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TN CLAIMS COMMISSION
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IN THE CLAIMS COMMISSION OF THE STATE OF TENNESSEE
MIDDLE DIVISION

ONAH SCHREFFLER,	)	
	)	Claim No. T20140530
Claimant.	)	
v.	)	
	)	
STATE OF TENNESSEE	)	
	)	Regular Docket
Defendant;	)	

FINAL JUDGMENT FOR CLAIMANT

This claim came on for a bench trial before Robert N. Hibbett, Commissioner and Trial Judge of the facts and law. The Claimant, Onah Schreffler, seeks damages arising from an automobile accident in which the vehicle she was driving was struck from behind by a Tennessee Department of Transportation (TDOT) truck. The TDOT truck pushed her vehicle into the oncoming lane of traffic where she was struck again by another vehicle. The claim was tried on October 29, 2014 in the Mount Juliet City Courtroom. The Honorable Robert E. Lee Davies, Esq. and David H. Veile, Esq. appeared for Ms. Schreffler. Assistant Attorney General Amanda Jordan, Esq. represented the State of Tennessee.

The Claims Commission has jurisdiction of this matter under Tenn. Code Ann. § 9-8-307(a)(1)(A), relative to negligent operation of a motor vehicle.

STIPULATIONS

The parties have stipulated and agreed that the State is completely liable for the accident involving the State TDOT truck and the Claimant. The parties have further stipulated that the medical expenses of $138,695.85 incurred by the Claimant from the accident were reasonable and necessary.

Pursuant to Tenn. Code Ann. § 9-8-403(i), the Tribunal makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

Testimony of Onah Schreffler Chapman

Mrs. Schreffler Chapman is a recently married twenty-year-old receptionist at the Williamson County Animal Hospital. At the time of the accident, she was living with her parents and her father was suffering from some major medical issues. She withdrew from college to aid her family and was working as a waitress.

On July 30, 2013, she was stopped, waiting for oncoming traffic to pass on Highway 96 so she could turn left, when a TDOT truck struck her in the back and

pushed her car forward into oncoming traffic. She was again struck in the passenger side by a Toyota 4-Runner which spun her around into the ditch. After the wreck, she was in shock. She took her seatbelt off and started to push her door open. She looked down and had blood dripping down her arm. An older gentleman walked by and told her the ambulance was on the way. A young girl gave her water to drink and poured water over her wound. She was terrified during this time and suffered much pain in her ribs.

The ambulance arrived and started an IV with pain medication. They placed a neck brace and back brace on her. Because of the damage to her vehicle, they could not remove her through the driver's door. They had to retrieve her through the back window. Even though she was in Williamson County, they decided to take her to Vanderbilt Medical Center. She was conscious the entire time.

When they arrived at Vanderbilt, she was placed on a flat table and all her clothing was removed. The emergency staff began pressing down on different body parts to find the location of her injuries and pain. This was very painful because of her broken ribs. She was given a pain pump that she was pushing the

entire time. They removed glass from her head and placed staples into the location of her head injuries.

Her first night in the hospital was very painful. She was having flashbacks concerning the accident and would wake up shaking and in a panic. The pain pump would work every five minutes but she was pushing the button every thirty seconds. She became very nauseous and she felt like her ribs were sticking through her side. The pain or the flashbacks were keeping her from sleeping more than thirty minutes at a time. They put a catheter in her and she had tremendous amounts of blood in her urine.

On the day of her surgery, she woke up freezing and her teeth were chattering. It was decided she needed emergency surgery and a blood transfusion. After the surgery, she observed her stomach was very bruised and swollen. She got up and walked with assistance but it was hard to do without pain. She had a drain tube placed in her side, and it would be drained of blood periodically. She went home with the drain tube inserted and the staples in her head. Both were removed later. She lost ten to fifteen pounds while she was in the hospital.

When she was discharged from the hospital, her ribs still hurt, and the cut to her head was tender. She had to sleep downstairs for a week and a half before she could sleep in her own bedroom. Her ribs and the incision in her stomach were really painful, but the pain medication made her vomit. It took a week and a half to two weeks for her stomach to be normal in size.

Currently, she has lower back pain when riding over an hour in a car or sitting too long at work. According to the Claimant, she has been affected by the removal of her gallbladder because of the accident. No matter what she consumes at meals, she experiences diarrhea approximately ninety percent of the time very soon after eating. The scar from her surgery extends from the bottom of her chest to her pubic bone. The Claimant introduced a current picture of the scar (Exhibit 6). It is very noticeable and is not likely to fade completely. The Claimant is very conscious of the scar when she swims. She does not have any physical limitations affecting her work and does not take any pain medications. The Tribunal accredits and believes the testimony of the Claimant.

Testimony of Kimberly K. Schreffler

Mrs. Schreffler is the mother of the Claimant. After her daughter's accident, she went to Vanderbilt Medical Center--it was total chaos, and she was

not allowed to be with her daughter. After some time, she was able to spend approximately from 10:00 a.m. to 5:00 p.m. with her daughter daily because she did not like being alone. She observed her daughter having panic attacks at the hospital. She would sleep for short naps and then would wake up, push the morphine button and cry. She observed her having pain in her ribs and vomiting because of nausea. When her daughter arrived home, she never left the house for the first two weeks.

The Claimant is very anxious when she is riding in or driving a vehicle, and the anxiety has never subsided. Currently, if she makes it through a meal, she has to go to the bathroom, or she does not feel well afterward. The Tribunal believes and accredits the testimony of the witness.

Testimony of Perry Clint Chapman

Mr. Chapman is the husband of the Claimant. The first time he saw the Claimant after the accident is when she was being taken to the trauma unit. She looked very pale with blood running down her head. When he saw her in the trauma unit, she was in pain, shock and was having anxiety attacks. He observed her throwing up because she was nauseous, and it caused excruciating pain in her ribs. He would stay with her at night, and she would only sleep ten

to fifteen minutes at a time. She was afraid and would wake up in a panic. On Friday, the day of the surgery, she awoke freezing and very pale. She was very confused before the surgery and did not comprehend the risk factor conversation with her doctors.

Both before and after the surgery, if she yawned or sneezed it caused excruciating pain. Her medication made her extremely sick, to the point she would vomit. When she went back to the doctor to get her drain tube removed, she experienced pain. She suffered anxiety when she was in a vehicle, and the jolting of the vehicle bothered her ribs. Nothing has changed concerning her behavior when riding or driving an automobile. She is terrified of people getting behind her or a driver getting too close in front of her. Currently, when she eats, she has stomach cramps, pains and many times diarrhea afterward. The Tribunal believes and accredits the testimony of the witness.

Testimony of Dr. Oscar Dean Guillamondegui, M.D. by deposition

Dr. Guillamondegui is a board certified specialist in general surgery and surgical critical care. When the Claimant was presented to him at Vanderbilt Medical Emergency Room on July 30, 2013, she was taken to the CT scanner for evaluation. Her CT scan showed she had a significant injury to her liver. He

was not worried that she was bleeding to death but she was probably oozing blood. Her gallbladder appeared to possibly be injured. They would not operate in the first hours of that type of injury because of the high risk of active bleeding. They would know in two or three days whether she would stabilize. She had a grade two kidney injury, multiple rib fractures, a lumbar spine transverse process fracture and a scalp laceration. They treated the rib fractures and spine fracture through pain control. They cleaned the glass out of her head and stapled it.

Eventually they had to perform surgery because her gallbladder was torn away from her liver. The gallbladder was in the process of dying. There was a lot of blood in her abdomen, and the witness estimated it was close to half of her blood volume. The surgeons washed out her entire abdomen, removed her gallbladder and left a drain in her abdomen. They had to do an incision from the Xiphoid to above the pubis to accomplish the surgery. She healed well after the surgery.

Dr. Guillamondegui opined that it takes six weeks for a scar of this type to heal so a person can function normally again. The pain level that the Claimant experienced in the hospital was substantial. They recommended that the

Claimant refrain from sporting activities or lifting heavy objects for four to six weeks.

The loss of a gallbladder, according to the witness, causes post-operative pain and sometimes nausea. A few people will have rapid transit syndrome in the long term. Every time they eat, their food will go through them very quickly and they will have post-parenteral diarrhea. This occurs in one to two out of 300 people. Typically, it is a short-term problem. However, some people can have it long term, and for them, it can be devastating. All of Dr. Guillamondegui's opinions were given within a reasonable degree of medical certainty. The Tribunal finds that his expert testimony was extremely probative and aided the Tribunal in applying the facts to the law.

CONCLUSIONS OF LAW

The Claims Commission's jurisdiction over this action is set forth in Tenn. Code Ann. § 9-8-307(a)(1)(C), which states:

> The commission or each commissioner sitting individually has exclusive jurisdiction to determine all monetary claims against the state based on the acts or omissions of "state employees," as defined in § 8-42-101(3), falling within one (1) or more of the following categories:
>
> * * *

(A) The negligent operation or maintenance of any motor vehicle or any other land, air, or sea conveyance....

Because the State has admitted liability, the only issue before the Tribunal is the proper measure of damages.

I. Economic Damages

The past economic damages in this case are uncomplicated to ascertain. The parties have stipulated to the medical expenses of $138,695.85 and the Tribunal so finds and approves of the amount. The Claimant has not asked for past-lost wages or future loss of earning capacity, therefore the Tribunal shall not award these damages.

II. Non-Economic Damages

In deciding pain and suffering, permanent injury, and loss of enjoyment of life, the law prescribes no definite standard or method of calculation. *See 8 Tenn. Prac. Pattern Jury Instr. T.P.I. Civil* 14.01 (2011). The Trier of fact shall use calm and reasonable judgment in fixing just and reasonable damages in light of the evidence. *Id.* The Court of Appeals in its all-encompassing opinion on compensatory damages, *Overstreet v. Shoney's, Inc.*, 4 S.W.3d 694 (Tenn. App. 1999), gives guidance as to the Trier of fact in the determination of non-economic damages.

> It will be helpful at the outset to define each of the non-economic damages that the jury awarded – pain and suffering, permanent impairment and/or disfigurement, and loss of enjoyment of life – both past and future. Although conceptually they all can be encompassed within the general rubric of pain and suffering, each of these types of damages are separate and distinct losses to the victim. *Id. at* 715.

With this directive firmly in mind, the Tribunal will adjudicate each loss with a distinct amount.

In the matter of past physical pain and mental suffering in light of both the Claimant's and Dr. Guillamondegui's testimonies, the Tribunal awards $50,000.00. In the matter of future pain and suffering in light of her back pain when sitting, the Tribunal awards $10,000.00.

There is certainly disfigurement from the permanent and observable scar, and this is the most difficult damage to adjudicate. The Tribunal must contemplate the Claimant's self-image when applying a monetary figure to the scar. It is true that the overwhelming majority of the time the scar is covered. However, the Claimant must look at it every day. For this reason, the Tribunal awards $50,000.00 for the permanent scar.

For past loss of capacity for enjoyment of life, $20,000 is allowed to the Claimant. In determining future loss of capacity for the enjoyment of life, the

Tribunal must discuss the Claimant's continuing digestive discomfort. It appears that the loss of her gallbladder continues to impact her life for almost a year and one half after the accident. This will not likely end and will continue to make her life difficult and cause an endless search for restroom facilities. For this, the Tribunal finds $70,000 is reasonable compensation. Therefore, non-economic damages total $200,000 with the grand total of compensatory damages being $338,695.85.

III. Statutory Monetary Limit

The Claims Commission is a Tribunal of statutory jurisdiction with a limit to its authority to award compensatory damages. T.C.A. § 9-8-307(e) clearly states, "For causes of action arising in tort, the state shall only be liable for damages up to the sum of three hundred thousand dollars ($300,000) per claimant and one million dollars ($1,000,000) per occurrence." Therefore, even though the Tribunal finds the State solely liable for this incident and finds $338,695.85 in compensatory damages, it may only award the Claimant $300,000 in total. The Tribunal so finds.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED:

1. That the State of Tennessee, based on the stipulation, is found to be the sole legal and proximate cause of the incident involving the Claimant, Onah Schreffler, and the cause for her injuries and damages.
2. That the Claimant, Onah Schreffler, is awarded the sum of three hundred thousand dollars ($300,000) in compensable damages pursuant to T.C.A. § 9-8-307(e).
3. That the costs, if any, are taxed to the State of Tennessee.
4. This is a final judgment.

ENTERED this 18 day of December, 2014.

ROBERT N. HIBBETT
Claims Commissioner
Sitting as the Trial Court of Record

CERTIFICATE OF SERVICE

This is to certify that a true and exact copy of the foregoing document has been served upon the following parties of record:

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This 22 of Dec, 2014.

Paula Swanson

PAULA SWANSON
Administrative Clerk
Tennessee Claims Commission