Petrika Dojce v. 1302 Realty Company, LLC, and F. and D. Improvements Incorporated / Petrika Dojce v. Mesivta Yeshiva Rabbi Chaim Berlin; 2023 Jury Verdicts LEXIS 58561

508449/2016; 514529/2018

November 17, 2023

Headline: Worker claimed grinding tool lacked required safety guard

Published Date: February 09, 2024

Topic: Construction - Accidents - Construction - Labor Law - Workplace - Workplace Safety

Injury: back, lower back, spasm, lumbar, fusion, lumbar, herniated disc, herniated disc, lumbar, herniated disc at L5-S1, lumbosacral discogenic pain syndrome, neck, spasm, cervical, fusion, cervical, herniated disc, cervical, herniated disc at C3-4, herniated disc at C5-6, herniated disc at C6-7, other, spasm, thigh, sutures, bone graft, laceration, arthropathy, myofasciitis, microdiscectomy, physical therapy, steroid injection, epidural injections, lumbar facet injury, muscle, damage/loss, neurological, radiculopathy, nerve damage/neuropathy, neurological impairment, neuritis, radicular pain / radiculitis, surgeries/treatment, decompression surgery, mental/psychological, depression

Practice Area: Civil Procedure; Torts; Workers' Compensation and SSDI

State: New York

Court: Kings Supreme

Plaintiff Counsel

Plaintiff Name: (Petrika Dojce)

Peter S. Thomas

Firm Name: Peter S. Thomas, P.C., Forest Hills, NY, trial counsel, Lipsig, Shapey, Manus & Moverman, P.C.

Address: New York, NY

Plaintiff Name: (Petrika Dojce)

Daniel A. Thomas

Firm Name: Law Offices Of Daniel A. Thomas, PC, New York, NY, trial counsel, Lipsig, Shapey, Manus & Moverman, P.C.

Address: New York, NY

Defendant Counsel

Michele Levin

Firm Name: Catalano Gallardo & Petropoulos, LLP

Address: Jericho, NY

Domingo R. Gallardo

Firm Name: Catalano Gallardo & Petropoulos, LLP

Address: Jericho, NY

Judge: Peter P. Sweeney

Case Summary
On April 21, 2016, plaintiff Petrika Dojce, a construction worker in his 30s, was doing demolition work at Yeshiva Rabbi Chaim Berlin school in Brooklyn. He was using a handheld grinding tool with a wood saw blade attached. While he was cutting flooring with the tool, the blade kicked back toward him and cut his right leg. He subsequently fell backward. Dojce claimed the fall caused additional injuries to his neck and back. Dojce sued the owner of the property, 1302 Realty Co., and his employer, F. and D. Improvements. Dojce alleged industrial code and labor law violations. He then filed a separate lawsuit against Mesivta Yeshiva Rabbi Chaim Berlin. The lawsuits were consolidated. The claim against F. and D. was ultimately discontinued. Dojce claimed that, on the day of the incident, his boss had given him the grinding tool, which was allegedly missing a safety guard. Plaintiff's counsel argued a guard would have prevented Dojce's injuries. Dojce specifically alleged a violation of Industrial Code Rule § 23-1.12(c)(1), which states in part, “Every portable, power-driven, hand-operated saw … shall be equipped with a fixed guard above the base plate which will completely protect the operator from contact with the saw blade when the saw is operating.” The plaintiff also claimed a violation of § 23-1.5(c)(3), which states, “All safety devices, safeguards and equipment in use shall be kept sound and operable, and shall be immediately repaired or restored or immediately removed from the job site if damaged.” The defense claimed Dojce changed the blade on the saw and was therefore liable for the accident.

Injury Text: Dojce was taken to the hospital. He sustained a severe right thigh laceration that caused a partial tear of the vastus lateralis muscle along with mononeuritis. He also claimed herniations at C3-4, C5-6, C6-7 and L5-S1. Dojce additionally alleged lumbago and lumbar facet arthropathy. He further claimed lumbar and cervical radiculopathy/radiculitis, traumatically induced discogenic disease and myofasciitis/spasms. Dojce received sutures for his thigh injury. He also underwent physical therapy and received lumbar epidural steroid injections. Dojce additionally had three spinal surgeries. In March 2019, he had an L5-S1 microdiscectomy. Two months later, he underwent a C5-6 anterior cervical decompression and fusion with bone graft. Dojce’s third surgery, which took place in January 2020, was an anterior and posterior L5-S1 fusion. Dojce said that he developed psychosis and depression as a result of the incident. At the time of trial, Dojce was still undergoing physical therapy and counseling. He walked with a cane and claimed he can no longer work as a laborer. Dojce’s counsel said the plaintiff needs additional doctors’ appointments, physical therapy, injections, pain medications and hardware maintenance in the future. Dojce sought recovery of future medical expenses, past and future lost earnings and damages for his past and future pain and suffering. The defense argued that Dojce’s spine complaints resulted from pre-existing bone spurs.

Trial Length 23 days

Jury Deliberation 2 days

Jury Poll 5-1 on plaintiff's negligence and whether his negligence was a substantial factor in causing the accident; 6-0 on all other questions

Insurer: Church Mutual Insurance Co.

Plaintiff Amounts: (Petrika Dojce)

$ 300,000 Past Lost Earnings

$ 5,000,000 Past Pain Suffering

$ 204,764 future pain management visits for 32.7 years

$ 314,557 future neuromodulation hardware maintenance for 32.7 years

$ 108,878 future orthopedic and/or neurology visits for 32.7 years

$ 1,096,953 future interventional treatment for 32.7 years

$ 860,307 future physical therapy for 32.7 years

$ 988,620 future pharmacologic management for 32.7 years

$ 10,000,000 future pain and suffering for 32.7 years

$ 900,000 future lost earnings for 17.1 years

$ 19,774,079 Plaintiff's Total Award

Plaintiff Expert(s)

Paul M. Brisson, M.D.

Address: New York, NY

Specialty: Spinal Surgery

Debra S. Dwyer, Ph.D.

Address: Stony Brook, NY

Specialty: Economics

Jacob Rauchwerger, M.D.

Address: Rockville Centre, NY

Specialty: Pain Management

Thomas M. Kolb, M.D.

Address: New York, NY

Specialty: Radiology

Vagmin P. Vora, M.D.

Address: Brooklyn, NY

Specialty: Spinal Surgery

Defendant Expert(s)

Ali M. Sadegh, Ph.D.

Address: New York, NY

Specialty: Mechanical

David M. Simpson, M.D.

Address: New York, NY

Specialty: Neurology

Edmond A. Provder, C.R.C.

Address: Hackensack, NJ

Specialty: Vocational Assessment

Jeffrey D. Klein, M.D.

Address: New York, NY

Specialty: Spinal Surgery

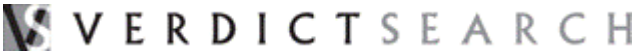
Michael Keith Brooks, M.D.

Address: Mineola, NY

Specialty: Radiology

Award: $ 19,774,079

Award Details: At the end of the liability trial, the jury determined that F. and D. had violated Industrial Code Rules § 23-1.12(c)(1) and § 23-1.5(c)(3). The jury further determined that these violations constituted a failure to use reasonable care and that this failure was a substantial factor in causing the accident. The jury also concluded that Dojce was negligent but determined that his negligence was not a substantial factor in causing the accident. At the end of the subsequent damages trial, the jury concluded that the defendants' negligence was a substantial factor in causing Dojce's injuries. The jury awarded him $19,774,079.



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