

Raeder v. Hanan Klepner, Elrac, Inc. and Sumatilal Shah

Auto Accident

Queens County

SETTLEMENT \$1,200,000

CASE Walter Raeder and Jill Raeder
v. Hanan Klepner and Elrac,
Inc., and Sumatilal Shah, No.
7281/2003
COURT Queens Supreme
JUDGE Joseph G. Golio
DATE 2/20/2006

PLAINTIFF
ATTORNEY(S) William Schwitzer,
Dinkes & Schwitzer,
New York, NY

DEFENSE
ATTORNEY(S) David W. Brand,
Brand Glick & Brand P.C.,
Garden City, NY (Elrac Inc.,
Hanan Klepner)

John Zanicrowsky, James
P. Nunemaker, Jr. &
Associates, Uniondale, NY
(Sumatilal Shah)

FACTS & ALLEGATIONS On Aug. 24, 2000, plaintiff Walter Raeder, 44 a fire-alarm technician, was driving in the left westbound lane of the Long Island expressway, near Kissena Boulevard, in Queens. Hanan Klepner was operating a rental vehicle in the middle lane when he abruptly changed lanes, cutting off Raeder's van, and then stopped short. Raeder's vehicle was subsequently rear-ended by a vehicle that was being driven by Sumatilal Shah and propelled into Klepner's vehicle. Raeder claimed that he sustained back, knee and shoulder injuries.

Raeder sued Shah, Klepner and the owner of Klepner's vehicle, Elrac Inc. He alleged that Shah and Klepner were negligent in the operation of their respective vehicles and that Elrac was vicariously liable for Klepner's actions.

Raeder claimed that as he was proceeding at approximately 50 to 55 mph, Klepner rapidly approached and, without warning, suddenly swerved in front of him and stopped short while still at an angle to the lane. Raeder testified that he was able to bring his vehicle to a stop in the

left lane less than a foot behind Klepner's vehicle, but was then struck very hard in the rear by Shah, which pushed his van into the rear of Klepner's vehicle.

Plaintiff's counsel called the responding officer, who testified that Klepner stated he was proceeding at a speed of 70mph when he realized he was going to fast and stopped suddenly. The officer wrote this admission in his police report accident for proceeding at 70mph in a 50-mph zone, which Klepner pleaded guilty to. The accident report, ticket and guilty plea were all admitted into evidence at trial.

Klepner testified that he did not specifically recall telling the officer that he was preceding at 70mph nor did he recall if the ticket was handed to him or one of his passengers. Although Klepner, an Israeli national who came to work in a camp for the summer, did not require an interpreter at trial, he claimed that his command of English was not 100% and that he was somewhat intimidated and confused at the accident scene.

Klepner further testified that for the 15 minutes before the accident, he was only in the left lane and that he did not change lanes in front of Raeder immediately prior to the subject accident. HE claimed that he stopped short because the vehicle that was in front of him in the left lane stopped short. He further claimed that when he was almost at a stop, he felt one impact to the rear of his vehicle.

A nonparty passenger in the rental vehicle testified to Klepner's version of how the accident occurred. He also testified that he believed Klepner was proceeding at about 60 to 65 mph and that he was next to Klepner when he spoke with the responding officer. He contended that he had no specific recollection of Klepner discussing his speed prior to the accident, but stated that the officer did hand Klepner a ticket for speeding at the accident scene.

Counsel for Klepner argued that it would be physically impossible for Klepner to cut-off Raeder while traveling at a much faster speed if in fact Raeder subsequently came to a stop less than a foot behind Klenper, as the plaintiff had testified.

Shah had previously testified in his deposition that he had patient appointments at Brooklyn Hospital commencing at 1p.m. on the date of the accident. The responding officer testified that the accident had occurred at 12:45 p.m., so counsel for Elrac and Kepner argued that Shah was still at least a half hour from the hospital and in a hurry. Counsel for Elrac and Klepner further argued that Raeder did in fact show his van using his brakes because otherwise he would have struck Klepner at more than 50 mph. He argued that Shah failed to see the brake lights directly in front of his own vehicle.

It was undisputed that Raeder's brake lights were in working order.

Shah testified that he was proceeding for about 10 to 15 minutes in the left lane, behind the plaintiff's van, at about 50 to 55 mph prior to this accident. He claimed that he did not see the brake lights on the van illuminate immediately prior to this accident. He claimed that he did not see the brake lights on the van illuminate immediately prior to the accident because Raeder did not brake. Rather he claimed that he heard a metal-to-metal crash in front of him and then observed the van at a stop, prior to his rear-ending same. He contended that he did not see Klepner's vehicle at any time prior to the subject accident.

INJURIES/DAMAGES *compression fracture; fracture, T9; herniated disc at L5-S1; herniated disk at T10-11; radiculopathy; torn anterior cruciate ligament; torn rotator cuff*

The trial was bifurcated, so damages were not before the court.

Raeder was placed in an ambulance and transported to New York Hospital and Medical Center of Queens, where he was admitted for three days. He claimed that he sustained a compression fracture at T9 and herniated discs at T10-11 and L5-S1, the latter of which required a percutaneous discectomy. He also claimed that he suffered partial tear of his right anterior cruciate ligament, requiring arthroscopic knee surgery as well as a left (non-dominant) rotator-cuff tear and shoulder derangement requiring arthroscopic surgery consisting of a distal clavicle excision, rotator-cuff decompression with an acromionectomy, and release of the coraco-acromial ligament.

Raeder contended that he experiences cervical and lumbar radiculopathy, which was documented

by EMGs, and that he has been undergoing in osteopathic and physical-therapy treatment since the time of the accident. He contended that he requires a cane to ambulate.

Raeder claimed that he was unable to continue in his job as a fire-alarm technician and union member, earning about \$60,000 a year. He receives Social Security disability. The plaintiff's expert economist projected economic loss of about \$1.9 million. Raeder sought recovery of his past and future lost earnings and damages for his past and future pain and suffering. His wife presented a loss-of-services claim.

The defense denied that Raeder's claimed T9 fracture was casually related to the accident. The defendants contended that a lot of Raeder's complaints were actually chronic and caused by degenerative conditions. They also contended that there were gaps in knee complaints in Raeder's medical records.

RESULT The jury rendered a mixed verdict. It found 100% negligence against Shah and no liability against Klepner.

Four days after the jury verdict, Shah's insurance company settled with Raeder for \$1.2 million.