

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

DANIEL JESSIE DEW,)
)
Plaintiff,)
)
vs.)
)
ANDREW D. LANIER and)
D T TRANSPORT. LLC,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
CASE NUMBER: 2020-CP-38-561

**MEMORANDUM IN SUPPORT
OF MOTION FOR PARTIAL
SUMMARY JUDGMENT
AS TO LIABILITY**

Two independent eyewitnesses testified in their depositions that Defendant Andrew Lanier’s eighteen-wheel dump truck physically struck Plaintiff Jessie Dew’s moped on September 24, 2020, causing him to crash. In addition, there is absolutely no evidence that Plaintiff Jessie Dew contributed to the collision in any way. For these, and additional, reasons Plaintiff seeks an Order for Partial Summary Judgment as to Liability.

FACTS

On September 24, 2020, Plaintiff Jessie Dew was riding his moped in the far-right lane of northbound Highway 17-A near Goose Creek. This section of Highway 17-A has two lanes in each direction with an additional center turn lane. The Defendant, driving an eighteen-wheel dump truck, approached the Plaintiff from behind and attempted to pass the Plaintiff. The Defendant did not completely change lanes into the left northbound lane as he passed the Plaintiff. As the Defendant returned to the far-right lane, the dump trailer he was towing struck the Plaintiff’s moped and caused the Plaintiff to crash. The Defendant then fled the scene of the collision. As a result of the collision, the Plaintiff suffered life altering injuries, including a documented traumatic brain injury.

After the collision, Plaintiff Jessie Dew's father contacted Rudd Heating and Air, located across the street from where the crash occurred and obtained a copy of their video surveillance that showed the Plaintiff crash as the Defendant passed him. The Plaintiff's father turned the video over to an investigator who used still images to decipher the logo on the side of the Defendant's truck. Using those still images he was able to track down the Defendant on or around October 7, 2020, almost two weeks after the wreck. The investigator turned his information over to the responding officer who issued a ticket to Defendant Lanier for improper lane change.



Scene of Collision



Video still image, taken immediately after the collision, from a local business's surveillance camera (Rudd Heating and Air) of Defendant Lanier's eighteen-wheel dump truck.

Both independent eyewitnesses testified in their depositions that the Defendant's trailer struck the Plaintiff's moped. Alisha Philips testified "— the back of the trailer did hit the front of the moped." (Exhibit 1: Alisha Philips Deposition Page 15, Line 3-4). Cody Key testified "— it looked like he [Defendant Lanier] hit the front tire [of Plaintiff Dew's moped], because it kind of jerked his tire out." (Exhibit 2: Cody Key Deposition, Page 21, Line 4-5).

Unique to this collision, the Defendant's employee was following the Defendant in another eighteen-wheel dump truck. When asked in his deposition what he and Defendant Lanier discussed about the moped wreck when they got to their destination, Robert Johnson testified, "— I'm pretty sure he [Defendant Lanier] said something to me about if I gave any information, if I told the cops anything. And I pretty much told him, there wasn't anything to say, except once you passed him – once the semi [Defendant Lanier's] passed him, he [Plaintiff Jessie Dew] was on the ground." (Exhibit 3: Robert Johnson Deposition, Page 11, Lines 16-21).

The Defendant had a duty to safely pass the Plaintiff; however, the Defendant was negligent, if not reckless, and struck the Plaintiff's moped with his dump trailer. No testimony has been given that Plaintiff Jessie Dew was driving erratically or driving in any unsafe manner. Eyewitness Cody Key saw the Plaintiff prior to the collision, and simply stated "He was hugging

the sidewalk, but he was in the asphalt lane.” (Exhibit 2: Cody Key Deposition, Page 9, Line 18-19). Defendant Lanier testified that “he [Plaintiff Jessie Dew] was in the right lane and he was kind of close to the curb most of the time...” (Exhibit 4: Defendant Lanier Deposition, Page 52, Line 25 – Page 53, Line 1).

The evidence shows that 1) two independent eyewitnesses saw the Defendant’s trailer strike the Plaintiff’s moped, 2) the Defendant testified to the collision, and 3) the Defendant pled guilty to a ticket for improper lane change related to this collision. For these reasons, there is no genuine issue of material fact as to liability.



Resting place of Plaintiff Dew’s moped following the collision and scrapes in the asphalt show where the moped first when down.

LAW

“The trial court shall grant summary judgment if ‘the pleadings depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.’ Rule 56(c), SCRPC. ‘In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party.’” Bennett v. Carter, 421 S.C. 374, at 379, 807 S.E. 2d 197 (2017) (quoting Quail Hill, LLC v. Cty. Of Richland, 387 S.C. 223, 692 S.E. 2d 499 (2010), Pye v. Estate of Fox, 369 S.C. 555, 563, 633 S.E. 2d 505 (2006)).

ARGUMENT

I. ALISHA PHILIPS AND CODY KEY WERE EYEWITNESSES TO DEFENDANT ANDREW LANIER’S EIGHTEEN-WHEEL DUMP TRUCK STRIKING PLAINTIFF JESSIE DEW’S MOPED.

Alisha Philips and Cody Key were eyewitnesses, in separate vehicles, to the collision between Defendant Andrew Lanier’s tractor-trailer and Plaintiff Jessie Dew’s moped. They both provided affidavits and consistent testimony in their depositions that Defendant Andrew Lanier’s trailer struck Plaintiff Jessie Dew’s moped.

a. TESTIMONY OF EYEWITNESS CODY KEY

Cody Key testified during his deposition:

Q: “Will you please read this affidavit in the record?”

A: “Yes. Just after lunchtime on the 24th of September 2020. I [Cody Key] was driving north on Highway 17-A, or from the direction of Carnes Crossroads toward the direction of Moncks Corner. I was in the right lane behind an 18-wheeler dump truck, and traffic on 17-A was traveling slowly in front of me. I was then able to see that there was

a man on a moped driving on the far right side of 17A, who was also headed north, and traffic was slowing to pass the moped. The 18-wheeler in front of me got over to its left and started to go around the moped. The truck got back over to its right before it had cleared the moped, and **the truck hit the moped with either the rear tires, or the very far back corner of the truck's trailer.** When the truck hit the moped, it caused the driver of the moped to lose control, and wreck in the middle of the road. I stopped to make sure no one else hit the man, and other people stopped to help the man. I saw that the 18-wheeler did not stop. The 18-wheeler continued up 17-A and did not come back to the accident. I waited for the police to arrive, and gave my name and contact information to the Trooper who came to the scene.”

“I have received a copy of this statement, which I give of my own free will to be true and accurate to the best of my knowledge.”

- Q: “Would you like to change anything about this affidavit?”
- A: “No, I would not.”
- Q: “All right. Did you see any part of the tractor trailer make contact with the moped?”
- A: “It happened right in front of me. I was driving and so I’m looking at all my surroundings, but I saw – I couldn’t tell you exactly where the moped was hit. I mean, I know it was the corner of the dump truck, tractor trailer, whatever we want to call it. **It hit him for sure, and then he went down.** I mean, I didn’t – I don’t know the exact square inch of it that hit him, but it hit him.”

(Exhibit 2: Cody Key Deposition, See Pages 5-7)

b. TESTIMONY OF EYEWITNESS ALISHA PHILIPS

Alisha Philips provided similar testimony at her deposition:

- Q: “All right. Will you please read your affidavit into the record?”
- A: “Yes”

...

“In the early afternoon of September 24th 2020, I was driving on Highway 17A in the left lane headed toward the direction of Moncks Corner. There was an 18-wheeler tractor-trailer truck up ahead of me in the right lane. In front of the 18-wheeler was a man on a moped riding on the very far side – right side of 17A and both were headed toward the direction of Moncks Corner.

The tractor trailer began to ease over to its left and started to go around the man on the moped. As the tractor-trailer was passing the man on the moped, the truck eased back over to his right, but the truck was not clear of the moped, and **the very back of the truck trailer hit the front of the moped and caused the moped to wreck.**

The man on the moped hit the pavement very hard, and I came to a stop. The tractor trailer did not stop and continued to travel toward Moncks Corner on 17A. The tractor-trailer did not come back to the accident, and I was unable to get a tag number or identify the driver in any way. Highway Patrol came to the accident, and I told the trooper that I was a witness and gave him my name and contact information.

And then, I received a copy of this statement, which I give of my own free will to be true and accurate to the best of my knowledge.”

Q: “All right. Do you stand by this statement that you just read?”

A: “Yes. Yes”

(Exhibit 1: Alisha Philips Deposition, See Pages 6-7)

Both Cody Key’s and Alisha Philips’ testimony were consistent that the Defendant’s trailer struck the Plaintiff’s moped causing him to crash.

II. DEFENDANT ANDREW LANIER'S DEPOSITION TESTIMONY

During his deposition, Defendant Lanier was shown a video surveillance clip from a business, Rudd Heating and Air, located across Highway 17-A from where the crash occurred. This video shows Plaintiff Jessie Dew's moped in the northbound lane, the Defendant's eighteen-wheel dump truck passes the Plaintiff, and then the Plaintiff and his moped are seen sliding along the roadway until they come to a stop. (Video Exhibit to be played at hearing).

After being shown the video, Defendant Lanier testified:

Q: "You would admit the video that you watched, the first video, documents Jessie Dew wiping out on his moped at the same time your tractor-trailer --"

A: "Goes by him."

Q: "-- goes by him, correct?"

A: "Correct."

(Exhibit 4: Defendant Lanier's Deposition, Page 32, Line 25 – Page 33, Line 5)

There is no denying that Plaintiff Jessie Dew and his moped crashed at the same time Defendant Lanier passed him in his eighteen-wheel dump truck. Defendant Lanier acknowledged the same and testified to it in his deposition:

Q: "Those four trucks that were in front of you, they successfully navigated around Jessie Dew on his moped, correct?"

A: "Correct."

Q: "And you're the fifth truck and that's when Jessie Dew wiped out, correct?"

A: "Correct, right in front of the medical office right there on 17A."

(Exhibit 4: Defendant Lanier's Deposition, Page 53, Line 10-17)

III. DEFENDANT ANDREW LANIER PLED GUILTY TO AN IMPROPER LANE CHANGE TICKET

On February 8, 2022, Defendant Lanier pled guilty to improper lane change. He did not request a jury trial or make a defense on his own behalf. A copy of his Certified Guilty Plea is attached. (Exhibit 5). During the plea hearing, Defendant Lanier testified as follows:

Mr. Moore [Prosecutor]:

“Your honor, just real briefly. Mr. Lanier was traveling northbound on US 17A. he was in the left-hand lane. There was a moped in the right-hand lane. It looks like he went to switch lanes into the right-hand lane and struck the moped and he was involved in the accident so that’s why he was given a ticket for improper lane change.”

Judge Wilson:

“Is that your recollection of the facts, Mr. Lanier?”

Mr. Lanier:

“Yes, your honor that’s correct. Honestly, I don’t think I struck the guy. I think the guy just wobbled and fell off at the time. Yes, your honor.”

Judge Wilson:

“I find that there is a substantial factual basis for the guilty plea. I find the Defendant knowingly, intelligently, voluntarily, and freely made the decision to plea guilty, therefore, I’ll accept his plea...”

(Exhibit 4: Deposition of Andrew Lanier, Page 27, Lines 23-25 – Page 28, Lines 1-20)

CONCLUSION

There is no genuine issue of material fact as to the Defendant’s liability in causing this wreck. The Plaintiff had as much right to use his moped on Highway 17-A on September 24, 2020, as the Defendant did in his eighteen-wheel dump truck. The Defendant disregarded the rules of the road, and the Plaintiff’s safety, when he changed lanes and struck the Plaintiff’s

moped with the trailer he was towing. The contact between the Defendant's eighteen-wheel dump truck and the Plaintiff's moped was observed by two independent eyewitnesses. The Defendant testified in his deposition that the Plaintiff's moped crashed as he passed the Plaintiff and the he pled guilty to improper lane change. For these reasons, partial summary judgment as to liability should be ordered.

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