Carmine Carbone v. Metropolitan Transportation Authority, New York City Transit Authority, MTA Bus Company, Melville Harlequin and Judy Estevez; 2023 Jury Verdicts LEXIS 58290

702446/2019

December 20, 2023

Headline: Bus caused chain-reaction collision that led to surgeries: lawsuit

Published Date: February 03, 2024

Topic: Motor Vehicle - Bus - Motor Vehicle - Rear-ender - Motor Vehicle - No-Fault Case - Motor Vehicle - Multiple Impact - Motor Vehicle - Multiple Vehicle

Injury: back, lordosis, lower back, annular tear, bulging disc, fusion, lumbar, herniated disc, derangement, lumbar, bulging disc, lumbar, herniated disc, lumbar, herniated disc at L5-S1, neck, derangement, cervical, bulging disc, cervical, herniated disc, cervical, herniated disc at C5-6, other, lysis, adhesions, fasciitis, resection, synovitis, bone graft, acupuncture, arthrodesis, facetectomy, chiropractic, physical therapy, steroid injection, epidural injections, tendon, severed/torn, decreased range of motion, shoulder, derangement, shoulder, rotator cuff, injury (tear), supraspinatus muscle/tendon, tear, neurological, radiculopathy, surgeries/treatment, arthroscopy, debridement, laminectomy, laminectomy, lumbar, decompression surgery

Practice Area: Civil Procedure; Healthcare Law; Torts

State: New York

Court: Queens Supreme

Plaintiff Counsel

Plaintiff Name: (Carmine Carbone)

Peter S. Thomas

Firm Name: Peter S. Thomas, P.C., Forest Hills, NY, trial counsel, Law Offices of Patrick J. Mullaney, P.C.

Address: Forest Hills, NY

Defendant Counsel

Gregory Nelson

Firm Name: Morris Duffy Alonso Faley & Pitcoff

Address: New York, NY

Judge: Mojgan C. Lancman

Case Summary

On Sept. 5, 2018, plaintiff Carmine Carbone, 46, a Verizon employee, was driving a sedan on Juniper Boulevard North in Queens. He stopped for a red light at the 80th Street intersection. Judy Estevez was operating another sedan behind Carbone's vehicle. Melville Harlequin was operating a Metropolitan Transportation Authority (MTA) bus behind Estevez's car. The bus struck the rear of Estevez's car, which then rear-ended Carbone's vehicle. The impact pushed Carbone's car approximately 40 feet into the intersection. Carbone alleged neck, back and shoulder injuries. Carbone sued Estevez, Harlequin, the Metropolitan Transportation Authority, the New York City Transit Authority and the MTA Bus Co. Carbone alleged that Estevez and Harlequin were negligent in the operation of their

respective vehicles and that the remaining defendants were vicariously liable for Harlequin's actions. Estevez's counsel filed a motion for summary judgment, and plaintiff's counsel filed a motion for summary judgment of liability. Both motions were granted. The matter proceeded to trial to determine damages against the remaining defendants. During trial, the plaintiff withdrew his claims against the Metropolitan Transportation Authority and the New York City Transit Authority.

Injury Text: Carbone went to the hospital from the scene. Carbone was diagnosed with an L5-S1 herniation and annular tear. He also claimed L1-2 and L4-5 bulges, lumbar radiculopathy, facet synovitis, lumbosacral derangement, posterior paraspinal fasciitis and loss of lumbar lordosis. He further alleged a C5-6 herniation, a C6-7 bulge, cervical derangement with radiculopathy and straightening of the cervical lordosis. Carbone additionally injured his right shoulder. He claimed a partial thickness tear of the supraspinatus tendon along with shoulder derangement and a decreased range of motion. Carbone received a lumbar epidural steroid injection in February 2019. Later that month, he underwent arthroscopic shoulder surgery that included a debridement, subacromial decompression, distal clavicle resection and lysis of adhesions. Carbone subsequently received a bilateral facet joint injection in April 2019 and lumbar medial branch blocks in August 2019. He also had physical therapy, chiropractic treatment and acupuncture. Carbone additionally underwent lumbar surgery in October 2019. The decompressive lumbar laminectomy included medial facetectomies, an arthrodesis and bone grafting. Carbone then received additional bilateral lumbar injections in June 2021 and March 2023. Carbone testified he never had any prior accidents and had never missed any time from work before the subject crash. His counsel argued that Carbone requires additional pain management treatment, diagnostic testing, physical therapy, doctors' appointments, medical equipment, medications and surgeries. Carbone specifically claimed that he requires an adjacent-level lumbar fusion and a cervical discectomy and fusion. Carbone sought recovery of future medical expenses, past and future lost earnings and damages for his past and future pain and suffering. Defense counsel argued that Carbone did not suffer a serious injury, as defined by the no-fault law, Insurance Law §5102(d) The defense argued that Carbone only suffered sprains and strains in the crash and that he had pre-existing conditions unrelated to the accident.

Trial Length 12 days

Jury Deliberation 2.5 hours

Jury Poll 6-0

Insurer:

Plaintiff Amounts: (Carmine Carbone)

$ 450,759 Past Lost Earnings

$ 5,000,000 Past Pain Suffering

$ 25,000 future orthopedic/physical medicine appointments for 26 years

$ 488,683 future surgeries for 26 years

$ 100,000 future pain management for 26 years

$ 149,579 future physical therapy for 26 years

$ 314,740 future medications for 26 years

$ 11,308 future medical equipment for 26 years

$ 94,904 future diagnostic testing for 26 years

$ 15,000,000 future pain and suffering for 26 years

$ 1,725,792 future lost earnings for 26 years

$ 23,360,765 Plaintiff's Total Award

Plaintiff Expert(s)

John S. Vlattas, M.D.

Address: Bayside, NY

Specialty: Pain Management

Barry C. Root, M.D.

Address: Roslyn Heights, NY

Specialty: Life Care Planning

Debra S. Dwyer, Ph.D.

Address: Stony Brook, NY

Specialty: Economics

Andrew A. Merola, M.D.

Address: New York, NY

Specialty: Spinal Surgery

Randall V. Ehrlich, M.D.

Address: White Plains, NY

Specialty: Orthopedic Surgery

Defendant Expert(s)

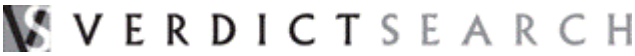
Yong H. Kim, M.D.

Address: New York, NY

Specialty: Orthopedic Surgery

Award: $ 23,360,765

Award Details: The jury determined that Carbone sustained a significant limitation of use of a body function or system, a permanent consequential limitation of use of a body organ or member and a medically determined, nonpermanent injury or impairment that prevented his performance of substantially all of the material acts that would have constituted the usual and customary daily activities of 90 or more of the first 180 days that followed the accident. The jury awarded Carbone $23,360,765.



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