary to determine what percentage of fault is borne by each of the actors. This determination is inherently subjective and imprecise. It is clear to me that the bus driver had a greater duty and was in a better position to prevent the accident, and that she was well more than fifty percent at fault in this accident. Although the arbitration panel's apportionment of fault is in no way binding upon my recommendation, I find that it is reasonable and can see no reason to deviate from it. Therefore, I attribute 80 percent of the fault to the bus driver and 20% of the fault to claimant.

History of This Claim bill

This claim was first presented to the Legislature in 2002. Senate Bill 54 by Senator Diaz de la Portilla was recommended unfavorably by the Senate Special Master and died in the Senate Committee on Education. House Bill 671 by Representative Meadows died in the House Committee on Claims.

In 2003, Senator Lawson sponsored Senate Bill 8. Both parties were given the opportunity to update the record for the 2003 claim bills and to dispute the unfavorable report of the Senate Special Master. Neither party requested an additional special master hearing. I served as Special Master for Senate Bill 8 and recommended that it be reported favorably. Senate Bill 8 died in the Committee on Rules and Calendar. Its companion, House Bill 727 by Representative Murzin, died in the Committee on Claims.

The Senate Special Master who considered the 2002 claim bill found no negligence on the part of the school bus driver and recommended against any award to claimant. However, I interpret the evidence differently. The previous special master placed greater emphasis upon the school bus driver's and Mr. Benson's testimony that they did not see claimant's car. For the reasons discussed above, I accept that claimant's car may not have been visible to Mr. Benson when he checked his rearview mirror, but do not think it possible that the vehicle was not visible to the bus driver as she drove through the paved median. Therefore, I cannot conclude that the bus driver was not negligent.

The parties did not submit additional arguments or information in support of or opposition to this year's bill.

ATTORNEYS FEES:

Section 768.28, F.S., limits attorney's fees to 25 percent of recovery. Claimant's attorney has presented evidence that the attorney's fees are within the statutory limit.

RECOMMENDATIONS:

I recommend that Senate Bill 6 (2004) be reported FAVORABLY.

Respectfully submitted,

Scott E. Clodfelter
Senate Special Master

cc: Senator Al Lawson
Faye Blanton, Secretary of the Senate
House Subcommittee on Claims

#1 by Education:
Technical amendment to correct date of final judgment.