

DRAFT

TEXAS

DALLAS COUNTY

None reported

Headline Unknown.

Verdict (P) \$470,429

Net \$423,386

Case Denise Clay v. Bright Future Electric LLC, No. 09-01603-C

Court Dallas County Court at Law No. 3

Judge Sally Montgomery

Date 10/3/2011

Plaintiff

Attorney(s)

Eric H. Marye, The Marye Law Firm, Dallas, TX

Defense

Attorney(s)

Daniel J. Madden, David, Goodman & Madole, Dallas, TX

Facts & Allegations

On 3/1/07, plaintiff Denise Clay, 48, was working as a waitress at a restaurant in Garland. Two electricians of Bright Future Electric LLC were changing a wire for an electric oven. Plaintiff tripped over an electrical cord and fell. The electricians had driven to Dallas from Florida for this job. They were not licensed in Texas, and neither of them was a journeyman electrician.

Plaintiff sued Bright Future for premises liability, alleging that Bright Future creating a dangerous condition and failing to warn her of it. There was no warning tape, cone, or chair to warn of the cord.

Bright Future designated the restaurant as a responsible third party, but the court struck the designation, for lack of evidence that the restaurant directed and controlled the electrical work.

The defense argued that plaintiff failed to watch her step and was failing to take responsibility for herself.

Also, the defense argued, she had stepped over the cord once and knew it was there.

Injuries/Damages

Plaintiff sustained a fractured fibula and torn anterior cruciate ligament. She underwent arthroscopic reconstructive surgery, which left small scars.

The graft did not take. Plaintiff was left with permanent instability in her knee and uses a knee brace.

For past medical, she sought \$51,729.05.

For past lost wages, she sought \$45,000.

For future lost wages, she sought \$110,500.

She said it hurts to perform housework or cook.

She sought \$33,480 for past physical pain, \$120,000 for future physical pain, \$16,740 for past mental anguish, \$40,000 for future mental anguish, \$33,480 for past physical impairment, and \$70,000 for future physical impairment.

The amounts sought for past and future disfigurement and loss of household services were unavailable.

The defense argued that she could perform sedentary work.

The defense introduced a surveillance video to show that she was mobile. Plaintiff's counsel noted that it showed her limping and trying to work.

Result

The first jury panel was busted, because many panel members could not follow the court's instruction on the burden of proof for the noneconomic damages.

Jury found Bright Future 90 percent and plaintiff 10 percent negligent.

Plaintiff's damages were \$470,429. Comparative fault reduced them to \$ 423,386.10.

Plaintiff(s)

Denise Clay

\$51,729 past medical cost
\$45,000 past lost earnings
\$50,000 future lost earnings
\$33,480 past physical impairment
\$70,000 future physical impairment
\$16,740 past mental anguish
\$10,000 future loss of household services
\$40,000 future mental anguish
\$33,480 past physical pain
\$120,000 future physical pain
\$470,429 plaintiff's total award

Demand \$200,000

Offer \$70,000

Insurer(s)

Liberty Mutual

Trial Details

Trial Length: 4 Days

Jury Deliberations: 2 Hours

Jury Poll: None reported

Jury Composition: 6 female, no male; 5 white, 1 black

Plaintiff

Expert(s)

William Herring, electrical, Dallas, TX (Eric H. Marye)

Marvin Van Hal, M.D., orthopedic surgery, Dallas, TX (Eric H. Marye)

Defense

Expert(s)

Bernard McCaskill, M.D., orthopedic surgery, Dallas, TX (Daniel J. Madden)

Frank W. Rogers, electrical, Houston, TX (Daniel J. Madden)

Post-Trial

None reported

Editor's Note

None reported

Plaintiff(s)

Demographics

Denise Clay

Age: 48 Years

Occupation: waitress

Gender: Female

Married: Yes

Children: No

Children Description: injured party

Written By –John Schneider