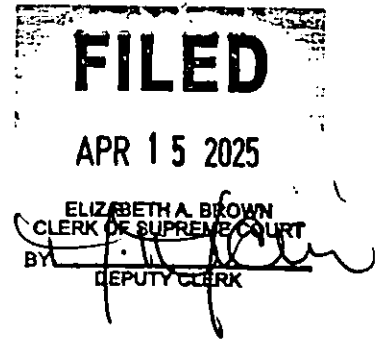


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ZACHARY TAMBEAGBOR,
INDIVIDUALLY,
Appellant,
vs.
MELAKU TEFERA, AN INDIVIDUAL;
AND HENDERSON TAXI, A NEVADA
CORPORATION,
Respondents.

No. 88239-COA



ORDER OF AFFIRMANCE

Zachary Tambeagbor appeals from a judgment entered after a jury verdict and post-verdict decisions in a personal injury matter. Eighth Judicial District Court, Clark County; Jacqueline M. Bluth, Judge.

In February 2017, Tambeagbor was involved in a single car traffic accident where he drove his vehicle over an item referred to as either a stanchion or short pole in the median of a roadway. The collision caused the airbags of his vehicle to deploy and Tambeagbor was later taken to a hospital in an ambulance. Tambeagbor reported to medical providers that he had pain in his left shoulder and that the pain level was at seven on a one-to-ten scale. X-rays conducted at the hospital did not reveal broken bones but revealed a bone spur in the shoulder joint. The hospital providers ultimately concluded he had contusions but directed him to visit his primary care physician.

In May 2017, Tambeagbor was involved in a second traffic accident, which is the subject of this case, when a vehicle driven by respondent Melaku Tefera rear-ended his vehicle. Respondent Henderson Taxi employed Tefera as a taxicab driver and Tefera was driving a taxicab on behalf of Henderson Taxi when the accident occurred. Tambeagbor was stopped at a traffic signal and Tefera rear-ended him at approximately 14 miles per hour. A video recording of the accident revealed that Tambeagbor exited his vehicle and exhibited signs of discomfort in his left hand. Tambeagbor subsequently proceeded to drive his vehicle to a casino and later to his place of employment. Tambeagbor thereafter sought treatment at a medical facility. He reported pain in his left hand and fingers. The treating physician assessed that Tambeagbor had a contusion of his left hand.

In the weeks that followed, Tambeagbor visited a chiropractor and another physician and he began to complain of pain in his left arm, left shoulder, and back. Tambeagbor's pain continued and he visited Dr. Mary Shannon, an orthopedic surgeon. Dr. Shannon ultimately performed surgery on Tambeagbor's left shoulder in order to correct issues stemming from soft tissue tears and impingements.

Tambeagbor later filed suit against Tefera and Henderson Taxi (respondents), contending that his injuries were caused by the May 2017 traffic accident and that respondents were liable for monetary damages stemming from those injuries. Respondents answered, and this matter proceeded to discovery. Of note, Tambeagbor provided expert witness disclosures and he disclosed Dr. Shannon as a non-retained expert witness. Tambeagbor further disclosed that Dr. Shannon would testify as to the

cause of Tambeagbor's injuries and that "she may answer hypothetical questions that are based upon the facts, evidence, or testimony developed at trial." The record also indicates that the parties disclosed Tambeagbor's relevant medical information and the additional expert witnesses' reports.

Respondents submitted an offer of judgment to Tambeagbor in the amount of \$140,001, inclusive of costs, prejudgment interest, and recoverable attorney fees. However, Tambeagbor did not accept the offer of judgment and this matter proceeded to trial.

Tambeagbor filed several motions in limine concerning the admission of evidence at trial. The district court granted several of those motions, including precluding reference to any additional traffic accidents Tambeagbor may have been involved in, except for information concerning the February 2017 accident as such information was relevant to this matter. The court also precluded the parties from referring to this matter as an attorney driven case or a medical build-up case but allowed questioning concerning medical liens to ascertain whether a witness was biased. In addition, the district court precluded respondents from stating that either Tambeagbor or his witnesses were liars.

The district court also emailed the parties concerning its procedures for jury selection. Within that email, the court explained that the parties were permitted to first ask questions to the jury panel as a whole and they could thereafter conduct follow-up questions to the panel members. The court further explained that, if a party feels that a juror has not answered questions, the court will allow individual questions at that time. Tambeagbor subsequently filed a motion requesting permission to conduct questioning of individual jurors. However, the district court

explained that Tambeagbor would have the opportunity to question individual jurors after he first asked general questions. Jury selection ensued and the parties conducted extensive questioning of the jurors, including questions posed to individual jurors.

The parties thereafter presented opening statements. Tambeagbor explained his belief that the evidence presented at trial would show that his injuries were sustained in the May 2017 accident. Respondents acknowledged they were responsible for the May accident and that Tambeagbor suffered injuries from that accident. Respondents further accepted that they were liable for monetary damages based on the injuries that actually occurred as a result of the May 2017 accident. However, respondents asserted that the evidence would show that Tambeagbor's shoulder problems were not caused by the May 2017 accident and that they should not be held responsible for damages stemming from issues involving Tambeagbor's shoulder. The parties thereafter proceeded to present testimony and evidence to the jury.

Tambeagbor testified concerning both the February 2017 and the May 2017 accidents, his injuries, and difficulties stemming from his shoulder issues. Tambeagbor also presented testimony from a retained expert witness, Dr. Andrew Cash, an orthopedic surgeon. Dr. Cash testified concerning his review of the medical records and stated that he concluded that Tambeagbor's shoulder issues stemmed from the May 2017 accident.

Tambeagbor also presented testimony from Dr. Shannon, and she testified concerning the surgical procedure she performed on Tambeagbor's shoulder and her opinion on causation of his shoulder issues. She testified that Tambeagbor had reported to her that his pain stemmed

from the May 2017 accident and she explained that her opinion as to causation was based in part on Tambeagbor's statements. She explained that, during surgery, she noted that he had several tears in his labrum that had since healed, and there were indications that his shoulder had been dislocated at some point in the past. She further noted that there were degenerative conditions, including a bone spur, and that those conditions would have taken a long time to develop. She testified that she ultimately concluded his shoulder problems stemmed from the May 2017 accident but, again, explained that was in part based on Tambeagbor's statements that he had not had issues with his shoulder prior to that accident.

On cross-examination, respondents asked Dr. Shannon if she was aware that Tambeagbor had been in a traffic accident in February 2017 and had reported to the medical providers directly after the accident that his shoulder had a high amount of pain. Tambeagbor objected and argued that Dr. Shannon should not be questioned concerning the February 2017 accident because she had not been made aware of that accident prior to trial. The district court overruled the objection and permitted her to be questioned concerning that information. Dr. Shannon responded that she had not been aware of the February 2017 accident or Tambeagbor's report of shoulder pain following that accident. She acknowledged that her opinion on the cause of Tambeagbor's shoulder issues may have been altered had he reported that accident to her and explained that doctors have to rely on patient honesty to properly evaluate the cause of an injury. She further explained that tears to the rotator cuff and labrum caused by a trauma, as opposed to degenerative tears, typically involve immediate pain and dysfunction.

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