

Case Name: Timothy W. Martin v. CSX Transportation

Date Decided: November 17th, 2009

Originally Filed in: ()

Decided by: (State)

Court: Court of Appeals of Ohio

Judge: Judge Sadler

Citation: 2009 WL 3823364 (Ohio App.10 Dist.)

Background:

Defendant, CSX Transportation ("CSX"), filed this appeal seeking a judgment entered in favor of plaintiff, Timothy W. Martin ("Martin"). Martin filed an action seeking recoveries for injuries suffered while working for CSX under the Federal Employers' Liability Act ("FELA"). Martin was a signal maintainer whose duties included checking and repairing signals and switches along railroad tracks. On the date of his injury, Martin, along with signal maintainer Tim Stamper, were directed by their supervisor to check a broken pole along the tracks to determine whether it could be removed. Martin had not ever removed a pole before. Martin and Stamper checked the broken pole and attempted to remove it. Martin used a chainsaw to cut pieces from the bottom of the pole. The pole flipped over and struck Martin's helmet and a bolt used to attach a crossarm to the pole pierced Martin's shoulder. Martin elected not to file an injury report and opted to have Stamper's wife administer first aid. Three CSX employees, including Martin's supervisor had asked whether Martin wanted to file a report. Later that day Martin drove himself to get a tetanus shot and have the shoulder examined. Martin returned to work the following day until June of 2003 when he underwent surgery for an unrelated medical condition. Martin did not return to work after that surgery. Martin filed this action under FELA alleging (1) negligence for failing to provide a safe place to work (2) negligence for failing to provide suitable equipment (3) for failing to provide sufficient manpower (4) for assigning Martin work he was not qualified (5) for assigning Martin work beyond his physical capabilities and (5) CSX failed to comply with FELA. The jury found in favor of Martin and awarded him over \$2million. The jury also found that Martin was 30% contributory negligent. Both Martin and CSX appealed.

Issue:

Did the trial court err in determining whether Martin was contributorily negligent and CSX liable for Martin's injuries?

Overall Issues Discussed or Touched Upon in this Case:

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Held:

First, CSX argued that evidence submitted by Martin, to show future damages, was insufficient

to carry his burden of proving that the incident resulted in future wage loss. However, Martin provided testimony from a number of witnesses regarding the nature of his injuries. One such expert, Dr. William Zerick, a neurological surgeon who performed three surgeries on Martin's neck, testified that the first surgery was for the purpose of removing disk from Martin's neck that was placing pressure on a nerve. Moreover, Dr. Zerick testified that the surgery was related to the incident because Martin stated to him he had never complained of neck and arm pain prior to the incident. Dr. Zerick also testified that he would not recommend Martin to return to the same kind of job he was performing at the time of the incident. Moreover, Martin's other expert, Dr. Yousef Mohammad, testified that Martin suffered from post-concussion syndrome as a result of the incident and that it could interfere with his ability to work. As a result, this Court found that Martin's injuries were subjective and not subjective. Therefore, this Court found that Martin was required to show that his injuries are certain to result in future loss of earning capacity. Dr. Zerick's only testimony on the permanency of the injury was that Martin would have a loss of range of motion in his neck. Unfortunately, Dr. Zerick did not differentiate between the loss of range of motion resulting from the first surgery, which he stated was related to the incident and the loss of range resulting from the second surgery which he could not sufficiently relate to the incident. Accordingly this Court held that the lower court erred by instructing the jury to consider future wage losses. There was not enough evidence presented to support the claim he was permanently prevented from working. Therefore, CSX was entitled to directed verdict on that issue. CSX also argued that the trial court erred when excluded as inadmissible hearsay a statement made by Martin's former supervisor, Clark, that he believed a boom truck could not be used because the precise location of the pole would make it impossible for the boom to reach it. CSX contended this statement was made to rebut Martin's argument that CSX failed to provide him with equipment necessary for him to remove the pole. This Court found that the statement was made, at least in part, for the truth of the matter asserted: that a boom truck could not remove the pole. The Court found that the statement would have served to explain why a boom truck was not used and that the truth was whether a boom truck could in fact reached the pole. Therefore, the truth of the matter asserted was relevant and the trial court did not abuse its discretion in excluding it on hearsay grounds. CSX further submitted error by the trial court when it excluded evidence regarding Martin's application for disability benefits. CSX argued that Martin's statements were not offered as evidence of the receipt of collateral benefits, but that they were offered to impeach credibility as to his claims that his injuries were caused by the incident. Martin had, in one of the forms, answered "no" when asked if he was seeking benefits from a work-related injury. This Court found that the trial court carefully reviewed the admissibility of the evidence and did not err in excluding it. Central to the decision was that the prejudicial effect, ("bias producing") outweighed the probative effect (value to determine issues). Furthermore, CSX argued that the trial court erred in instructing the jury that CSX could be found liable under the FELA if it determined CSX's negligence played any part, no matter how slight, in causing Martin's injury. This however, this Court held, is contrary to FELA which allows recovery for

injuries occurring as a result of employer's negligence no matter how slight the cause. Martin argued that the trial court erred in failing to direct a verdict in favor on the issue of contributory negligence, and then failed to grant a judgment notwithstanding the verdict when the jury found he was 30% contributorily negligent. However, Martin testified that he thought he could do the work with one other employee but that had he felt he needed more people, he knew he could have asked his supervisor for help. Accordingly, this Court found that the trial court erred when it declined to direct a verdict or grant judgment notwithstanding the verdict on the issue of Martin's contributory negligence.

Comments:

One of the issues in this case involved the compensation of future losses reasonably expected to be incurred by the plaintiff. In FELA cases, courts considering the appropriateness of an award for future wage loss have considered whether expert testimony provides a plaintiff's injuries are permanent and may preclude the same earning capacity prior to the injury. Therefore, if the plaintiff fails to establish that their injuries are not only permanent, but also related to the incident causing the injury, than future losses may not be considered. Steve Gordon