OTIS J. FABRE : NUMBER: 561,395-B

VERSUS : FIRST JUDICIAL DISTRICT COURT

BARBARA RUSHING, ET AL : CADDO PARISH, LOUISIANA

**REASONS FOR JUDGMENT**

Trial was held July 11, 2013. The Court heard testimony from Otis Fabre, Barbara Rushing and received into evidence the deposition testimony of Bryan Mills, M.D. and Adam Brewer, Ph.D. Additional evidence was introduced including the records and invoices from Willis Knighton Hospital, Mills Clinic, Brewer Physical Therapy as well as photographs and other items. Following a thorough review of all evidence, and for reasons that follow, the Court concludes that Otis Fabre has proven that Barbara Rushing was 100% at fault in the accident of March 22, 2012, and he has proven special damages in the amount of $10,674.04 and general damages in the amount of $20,000.00.

**THE ACCIDENT**

On March 22, 2012, Plaintiff Otis Fabre was driving his truck in the southbound outer lane of Clyde Fant Parkway. As he approached the East Preston exit, he observed Defendant Barbara Rushing driving her truck in the wrong direction, within the exit ramp toward his lane of southbound traffic. Immediately to Fabre’s left and parallel with him was another southbound motorist which precluded movement into the southbound inner lane. Fabre thought Ms. Rushing’s vehicle was about to enter his lane of travel and he therefore swerved to his right from Clyde Fant Parkway onto the shoulder in an attempt to avoid what he foresaw as a head-on collision. Realizing that she was traveling the wrong way on the exit ramp, Ms. Rushing steered to her left onto the right shoulder of the exit ramp. A head-on collision and significant impact occurred with air bags deployed, Mr. Fabre’s head hitting the windshield resulting in personal injuries and property damage.

The defendants have argued comparative fault of Mr. Fabre with Ms. Rushing testifying that she wished Fabre had remained on Clyde Fant Parkway. This Court notes that Mr. Fabre is a 25 year retired veteran of the Shreveport Police Department, obviously one extensively trained in defensive driving. He had to make a critical decision in a split second which was (1) continue southbound on Clyde Fant at the posted speed limit and risk a life-threatening head on collision; or (2) avoid what appeared to him (in those seconds) to be a significant collision and steer to his right onto the safe haven of the roadway shoulder. The Court declines to second guess this retired officer on what he reasonably thought at the time to be the better of his two choices. The Court finds Ms. Rushing 100% at fault in the head-on collision.

**CREDIBILITY**

As in any trial where there are disputed liability and quantum issues, the Court is called upon to evaluate the credibility of the parties and witnesses. Again, Otis John Fabre, now age 65, is a retired 25 year veteran of the Shreveport Police Department. Having closely examined Mr. Fabre’s demeanor as well as the substance of his testimony, the Court deems him credible in all respects and, if anything, he appears to be a strong and proud man who has somewhat downplayed the extent of his pain.

In fact, Dr. Bryan Mills, an expert in emergency medicine as well as general practice (6:20-21), testified “if anything he almost seemed to be stoic and downplaying some of his symptoms (Mills 8:1-2). Dr. Mills found him “straightforward and honest. . .not magnifying symptoms” (7:23-24). He “seemed consistent, he seemed reliable” (Mills 10-12) – a rather stoic individual in my opinion from talking with him. . .a retired police officer. . .very straight forward (Mills 20:21-25). He “seemed just reliable and upfront about things” (Mills 30:6-8).

Dr. Adam Brewer, Ph.D., Director of Brewer Physical Therapy and expert in physical therapy (Brewer 8:4) also believed Mr. Fabre to be credible and, if anything, downplaying the extent of his pain. Note the following dialogue in his trial deposition:

Q. In reviewing his records I noticed that he never made complaints of ten out ten pain?

A. No.

Q. Did you regard his complaints to be genuine?

A. I did. In fact, if anything I felt like he was hesitant to complain at all. He’s – he’s a – kind of one of those guys that tries to roll with the punches so to speak so.

Q. Okay. And was there anything either in the intrinsic nature of the history he provided to you or as compared to the objective findings that you made during your examination that caused you to doubt his veracity during his reporting?

A. No, I did not.

(Brewer 11:22-25; 12:1-10)

Thus, the Court’s credibility determination as to Mr. Fabre is well corroborated by the statements made under oath by both of the expert witnesses in the case.

The Court also deems Ms. Rushing to be a very nice lady and an otherwise good driver - who made a mistake on March 22, 2012 and caused Mr. Fabre’s damages.

**INJURIES AND TREATMENT**

Having made credibility determinations, the Court turns to the extent of Fabre’s injuries, pain and suffering. Of particular issue to defense counsel is the gap in treatment by Dr. Mills and Dr. Brewer essentially during the summer months of 2012. Specifically, both experts stopped treating Mr. Fabre on May 24 and both resumed treating him on October 4 for about another thirty day regimen. Both experts testified that it is not unusual in a situation where there has been a significant impact for there to be intermittent residual pain and that such is especially true for someone of Mr. Fabre’s age. Moreover, Mr. Fabre testified that he presently has intermittent neck pain and upper body stiffness, which he attributes to the accident. Again, this Court accepts the plaintiff’s testimony and, if anything, believes that he has modestly understated his injuries in an effort to – as Dr, Brewer expressed it – “roll with the punches”.

**CONCLUSION**

For reasons assigned, the Court concludes liability as to Ms. Rushing and therefore her insurer, State Farm Mutual Automobile Insurance Company, and assesses special damages in the amount of $10,674.04 and general damages in the amount of $20,000.00.

Counsel shall submit a proposed formal judgment in conformity with this ruling and in accordance with La. Dist. Ct. R. 9.5.

Signed this 17th day of July, 2013, in Shreveport, Caddo Parish, Louisiana.

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SCOTT J. CRICHTON

DISTRICT JUDGE

DISTRIBUTION:

William F. Kendig, Counsel for Otis Fabre

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State Farm Mutual Automobile Insurance Company