

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RUTH LOVE, : CIVIL ACTION  
Plaintiff, :  
 :  
v. :  
 :  
V-LINE TRUCKING, et al., :  
Defendants. : No. 02-8203

**MEMORANDUM AND ORDER**

**J. M. KELLY, J.**

**SEPTEMBER , 2004**

After a non-jury trial in the above-captioned matter, and review of the pleadings filed by the parties, the Court makes the following Findings of Fact and Conclusions of Law.

**I. FINDINGS OF FACT**

**A. Automobile Accident**

1. On March 26, 2001 at approximately 4:00 p.m., Plaintiff Ruth Love ("Love") and Defendant Chau N. Hguyen ("Hguyen"), both operating vehicles, were involved in a motor vehicle accident at the Walt Whitman Bridge Exit on Interstate 95 ("I-95") Northbound in the city of Philadelphia.

2. At the time of the accident, Hguyen was employed, and was operating a tractor trailer owned, by Defendant V-Line Trucking ("V-Line").

3. I-95 Northbound, at the Walt Whitman Bridge Exit, consists of three northbound lanes and a fourth lane, which is the right-most lane that becomes an exit-only lane for the Walt Whitman Bridge.

4. For clarity purposes, we refer to the four northbound lanes from left to right as Lanes One, Two, Three and Four, respectively.

5. Police Officer Joseph Luce, while off-duty, witnessed the accident.

6. Officer Luce testified at trial and we credit his testimony in its entirety.

7. Officer Luce testified that immediately prior to the accident, V-Line's tractor trailer was in Lane Three, and Love's automobile was in Lane Two.

8. Officer Luce testified that just before reaching the Walt Whitman Bridge Exit, Hguyen operated V-Line's tractor trailer in such a way that it moved toward the right-most boundary of Lane Three, but then Hguyen began to change lanes from Lane Three toward Lane Two, which was to his left. At the same time, Love began to change lanes from Lane Two into Lane Three, which was to her right. The two vehicles collided at this time.

9. The trailer came to rest in Lane Two, and the "semi" portion of the tractor trailer itself came to rest in both Lanes One and Two as it was turned to the left facing southbound traffic.

10. Love's automobile came to rest in the barrier on the right-hand side ahead of the Walt Whitman Bridge Exit.

11. This motor vehicle accident occurred when both Love and Hguyen simultaneously attempted to change lanes.

12. Police Officer Joseph Notarfrancesco was called to the scene to investigate the motor vehicle accident.

13. Officer Notarfrancesco was not a witness to the accident.

14. After speaking with Officer Luce, who witnessed the accident, Officer Notarfrancesco prepared a police report.

15. Officer Notarfrancesco's written notes on the police report are consistent with Officer Luce's testimony.

16. Officer Luce testified, however, that the diagram on the police report is inaccurate as to the initial impact points and where the vehicles came to rest.

17. Officer Luce testified that the vehicles' initial points of impact were the right-side rear of Love's automobile and the left-side front of V-Line's tractor trailer.

18. Officer Notarfrancesco was not identified as an expert witness for trial.

**B. Love's Employment History and Income**

19. Love is a high school graduate.

20. Love has a certificate in computer networking.

21. Love was employed as a bookkeeper for eleven years prior to becoming a tractor trailer driver in 1998.

22. Love had been a tractor trailer operator for the calendar years of 1999 and 2000.

23. Plaintiff's Exhibit 14 is Love's IRS Form 1099 from the year 1999, and the parties agree that it represents Love's income for driving a tractor trailer for East Coast Transport, Ltd. in 1999 as \$31,626.41.

24. Plaintiff's Exhibit 15 is Love's IRS Form 1040 from the year 2000, and it represents Love's income for driving a tractor trailer in 2000 as \$30,955.00.

25. Approximately one week prior to the accident, Love was laid off from a tractor trailer driving job with a company called SCAT, Inc.

26. Love was an unemployed tractor trailer driver at the time of this accident.

27. As a result of being laid off from SCAT, Love received unemployment compensation until September of 2001. Love received approximately \$9,000.00 in total unemployment compensation.

28. From September 2001 to March 2002, Love was unemployed and did not collect any unemployment compensation.

29. Love did not work for one year subsequent to the March 26, 2001 accident.

30. Based on an annual income of \$30,000.00, which is the figure proposed by Plaintiff at trial, less the \$9,000.00 unemployment compensation Love received in 2001, Love incurred

\$21,000.00 in lost earnings from March 26, 2001 until March 2002.

31. The parties stipulate that, as a result of the March 26, 2001 accident, Love incurred \$4,000.00 in medical bills.

32. As a result of the March 26, 2001 motor vehicle accident, Love's total out of pocket medical bills and wage loss is \$25,000.00.

### **C. Medical Testimony**

33. On the day of the accident, Love was taken to the Thomas Jefferson Hospital Emergency Room where a CT scan was performed of her head and cervical (neck) spine. No x-rays were taken of Love's lower back or wrists.

34. Love never visited her family doctor for injuries from the accident.

35. Sometime between March 26 and March 29, 2001 Love saw Gary S. Dion, Esquire, her attorney in this matter, who provided her with a list of doctors.

36. From that list of doctors, Love chose to visit Richard Dimonte, Sr., D.O. on March 29, 2001, three days after the accident.

37. Dr. Dimonte ultimately recommended that Love see Dr. Gerald Dworkin and Dr. Norman Stempler, an orthopedist.

38. Dr. Dimonte ultimately discharged Love on November 16, 2001, and his discharge impression was that Love had cervical and

shoulder sprains and strains. (See Cook Dep. at 18.)<sup>1</sup>

39. Dr. Dworkin prescribed the first cervical MRI, which was conducted on May 31, 2001 at the MRI Center of Delaware County.

40. After Love's first visit to Dr. Stempler in December 2001, Dr. Stempler issued a letter to Love's attorney.

41. Love complained to Dr. Stempler of tingling sensations in her arms and wrists, so he referred Love to Francis J. Bonner, Jr., M.D. for an EMG of her upper extremities.

42. The cervical MRI prescribed by Dr. Dworkin and the EMG prescribed by Dr. Stempler were the only tests performed on Love prior to a workplace injury she later suffered in July of 2002.

43. The testimony of David G. Cook, M.D., a medical expert witness for the Defendants, was competent and credible.

44. Dr. Cook is a neurologist.

45. Dr. Cook met with Love on October 23, 2003 and, at that time, took a history and conducted a physical exam.

46. Dr. Cook testified that Love's complaint of neck pain "was right more than left, on the lateral side of the neck."  
(See id. at 8.)

47. Dr. Cook's examination of Love "did not reveal any evidence of either central, or what we will call peripheral

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<sup>1</sup> Our findings of fact will later address Dr. David G. Cook's testimony, Defendants' medical expert witness.

nervous system dysfunction, namely, damage to the nerves, damage to the spinal cord." (See id. at 13.)

48. Dr. Cook testified that after escorting Love to the elevator, "she seemed to be doing a lot better with her walk thereafter, when not under direct observation." (See id. at 11.)

49. Before meeting with Love, Dr. Cook reviewed Love's records regarding her prior medical care.

50. Dr. Cook testified that the Jefferson Hospital Emergency Room conducted x-rays and a CT scan of Love's head and neck, and that those records indicated a tiny central vacuum disc phenomenon at C2, C3 (hereinafter, "C2-3"), that is between the bodies of C2 and C3. (See id. at 16-17.)

51. Dr. Cook testified that the C2-3 disc phenomenon represents a chronic change, that it is not acute, and that "C4 through T2, T3 were fine." Dr. Cook further testified that the Jefferson Hospital records diagnosed Love as having "no posttraumatic abnormalities," which means that they did not see any kind of change on the studies that they could attribute to a traumatic event. Dr. Cook regularly reviews these studies as a neurologist. (See id. at 17.)

52. Dr. Cook also reviewed the films of Love's first MRI taken of her cervical spine on May 31, 2001. Dr. Cook regularly reviews MRI films as a neurologist. After reviewing the May 31, 2001 films, Dr. Cook noted that there are no herniations at C2-3.

(See id. at 22.)

53. Dr. Cook is the only witness that personally reviewed the May 31, 2001 cervical spine MRI films. After an independent review of the films, he agrees with the reading radiologist at the MRI Center of Delaware County that Love has cervical spondylosis, C-4 foraminal stenosis, and that there are no identifiable herniations. (See id. at 19-20, 22.)

54. Dr. Cook testified that Love was born with a "tight" spinal cord canal which is narrower than normal. (See id. at 23-4.)

55. Dr. Cook testified that after reviewing the May 31, 2001 MRI films, there are no injuries to the cervical spine due to trauma. (See id. at 20.)

56. After reviewing Love's medical records, taking the history and conducting a physical exam, which included a neurologic motor and sensory exam, Dr. Cook did not find any evidence of neurological injury, which includes, inter alia, the brain, spinal cord, nerve root, peripheral nerves and plexus nerves. (See id. at 33.)

57. Dr. Cook testified that Jefferson Hospital, which is where Love was taken immediately after the March 26, 2001 motor vehicle accident, diagnosed Love with Cervical Strain and a Closed Head Injury. (See id. at 69.)

58. In response to a letter from Love's attorney, Dr.

DiMonte wrote a disability note for Love stating that she could not work between March 26, 2001 and November 1, 2001. (See id. at 75.)

59. On March 29, 2001, Therapist Michael Perry of Occupational Therapy & Rehabilitation Services, P.C. diagnosed Love with lumbar sprain and strain. (See id. at 33; see also Pl.'s Ex. 11.)

60. Love contends that as a result of the March 26, 2001 motor vehicle accident she is suffering from neck, low back and neurological problems; and also from bilateral carpal tunnel syndrome.

61. Love did not claim wrist or elbow trauma at the time of the March 26, 2001 accident.

62. Dr. Cook testified that the March 26, 2001 injury Love sustained does not typically cause bilateral carpal tunnel syndrome. (See Cook Dep. at 27.)

63. Dr. Cook testified that he cannot agree with the findings of Dr. Bonner's EMG report. (See id. at 84, 86-7.)

64. Dr. Cook testified that "the greater majority of individuals who have an ulnar neuropathy is on a chronic basis, from resting elbows usually. . . I've not seen it in a trauma setting where the patient didn't have an actual elbow trauma at that time." (See id. at 28.)

65. Dr. Cook testified that Dr. Dworkin's impression when

he saw Love on July 27, 2001 was that she had cervical pain syndrome. (See id. at 25.)

66. Dr. Cook testified that Dr. Dworkin's records from July 6, 2001 found that Love's straight leg raising test was negative for dural signs and that her limb extension was pain free. (See id. at 25.)

67. Love indicated to Dr. Cook that since the March accident her physical problems had become worse. Dr. Cook testified that individuals who suffer from a traumatic injury will either stabilize or get better, and that they should not worsen with time unless there is an objectively identifiable neuroradiologic reason. (See id. at 7-8.)

68. At the time of the first MRI, Love had degenerative disc disease. (See id. at 46.)

69. Dr. Cook testified that aggravated degenerative changes would be seen on an MRI before and after an accident, but that there is no way to say that Love's degenerative changes were aggravated absent an MRI that was done before the March 26, 2001 accident. (See id. at 118.) There is no evidence of a MRI predating March 26, 2001.

70. Dr. Cook testified that degenerative disc disease will continue to progress as long as an individual uses his/her neck. (See id. at 135-36.)

**D. Love Obtains Subsequent Employment as a Truck Driver**

71. On March 19, 2002, approximately one year after the March 2001 motor vehicle accident, Love applied for a position as a tractor trailer driver at J.B. Hunt.

72. Love began work as a tractor trailer driver for J.B. Hunt in March 2002.

73. Love was required to complete various forms prior to becoming employed as a tractor trailer driver for J.B. Hunt.

74. Specifically, on March 19, 2002, Love admitted that she had no established medical history or clinical diagnosis of arthritic, orthopedic, muscular, neuromuscular, or vascular disease that interfered with her ability to control and operate a commercial motor vehicle safely. (See Ex. D-8 at 1.)<sup>2</sup>

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<sup>2</sup> As a further admission, Love certified on the Certification of Ability To Perform Job Functions for J.B. Hunt that she was able to perform the following:

- a. load, unload, and secure cargo including the ability to lift 100 pound containers over 4 feet high, the ability to stow cartons and merchandise weighing up to 60 pounds overhead and the ability to roll drums weighing up to 600 pounds into place on rims;
- b. pull (including cargo and release pins on equipment);
- c. stoop (maneuvering under equipment);
- d. repeatedly bend at the waist, neck, wrist and shoulders;
- e. twist and rotate hands, elbows and forearms;
- f. grip and grasp repeatedly;
- g. operate foot control pedals (clutch, brake, accelerator);
- h. climb ladders (4-10 feet) steps, and in and out of truck repeatedly;

75. On March 19, 2002, Love also denied that she was restricted in any work duties by a doctor. (Id.)

76. As part of Love's application for employment with J.B. Hunt, she also underwent a physical examination by Anna Lee, M.D. on March 19, 2002.

77. We credit Dr. Lee's certification that Love was "free of any conditions likely to interfere with his/her ability to safely drive, load, and unload a tractor trailer or his/her ability to perform all the essential job functions of a truck driver for J.B. Hunt." (Id. at 5.)

**E. Love Injured at J.B. Hunt**

78. On January 28, 2003, Love told Dr. Michael of NovaCare Rehabilitation that she was independent with all activities prior to an injury that occurred while working for J.B. Hunt on July 31, 2002. (See Ex. D-5.)

79. Love performed her duties as a tractor trailer driver

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- i. sit for extended periods of time;
  - j. hook and unhook various equipment combinations (hoses, pins, latches and crank lever);
  - k. safely drive during day and night;
  - l. adequately respond to stress;
  - m. safely handle irregular work/rest and meal cycles;
  - n. safely handle routine noise and vibration associated with the operation of a truck; and
  - o. maintain balance.

(Ex. D-8 at 2.)

with J.B. Hunt until July 31, 2002 when she sustained an injury while performing her job duties.

80. Prior to her July 31, 2002 workplace injury, there was no evidence that Love missed work at J.B. Hunt.

81. As a result of the workplace injury, a second cervical spine MRI was conducted on Love in August of 2002.

82. The August 2002 MRI showed a C2-3 herniated disc, for which Love collected workman's compensation.

83. Dr. Cook testified that the C2-3 herniated disc is not related to the March 2001 accident and that a herniated disc, such as Love's C2-3, cannot appear "after an MRI is obtained soon after the event." (See Cook Dep. at 32.)

## **II. CONCLUSIONS OF LAW**

1. Contributory negligence is negligence on the part of a plaintiff that is a proximate cause of the plaintiff's injury. The defendant must prove that the plaintiff, under all the circumstances present, failed to use reasonable care for her own protection. Koelle v. Philadelphia Electric Co., 277 A.2d 350, 354 (Pa. 1971). Love and Hguyen are equally responsible for this accident as both parties simultaneously changed driving lanes causing the March 26, 2001 motor vehicle accident.

2. When personal injury results from negligence, the verdict shall be "diminished in proportion to the amount of

negligence attributed to the plaintiff." 42 Pa. Cons. Stat. § 7102 (a); Wallis v. Southeastern Pennsylvania Transportation Authority, 723 A.2d. 267, 270 (Pa. Commw. Ct. 1999). Love and Hguyen were equally negligent when they simultaneously changed lanes and collided. Love was fifty percent responsible for this automobile accident, and Hguyen, employed by V-Line, was fifty percent responsible for the accident.

3. By March 2002, Love sufficiently recovered from injuries sustained in the March 26, 2001 motor vehicle accident such that she chose to return to full-time employment as a tractor trailer driver with J.B. Hunt. Defendants are liable only for those injuries that the Defendants' negligence was a substantial factor in bringing about. Mietelski v. Banks, No. 1305 MDA 2003, 2004 Pa. Super. LEXIS 2207, at \*13 n.6 (Pa. Super. Ct. July 8, 2004).

4. Defendants Chau N. Hguyen and V-Line Trucking are only responsible for, and shall collectively pay Plaintiff \$12,500.00, which represents fifty percent of Plaintiff's total out of pocket medical bills and wage loss. Defendants are not responsible for Love's alleged subsequent and ongoing injuries, which appear to have resulted from her July 31, 2002 workplace injury at J.B. Hunt.

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RUTH LOVE,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	
	:	
V-LINE TRUCKING, et al.,	:	
Defendants.	:	No. 02-8203

O R D E R

**AND NOW**, this            day of September, 2004, in consideration of the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that judgment is entered in favor of Plaintiff, Ruth Love, and against Defendants Chau N. Hguyen and V-Line Trucking, who are only responsible for, and shall collectively pay Plaintiff \$12,500.00. This case is **CLOSED** for statistical purposes.

BY THE COURT:

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JAMES MCGIRR KELLY, J.