

SUPREME COURT OF LOUISIANA

No. 00-C-0157

RAYMOND J. LeBLANC, II

VERSUS

**WILLIAM STEVENSON, III and
AUDUBON INDEMNITY COMPANY**

**ON WRIT OF CERTIORARI TO THE COURT OF APPEAL
THIRD CIRCUIT, PARISH OF LAFAYETTE**

CALOGERO, Chief Justice, dissenting in part.

I agree with the majority's conclusion that the court of appeal was correct in finding the defendant, Stevenson, 60% at fault and in affirming the court of appeal's awards for pain and suffering, past and future medical expenses, and past lost income. I write separately, however, to dissent from the majority's conclusion that LeBlanc is not entitled to an award for loss of future earnings or loss of earning capacity.

At trial, plaintiff called Dr. Roy Douglas Womack, an expert in economics and finance, to establish LeBlanc's lost wages. Dr. Womack testified that LeBlanc's average yearly income as a carpenter in the three years leading up to the accident was \$39,684 (1993, 1994, and 1995). Following his accident and partial amputation of his left index finger on December 21, 1995, LeBlanc's income fell substantially. In particular, his average yearly income over the three years following the accident was \$21,087 indicating an average loss of \$18,597 per year. Dr. Womack concluded that LeBlanc suffered \$54,861 in lost past wages from the date of the accident to the date of trial (2.95 years times \$18,597). (R. 745). Dr. Womack then found that LeBlanc's work-life expectancy was 19.72 years and concluded that his lost future wages from the date of trial until the end of his work-life expectancy would total \$314,035 (19.72 years times \$18,597 along with adjustments based on a 3.5% growth rate and a 5.1%

discount rate). (R. 754).

The majority agrees with the first calculation that plaintiff suffered a loss of income from the date of injury up to trial of \$54,861; however, they reject the second finding and instead find that plaintiff will suffer no loss of future earnings or earning capacity. In support of this second conclusion, the majority reasons that LeBlanc did not lose his ability to earn income as a salesman or supervisor. They point to LeBlanc's somewhat unsuccessful business ventures in 1996 and 1997 when he was being treated for his injuries and unable to carry out his previous workload as a carpenter. While I agree with the majority that LeBlanc may have the ability to work in other fields (although this is speculative) and even to venture into new business endeavors, the issue before us is not whether or not he can ever work again (surely he can); instead, the issue before us is whether the partial amputation of his left index finger will cause a reduction in the plaintiff's future earning potential.

The plaintiff in this case was a carpenter making roughly \$43,000 a year prior to this injury. Following his injury, plaintiff's average income over the next three years was roughly \$21,408. It is wholly inconsistent for the majority to recognize that this loss of earnings and, no doubt, earning capacity continued from the date of the accident up to trial, but not a day beyond. There is no question that plaintiff has the ability to work in other lines of employment. These other lines of employment, however, have not been as fruitful as carpentry as evidenced by LeBlanc's substantially lower income the three years following the injury.

While a person in a professional occupation would not likely suffer a loss of future earning capacity because of a partial finger amputation, as in this case, a person who needs the use of his hands on a daily basis would no doubt suffer this loss. As Mr. Glenn Hebert, a vocational rehabilitation expert, testified, "The biggest problem

[the plaintiff] faces, when you're trying to drive a nail, you have to hold it with these two fingers He can't do that because of his sensitivity when he hits himself or when you're hanging sheetrock or you're trying to put up cabinets, that finger [sic] gets in the way." (R. 713). In my view, this inability to perform these basic carpentry functions is sufficient to indicate a residual injury which causes a loss to the plaintiff's future earning capacity. As it is well accepted that LeBlanc lost \$54,861 over the three year period leading up to trial, it is reasonable to conclude that he would suffer a loss of at least that monetary sum over the course of the remaining 19.72 years of his work life expectancy. I would therefore reduce the court of appeal's unsupportable award of \$314,035 to a more reasonable \$55,000 because I cannot conclude that there is simply no loss of earning capacity whatsoever. Therefore, I respectfully dissent in part from the majority's decision only with respect to the complete deprivation of any award for loss of future earnings or earning capacity.