

# SUPREME COURT OF LOUISIANA

No. 96-C-1084

STEVEN GUILLORY

Versus

INSURANCE COMPANY  
OF NORTH AMERICA, ET AL

JOHNSON, J. Dissenting

Plaintiff was involved in a serious vehicular accident on I-10 when his Toyota Supra collided with a tractor trailer rig owned by defendant Texaco and operated by its employee, Louis Richard. Defendant, Insurance Company of North America provided liability insurance.

I believe that it was error to assign 20% of liability to the plaintiff. Our laws impose a duty on drivers not to exceed the legal speed limit. (La. R.S. 32:61 et seq.). However, if the facts and circumstances of a case show that the negligence of a driver in exceeding the legal speed limit is not the proximate cause of an accident, then it is error to place liability on that driver because of his speed. While excessive speed is a violation of law, it is not necessarily the proximate cause of every accident. See Aguillard v. Frank, 542 So. 2d 834 (La. App. 3 Cir. 1989). A review of the evidence shows that the appellate court properly reversed the jury's assessment of 20% liability on plaintiff. Whether or not he was speeding, Dr. Guillory could not have avoided this collision because plaintiff's vehicle was located along side of the rig when Louis Richard decided to change lanes. The proximate cause of the collision was the negligence of the Texaco driver, therefore, the appellate court was correct in assigning 100% negligence to Richard.

Both lower courts found that plaintiff's ailments associated with Meniere's were not caused by this accident. The major portion of the increase in the awarded special damages was for lost earning capacity. The appellate court determined that the jury abused its discretion and increased the damages award to the lowest amount within the discretion of the trier of fact. Their review of the record convinced them that the lowest appropriate award was \$750,000, and I agree.

At the time of the accident, Dr. Guillory was working as an emergency room physician. The evidence proved that he suffered a painful knee injury which will require surgical repair and a period of rehabilitation. While the majority seemed to take note of plaintiff's injuries, they minimize the right hand injury which in this case resulted in a reduction of strength in his dominant hand. He sustained a complete tear of the median nerve in his right arm which reached maximum recovery and has left him with a permanent disability of at least 25%. He has lost the sensory nerve in his right thumb. The evidence further shows that because of this injury, he can no longer perform certain functions required of an emergency room physician such as suturing and drawing blood. Without any doubt, this inability to perform functions that he was trained for is attributable to the accident.

In Philippe v. Browning Arms Co., 395 So. 2d 310 (La. 1980), a dentist brought a products liability action against the manufacturer and importer of a shotgun which accidentally discharged and severed his right hand. As a result, the plaintiff could no longer practice dentistry but worked part-time as a consultant in the profession. In addition to other damages, plaintiff was awarded \$800,000 for impairment of earning capacity as a result of the loss of his thumb on his dominant hand.

The record supports a finding that Dr. Guillory's depression is associated with his physical injuries. Even if this court were to accept Texaco's argument that the

depression pre-dated the accident, he is still entitled to compensation where the injuries sustained aggravated a pre-existing condition. When negligent conduct aggravates a pre-existing condition, the victim is entitled to the full extent of the aggravation. Miley v. Landry, 582 So. 2d 833 (La. 1991). Therefore, any compensation awarded for a loss of earning capacity attributed to plaintiff's depression was not error.

For all of the above reasons, I respectfully dissent and would amend the ruling of the appellate court to exclude the medical costs associated with ear surgery, but affirm their decision in all other respects.