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Comparative Negligence Found For Freeway Injuries

Verdict \$1,118,750.00

Case Type: Pedestrian

Case: Damien Christian, Stephanie Christian and Jeffrey Bartling v. Enterprise Rent-A-Car of Los Angeles.

No. RCV37280

Venue: Superior Court of San Bernardino County, Rancho Cucamonga, CA

Judge Jeffrey King

Date 09-23-2002

PLAINTIFF(S)

Attorney:

- Steve F. Carlson; Carlson & Johnson; Orange, CA, for Damien Christian, Jeffrey Bartling, Stephanie Damien
- Paul B. Sink III; Law Offices of Paul B. Sink III; Anaheim, CA, for Damien Christian, Stephanie Damien, Jeffrey Bartling

Expert:

- Joseph Magaddino Ph.D.; Economics; Long Beach, CA called by: Steve Carlson
- Neil Kravetz M.D.; Orthopedics called by: Steve Carlson
- Kenneth Pearl; Automotive called by: Paul Sink

DEFENDANT(S)

Attorney:

- John M. Boyko; Law Offices of John M. Boyko; Rolling Hills Estates, CA, for Enterprise Rent-A-Car of Los Angeles
- Paul E. Stephan; Selman Breitman LLP; San Francisco, CA, for Enterprise Rent-A-Car of Los Angeles

Expert:

- Ramesh Kar; Automotive called by: John Boyko, Paul Stephan

Plaintiff Stephanie Christian rented a Ford Escort from defendant Enterprise Rent-A-Car of Los Angeles. After driving 452 miles, the three plaintiffs were driving on Interstate 15 when the right front tire went flat and they were forced to pull into the center median. As plaintiff Damian Christian attempted to change the flat, a vehicle being driven by Kim Rodgers swerved into the median, clipped the plaintiffs' car and struck Damian Christian. Plaintiff Jeffrey Bartling claimed the car then hit him and knocked him over.

The plaintiffs alleged that the rental car had a dent in the right front wheel rim that existed prior to the rental, and that the defendant was negligent for failing to replace and/or repair the dented rim. The plaintiffs claimed that because of the defendant's conduct, the tire deflated due to the wheel rim dent, causing Stephanie Christian to stop and Damian Christian to attempt to change the tire in the center median of the freeway. The plaintiffs also contended it was foreseeable that when the defendant rented a vehicle with a dented rim, that it might put the plaintiffs in a dangerous situation.

Defendant Enterprise denied liability and contended that the dent did not exist prior to the plaintiffs' rental. The defendant alleged that Stephanie Christian signed the inspection report without any damage.

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Furthermore, the defendant contended that when its engineering expert attempted to reinflate the tire, it would not hold air, evidencing that the plaintiffs must have struck something in the road just before it went flat. Additionally, the defendant claimed that the previous renter testified that he rented the vehicle for a month and did not notice any problems with the tire. The defendant further contended that the driver who struck the plaintiffs went over the line into the median and was the sole cause of the plaintiffs' injury. In addition, the defendant said that Stephanie Christian was negligent for pulling into the center median and Damian Christian was negligent in attempting to change the flat tire in the center median with traffic only a few feet away.

Injury:

Plaintiff Damian Christian, a 23-year-old corporal in the military, suffered a fractured femur requiring a rod that was later removed; a muscle tear in the calf causing nerve damage; a fractured elbow; and a right knee torn ligament requiring arthroscopic surgery. The plaintiff now works as a golf starter on a part-time basis. He claimed that the accident took away his career aspiration of becoming a police officer.

Plaintiff Stephanie Christian claimed emotional distress as a bystander under *Dillon v. Legg* (See, 68 Cal. 2d 728, 441 P.2d 912, 69 Cal. Rptr. 72 (Cal. 06/21/1968)) from watching her husband being injured.

Plaintiff Jeffrey Bartling claimed soft-tissue injuries.

Damian Christian sought to recover \$35,000 in past medical expenses, \$70,000 in future medical expenses, about \$50,000 in past wage loss, and an unspecified amount in future wage loss.

The defendant disputed the claim for future medical expenses and argued that the future surgery to the plaintiffs' hips and legs was unnecessary.

Verdict Information: The plaintiffs were awarded the sum of \$1,118,750 gross, plus statutory interest and costs.

The jury apportioned 50% negligence against defendant Enterprise, 10% against Stephanie Christian, 5% against Damian Christian and 35% against driver Kim Rodgers.

Before trial, the plaintiffs settled with Rodgers for \$50,000 (policy limits).

Jeffrey Bartling

\$750 Personal Injury: Economic Damages

Damien Christian

\$830,000 Personal Injury: Economic Damages

\$280,000 Personal Injury: Non-economic Damages

Stephanie Damien

\$8,000 Personal Injury: Non-economic Damages