

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

KAREN SMITH	:	CIVIL ACTION
	:	
v.	:	
	:	
TRIPLE E TRUCKING, INC., a/k/a TRIPLE E TRUCKING CO., EDWARD C. LEVY CO., and CHRISTOPHER REPRESS	:	
	:	
v.	:	
	:	
TRINA SMITH	:	NO. 06-5282

FINDINGS OF FACT AND CONCLUSIONS OF LAW

NORMA L. SHAPIRO, S.J.

MAY 13, 2008

This is an action arising out of a motor vehicle accident. Third-party plaintiffs Triple E Trucking, Inc. (a.k.a. Triple E Trucking Co.), Edward C. Levy Co., and Christopher Repress (collectively, “Triple E Trucking” or “Triple E”) asserted a claim against third-party defendant Trina Smith for contribution to a settlement Triple E Trucking entered into with the plaintiff in this action, Karen Smith, who was a passenger allegedly injured in the accident. The court tried the contribution claim non-jury on April 22 and 23, 2008 to determine: (1) whether Triple E Trucking was entitled to contribution based on Trina Smith’s negligence; and, if so (2) whether Triple E Trucking’s settlement with Karen Smith was reasonable. In accordance with Fed. R. Civ. P. 52(a), below are the court’s findings of fact and conclusions of law.

I. Stipulated Facts

This action arises from a motor vehicle accident between a tractor-trailer and an automobile that occurred at approximately 9:45 a.m. on April 19, 2005, on I-95 north near the Walt Whitman Bridge in Philadelphia, Pennsylvania. Traffic on I-95 north near the Walt Whitman Bridge was “bumper to bumper” and “stop and go.” Construction and/or road work activities closed the right lane of the highway. Vehicles in the right lane were required to merge into the middle or left lane because of the lane closure.

Trina Smith drove a Toyota Solara; Karen Smith was the front seat passenger. Trina

Smith, driving in the right lane of the highway, approached the place where the right lane was closed. Christopher Repress was driving a tractor-trailer in the center lane of the highway as he approached the place where the right lane was closed. The accident occurred when Trina Smith moved from the right lane into the center lane into the path of the stopped tractor-trailer. The Repress vehicle made three contacts with the rear of the Smith vehicle. Repress was unaware of Trina Smith's presence in that lane until the third impact.

The Philadelphia Fire Department EMS transported Karen Smith from the accident scene to the Methodist Hospital emergency room. Karen Smith was fifty years old at the time of the accident. Her right hip had been replaced in October 2004; she needed a cane to walk at the time of the accident. Karen Smith also had a history of avascular necrosis.

Following the accident, Karen Smith received physical therapy at Dynamic PT and Aquatic Rehab from April 28, 2005 through May 17, 2005. She treated with Delaware County Pain Management from May 24, 2005 through September 29, 2005. On August 3, 2005 and August 8, 2005, Karen Smith saw Bruce Grossinger, D.O., for EMG consultations. Dr. Grossinger interpreted the August 3, 2005, EMG study as a normal study of the left upper extremity.

Karen Smith treated with Dr. David Bosacco from June 2005 through 2007. Dr. Bosacco diagnosed her with: lumbar strain and sprain with aggravation of lumbar disc disease, manifested by lumbar disc herniation at L5-S1 with lumbar radiculopathy; sprained right shoulder with rotator cuff tear; sprained left shoulder with bursitis; sprained right knee with aggravation of meniscal tears and arthritis; and cervical strain and sprain. Dr. Bosacco determined the accident at issue caused her injuries.

Dr. Stephen J. Bosacco evaluated Karen Smith for Triple E Trucking on September 11, 2007. Dr. Bosacco diagnosed her with degenerative disc disease of the cervical spine; bursitis; impingement and impingement syndrome of the left shoulder; and lumbar disc degenerative disease, principally at L4 and L5, with facet arthrosis and mild stenosis.

II. Additional Findings of Fact

Trina Smith swerved ahead of the tractor-trailer before a safe opening in traffic appeared; her lane-change was unsafe. There was not enough space in front of the tractor trailer to accommodate her car safely. After she completed the lane change, Trina Smith's car was stopped in the tractor-trailer's front blind spot. Her testimony that there was enough space in front of the tractor-trailer to merge safely was not credible. Trina Smith was negligent with regard to the first of the three times the tractor-trailer hit her car.

Christopher Repress should have realized after the first impact that he had hit Trina Smith's car; he is fully responsible for the second and third impacts.

Karen Smith entered into a settlement with Triple E Trucking before trial. Because of pre-existing medical conditions, she was not working at the time of the accident. She would not have been eligible for lost wages at trial; her damages would have been based exclusively on any physical injury, pain and suffering. Careful review of the medical evidence and stipulated facts confirms Karen Smith sustained psychological and physical injuries as a result of the accident that exacerbated her pre-existing conditions. Karen Smith attended physical therapy for approximately three weeks; she was treated at Delaware County Pain Management for approximately six months; and she was diagnosed with posttraumatic stress disorder and major depression by a psychologist as a result of the motor vehicle accident. She treated with the psychologist four times over three months during which the psychologist consistently listed her condition as very depressed.

III. Discussion

A. Liability

The Pennsylvania Driver's Manual (the "Manual") gives direction on safe driving when adjacent to a tractor trailer on the road and notes the tractor-trailer's "blind spots". See *Pennsylvania Driver's Manual*, PUB 95 (9-06), available at http://www.dmv.state.pa.us/drivers_manual/pa_driversman.shtml (accessed May 6, 2008). The Manual lists the areas immediately in front of the truck's cab, immediately behind the truck, and

to either side of the trailer portion of the truck as “no-zones” or blind-spots. *See Id.* at 47. The Manual does not state that the area immediately to the right of the tractor, below the passenger-side window, is a “no-zone”. Trina Smith, a licensed driver, testified that before her examination for her learner’s permit she had familiarized herself with the Manual.

Trina Smith testified that before she merged to enter the space in front of the tractor-trailer, she occupied the space immediately to the right of the cab of the truck for some time. The Manual’s failure to include this area among a truck’s “no-zones” is not convincing evidence that a driver moving from the area immediately below the passenger window of the truck into the space immediately in front of the truck executes a safe lane change. Defendant’s accident reconstructionist testified convincingly that space is not visible from a truck’s mirrors.

A vehicle traveling in a lane of traffic has the right of way in that lane; when another vehicle enters that lane, the burden of proof is on the driver of the vehicle changing lanes to show her lane change was safe. A tractor trailer driver is not required to anticipate a car moving in front of him from a closed lane in “stop and go” traffic, particularly when that lane change involves movement from one blind spot to another. A reasonable driver would not have been aware that Smith’s car had entered the space in front of the trailer as she moved from blind spot to blind spot. A reasonable driver would have been aware of her presence after the first impact.

Trina Smith was twenty-five percent contributorily negligent and is liable to Triple E Trucking for contribution to the settlement.

B. Reasonableness of the Settlement

In Pennsylvania, the Uniform Contribution Among Tortfeasors Act (the “Act”) provides for a right of contribution among joint tortfeasors. 42 Pa.C.S.A. § 8324(a). Joint tortfeasors are defined as “two or more persons jointly or severally liable in tort for the same injury to persons or property” *Id.* at 8322. Under the Act, joint tortfeasors are entitled to contribution if they have paid more than their pro rata share of this common liability. 42 Pa.C.S.A. § 8324(b). When settlement occurs before the injured plaintiff has proven her original case at trial, the settling tortfeasor cannot enforce his right to contribution unless he proves the settlement figure was

reasonable. *Swartz v. Sunderland*, 403 Pa. 222 (1961). Although Trina Smith entered into her own settlement agreement with Triple E Trucking following the accident, that agreement did not release her from contribution to Triple E for Karen Smith's injuries.

Karen Smith had existing medical problems at the time of the accident. The accident aggravated those conditions. Trina Smith testified that her sister Karen had trouble sleeping and the medical evidence showed considerable physical pain and mental anguish as a result of this accident. The settlement was entered into before trial. Every settlement is to some degree a hedge against future loss. Given the medical evidence on the record, the court declines to second-guess Triple E's business decision that the figure upon which they settled with Karen Smith was appropriate in light of the future risk of a larger jury verdict. The settlement was reasonable.

Any facts in the Discussion section not found in the Facts section are incorporated by reference therein.

IV. Conclusions of Law

1. This court has personal jurisdiction and subject matter jurisdiction pursuant to 28 U.S.C. § 1332. Venue is proper.

2. A tractor trailer driver is not required to anticipate a car moving in front of him from a blind spot in a closed lane in "stop and go" traffic.

3. Trina Smith's contributory negligence caused twenty-five percent of Karen Smith's injuries.

4. The settlement between Karen Smith and Triple E Trucking was reasonable.

5. Trina Smith is liable to Triple E Trucking for twenty-five percent of the settlement Triple E entered into with Karen Smith.

Judgement will be entered accordingly.

