

May 17, 2021

HARRIS COUNTY**VERDICT** *of the* **WEEK****MOTOR VEHICLE**

Stop Sign; Intersection; Multiple Vehicle

Plaintiff claimed taxi driver negligent in two-car crash

Amount	\$7,011,000
CASE	Diane Perez and Ricky Perez v. Greater Houston Transportation Company d/b/a and/or a/k/a Yellow Cab and/or Yellow Cab and Delwende Nikiema, No. 2016-32437
COURT	Harris County District Court, 234th, TX
DATE	5/17/2021
JUDGE	Lauren Reeder
PLAINTIFF	
ATTORNEY(S)	Joseph "Joe" Stephens; The Stephens Law Firm; Katy TX for Diane Perez, Ricky Perez
DEFENSE	
ATTORNEY(S)	Martyn B. Hill; Pagel, Davis & Hill; Houston, TX for Greater Houston Transportation Co. Richard Post; Pagel, Davis & Hill; Houston, TX for Greater Houston Transportation Co. None reported for Delwende Nikiema

FACTS & ALLEGATIONS On June 30, 2014, plaintiff Diane Perez, 63, was driving a pickup truck west on Dacca Drive in Houston, approaching Rubin Street. Delwende Nikiema, driving a minivan taxicab, was driving south on Rubin. The cab was owned by Greater Houston Transportation Co., doing business as Yellow Cab. Nikiema had a stop sign, and Perez did not. The vehicles collided in the intersection. Perez claimed she suffered neck injuries.

Perez and her husband sued Yellow Cab. The lawsuit alleged that Nikiema was negligent and negligent per se in the operation of his vehicle. She claimed that Nikiema failed to yield the right of way and that he was an employee of Yellow Cab. The plaintiffs settled with Nikiema before trial for \$30,000.

In closing argument, Yellow Cab admitted Nikiema's negligence. However, the defense argued that, based on Nikiema's written contract, he was an independent contractor.

The jury was instructed that persons acting as independent contractors are not acting as employees. It was further instructed on the effect of a written contract excluding any right of control over the details of the work.

The court had granted summary judgment for Yellow Cab on the independent-contractor issue, but the First Court of Appeals reversed and remanded.

INJURY Two days after the accident, Perez went to her primary care doctor and reported neck, back and shoulder pain. Ultimately, she claimed she suffered intervertebral disc herniations at C5-6 and C6-7. She claimed that the discs caused nerve root compression and radicular symptoms in her arms.

On July 11, 2014, her primary care doctor referred her to a chiropractor, with whom Perez began physical therapy. Over the next 14 months, she underwent physical therapy, epidural steroid injections, facet block injections and radiofrequency ablation.

On Sept. 29, 2015, Perez underwent a two-level cervical fusion, which provided relief but interfered with her activities and independence, she said.

She claimed that her symptoms began to worsen in September 2019. She continued to follow up with an orthopedic surgeon and pain management doctor, and in April 2021, she underwent a diagnostic cervical block injection followed by radiofrequency ablations in April and May. She said the ablations provided relief.

Her husband asserted derivative claims, but they were either dropped or dismissed before deliberations began.

The parties stipulated that her past medical expenses were \$90,000; therefore, the element of past medical was not included in the jury charge.

Plaintiffs' counsel asked the jury to award \$3.36 million for future medical expenses and \$4 million in

noneconomic damages. The noneconomic damages were past and future physical pain and suffering, past and future mental anguish, past and future disfigurement and past and future physical impairment.

The defense argued that Perez malingered and that she failed to mitigate her damages. Also, the damage to her vehicle was relatively minor, and she denied injury at the scene.

In addition, Perez's cervical MRI showed preexisting arthritis. The jury was instructed on preexisting conditions.

The defense noted that Perez was still working full-time at the time of trial.

RESULT The jury found that Nikiema's negligence proximately caused the accident and that he was acting as an employee of Yellow Cab at the time. The jury awarded Perez \$7,011,000. With the stipulated past medical expenses of \$90,000, and after the offset for Nikiema's \$30,000 settlement, the damages were \$7,071,000.

POST TRIAL: Perez filed a proposed judgment seeking \$7,101,000, less the \$30,000 offset for the settlement with Nikiema, plus \$306,250 in prejudgment interest, for a total of \$7,377,250. Yellow Cab's counsel has expressed an intention to move for judgment notwithstanding the verdict, asserting such grounds as legal insufficiency of the evidence, discovery abuse and improper jury argument.

EDITOR'S NOTE This report is based on information that was provided by plaintiffs' and defense counsel.