

SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

ANITA MORRIS,

Plaintiff,

vs.

FERNANDO TRUCKING SERVICES,

Defendant.

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) **CASE NO. ST-07-CV-504**
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MEMORANDUM OPINION

Pending before the Court are Defendant's post trial motions for judgment as a matter of law, judgment of remittitur, and for a new trial.¹ For the following reasons, Defendant's motions will be denied.

FACTUAL AND PROCEDURAL HISTORY

On April 7, 2011, a jury found that Defendant was the sole cause of Plaintiff's injuries when she was struck by a forklift operated by Defendant's employee.

ANALYSIS

Defendant argues that the verdict should be set aside because Plaintiff was either wholly or partially the cause of her injuries.

A court will grant a motion for judgment as a matter of law following a jury verdict if "there is no legally sufficient evidentiary basis for a reasonable jury to return a verdict" in favor of the nonmoving party. *Murray v. United of Omaha Life Ins. Co.*, 145 F.3d 143, 148 (3d Cir. 1998). A new trial or remittitur should be granted only when the

¹ Defendant filed its motions on May 9, 2011, and Plaintiff filed an opposition on May 23, 2011.

“verdict is clearly against the weight of the evidence as to constitute a miscarriage of justice.” *Henry v. Hess Oil Virgin Islands Corp.*, 163 F.R.D. 237, 243 (D.V.I. 1995).

The jury answered the following interrogatories prepared by the Court to aid in its deliberations:

Question No. 1:

Do you find by a preponderance of the evidence that Defendant Fernando Trucking Services was negligent in the operation of a forklift?

Answer: Yes.

Question No. 6:

Do you find by a preponderance of the evidence that the conduct or omission of Plaintiff Anita L. Morris herself was a proximate cause, or substantial contributing cause, of the harm that she suffered?

Answer: No.

Sufficient evidence was presented at trial to support the jury’s conclusion that Plaintiff was not negligent. Defendant testified that Plaintiff was walking east to west and was struck by a forklift that was traveling south to north. Plaintiff testified that as she was walking in the area where the accident happened, there was activity and noise in the vicinity—pounding from Defendant’s business, traffic going back and forth, and several pedestrians walking about. The jury may have rationally concluded that, under the circumstances, Plaintiff did not act unreasonably when she failed to notice the moving forklift.

The Court will not substitute its judgment for that of the jury. In addition, there is no basis for remittitur because the amount Plaintiff received under the verdict is not shocking to the conscience, is rationally based on the evidence, and is substantially less than the amount for which Plaintiff asked. As Defendant concedes, the Court properly instructed the jury on the concept of contributory negligence but the jury found none.

Defendant also has provided no support for its claim that "Plaintiff's negligence contributed, at a minimum, 40% towards the accident." Furthermore, the verdict is not clearly against the weight of the evidence as to constitute a miscarriage of justice and necessitate a new trial. Accordingly, Defendant's motions will be denied. An Order consistent with this Opinion shall follow.

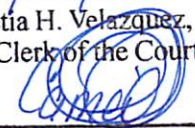
Dated: June 14, 2011

ATTEST: Venetia H. Velazquez, Esq.
Clerk of Court ____/____/____

by: Lori Boynes-Tyson
Court Clerk Supervisor 6/14/2011


HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS

CERTIFIED A TRUE COPY

Date: 06/27/2011
Venetia H. Velazquez, Esq.
Clerk of the Court
By: 
Court Clerk

SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

ANITA MORRIS,

Plaintiff,

vs.

FERNANDO TRUCKING SERVICES,

Defendant.

CASE NO. ST-07-CV-504

ORDER

Upon consideration of the premises, it is hereby

ORDERED that Defendant's post trial motions for judgment as a matter of law, judgment of remittitur, and for a new trial are DENIED; and it is

ORDERED that a copy of this Order be directed to counsel of record.

Dated: June 14, 2011

ATTEST: Venetia H. Velazquez, Esq.
Clerk of Court

by:

Lori Boynes-Tyson
Court Clerk Supervisor

HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS

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Date:

6/27/2011
Venetia H. Velazquez, Esq.
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IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

ANITA L. MORRIS and DENNIS MORRIS,

Plaintiffs,

vs.

FERNANDO TRUCKING SERVICES,

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CASE NO. ST-07-CV-504

ORDER

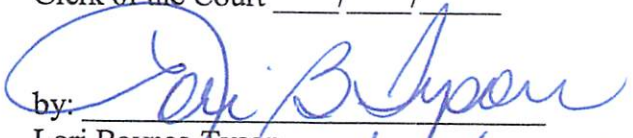
This matter comes before the Court *sua sponte* to clarify the record regarding the funds paid into the Court's registry by Plaintiffs and Plaintiffs' counsel on April 27, 2010, as sanctions for Plaintiffs' unilateral cancellation of a Court ordered mediation conference. By Order dated August 16, 2010, the Court granted, in part, Defendant's July 21, 2010, Motion to Disburse Funds Deposited in the Court's Registry. After Plaintiffs represented to the Court that Defendant's former counsel had not obtained the funds within the time set by the Court, the Court signed another Order on April 18, 2011, permitting the funds to be returned to Plaintiffs' counsel. But, unbeknownst to the Court and, apparently, to counsel for Plaintiffs, the funds had been paid to Moore, Dodson & Russell, P.C. for the benefit of Defendant's former counsel on August 19, 2010. The Court being advised in the premises, it is

ORDERED that the Order dated April 18, 2011, granting Plaintiffs' Motion to Release Funds from the Court's Registry to Plaintiffs' Counsel is VACATED; and it is

ORDERED that copies of this Order shall be directed to counsel of record.

DATED: May 29, 2011.

ATTEST: Venetia H. Velasquez, Esq.
Clerk of the Court ____/____/____

by: 

Lori Boynes-Tyson

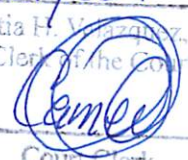
Court Clerk Supervisor 6/14/2011


HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS

CERTIFIED A TRUE COPY

Date: 6/27/2011

Venetia H. Velasquez, Esq.
Clerk of the Court

By: 

Court Clerk