Tuesday, May 17, 2016

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Re: Arbitration: Ugas ET ANO v. Eyow ET ANO

King County Superior Cause No.: 15-2-08428-3 SEA

Hearing held April 22 and May 2, 2016

Dear Counsel:

Enclosed is the Mandatory Arbitration Award in this matter. This letter is intended to help explain my decision.

LIABILITY

The action arose out of a “T-bone” type automobile collision where the I-5 off ramp exits at Swift Avenue in Seattle. Plaintiffs Ugas (four of them, minor children/girls of their mother, defendant Ubah Eyow; “Eyow”) were passengers in a 2004 Volvo XC 90 (an SUV type vehicle; the two younger ones in the middle seat, the two older ones in the back/real seat). They were travelling south on Swift Avenue at about 1:00 p.m. on July 7, 2013. Defendant Blackburn was driving his 2008 Mercedes R320 (also listed in the police report as an SUV type vehicle, although its picture looks like a sedan; the body type is irrelevant) on the off ramp as it curves from northbound to eastbound at the controlled three-way intersection with Swift. His wife and minor son accompanied him. The details of the collision are fairly agreed, but for who had the green light. Each party claims s/he had it. The expert witness hired by each party agreed it is not possible for both parties to have a green light. But their testimony contradicted, each claiming his/her client had the green light. The experts and the investigating SPD officer all acknowledged they could not be certain due to lack of independent witnesses or other evidence.

Plaintiffs presented complicated and at times contradictory theories of liability. One must wonder why defendant Eyow was not a plaintiff, but I have resisted the urge to check the clerk’s website to see if another action is pending. The parties offered no testimony about that, and it too is irrelevant to my decision.

Initially plaintiffs argued defendants were jointly and severally responsible for the collision. That theory is not legally supportable. To so find I would have to hold each defendant bore some liability for the collision. But both claim s/he had the green light and everyone agrees one, but not both of them, did. Plaintiffs do not argue each defendant was partially liable, preferring instead to claim it is for defendants to allocate responsibility. Under the evidence before me one of the defendants ran the red light and the other did not. Plaintiff did not ask me to decide each defendant was partially responsible, or offer any evidence on that. I deny recovery under the theory of joint and several liability.

Subsequently plaintiffs argued defendants were liable under the theory of res ipsa loquitur. Defendants argue res ipsa has not been applied in Washington state to a situation alleging liability of *two* independently acting tortfeasors. Defendant Eyow cited several similar cases in other jurisdictions where res ipsa was rejected, finding generally that res ipsa only applies when the instrument of injury was in the exclusive control of one tortfeasor. Defendants Blackburn concurred. Plaintiffs cited cases in Washington and other jurisdictions applying res ipsa to multiple, independent defendants.

I am accepting plaintiff’s res ipsa theory, although I believe it is not plaintiff’s best theory. In passing I note the answer of defendants Blackburn to plaintiff’s complaint did not allege Eyow was liable or counterclaim for damages. It is totally implausible Blackburn was driving 60 mph, as Eyow testified. It is also implausible two or more cars were at the scene of the collision yet all drove off, as Blackburn testified. Again, those testimonies are not relevant to my decision.

DAMAGES

All four minor children plaintiffs sustained injury. Ayni was treated in the ER the day of the collision. All of them followed up with their personal physician Dr. Lewis, then with several chiropractic and/or massage treatments Dr. Wardak or Dr. Ginsberg. There is no evidence of permanent partial disability or the need for future medical care.

**Ayni Ugas**

Plaintiff Ayni Ugas (“Ayni”; now age 13) suffered the most severe injuries. She lost consciousness when her head collided with the seat in front of her. She sustained injuries to her head, neck and back. The testimony was that she could not play basketball or swim that summer. Sometimes she felt lightheaded and dizzy, and for a while had a mark on her forehead. But by late 2013 she no longer suffered any symptoms of those injuries.

Her medical specials were $3,632.91. Ayni had the longest recovery period, about 5-6 months, which is fairly short. She now appears fully recovered. I award her the specials plus $7,500.00 of general damages, for a total of $11,132.91.

**Aaliya Ugas**

Aaliya, now 11, treated in a similar fashion to Ayni. She suffered neck and back pain and bumped her leg on the cup holder. Aaliya was unable to swim or play soccer for a month or so that summer. By late October she was fully recovered.

Aaliya’s medical specials were $1,566.90. She recovered faster than Ayni. I award her the specials plus $4,000.00 of general damages, for a total of $5,566.90.

**Ubeyta Ugas**

Ubeyta, now 8, was 5 when the collision occurred and she understandably remembers little of it, other than she hurt her back. Her medical specials were $1,300.14. She was fully recovered by late August, about 6 weeks later. I award her the specials plus $2,000.00 of general damages, for a total of $3,300.14.

**Aisha Ugas**

Aisha, then 3, now 6, did not testify. She suffered neck pain, which was fully resolved by late August. Her medical specials were $963.02. I award her the specials plus $2,000.00 of general damages, for a total of $2,963.02.

COSTS

Costs are to be awarded according to statute and court rule. I will be out of town until June 6, and again from June 17-24, so any ruling I need to make on costs may not be timely.

CONCLUSION

I thank the parties for their presentations. This ends my involvement. As approved by all parties, when the matter is fully concluded I will destroy the prehearing statements.

Sincerely yours,

Kirk Griffin

Enc.

cc: Arbitration Dept.