

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
FOR THE FOURTH JUDICIAL CIRCUIT

COUNTY OF DILLON 2022 NOV -3 A 11: 42

Mark McAuley,

Plaintiff,

Case No.: 2022-CP-17-00356

vs.

Sunshine 11, LLC d/b/a Relax Inn, Usha
Patel and Anjan Patel,

Defendants.

**ORDER OF DEFAULT JUDGMENT
AGAINST ALL DEFENDANTS**

RECEIVED

Jul 21 2023

PROCEDURAL HISTORY OF THIS CASE

SC Court of Appeals

This case arises from the shooting of Plaintiff while a guest at Defendant's hotel. The July 29, 2022, Summons and Complaint alleges negligence in a number of particulars, including renting a guest a room that was already occupied by a different guest, issuing a room key to a new guest for a room that was already occupied by a different guest, failing to create adequate policies and procedures to prevent such a mishap, failing to exercise due care for checking in and renting a room to a guest, and failing to act as a reasonable hotel and staff would under similar circumstances. Complaint ¶ 18. Plaintiff further alleges serious past, present, and future injuries as a result of this incident, including but not limited to medical bills, pain and suffering, mental anguish, lost enjoyment of life, humiliation, embarrassment, reduced life-expectancy, and permanent physical impairment. Complaint ¶ 20.

On August 4, 2022, all Defendants were personally served with the Summons and Complaint, including Usha Patel as the registered agent of Sunshine 11, LLC d/b/a Relax Inn. Defendants failed to timely answer or appear.

On September 8, 2022, default was entered and this matter was referred to the undersigned pursuant to Order of the Honorable Gwen T. Hyatt and Rule 53, SCRCPP, "to take testimony and direct entry of final judgment in this action under Rule 53 of the South Carolina Rules of Civil Procedure, and all matters arising from or reasonably related to such action." A review of this records reveals Defendants were properly served this litigation in accordance with Rule 4, SCRCPP, and were properly notified on September 23, 2022 of the upcoming damages hearing.

This matter came before the undersigned to determine liability and Plaintiff's damages on October 25, 2022. Present at the hearing were the Plaintiff together with his attorneys, Kenneth E. Berger and Bradley L. Lanford. In spite of proper notice, no one appeared on behalf of the Defendants. Additionally, prior to the hearing, Plaintiff's counsel physically called the names of the Defendants in the lobby of the hearing location and no one answered. The proceeding was transcribed by certified court reporter Doug Liperote of Spectrum Court Reporting Services of Mt. Pleasant, South Carolina.

After reviewing the admitted exhibits, listening to the evidence presented and considering arguments of counsel, the following findings of fact and conclusions of law are made in this matter.

FACTS

On October 17, 2021, Plaintiff, a Florida resident, was traveling on I-95 and stopped to spend the night at the Relax Inn, a hotel in Dillon, South Carolina, and was checked in as a guest and given a room key. Complaint ¶¶ 7-8. Unbeknownst to Plaintiff, the room had already been rented to another guest. Complaint ¶¶ 9-10. When Plaintiff attempted to open the door to the room, the occupant of the room was apparently frightened and fired a weapon at the door in self-

defense. Complaint ¶ 14. The bullet struck Plaintiff in the shoulder, seriously injuring him. Complaint ¶ 15.

At the hearing, after placing Plaintiff under oath, the Court heard extensive, compelling testimony on both liability and damages, along with supporting documentary exhibits. Plaintiff testified he was helping his stepson move from New York to Florida and decided to break the long trip by stopping in Dillon for the night. There were no rooms at South of the Border, so Plaintiff drove further down US Highway 301 to the Relax Inn. He checked in at the motel lobby and was given a room key. When he went to his assigned room and attempted to open the door, the interior latch caught the door and at that moment Plaintiff could see a man sit up inside the room. Plaintiff did not see a weapon. Realizing the room was occupied, Plaintiff immediately turned away from the door and in that instant was shot through the door by the person inside the room. The bullet entered Plaintiff's left shoulder, traveled through his chest fracturing his sternum and a rib, causing other significant internal damage, and lodging deep in the right side of his chest, where it remains to this day.

Plaintiff testified he remembered lying on the ground in a pool of his own blood and praying it was God's will he would survive. EMS eventually appeared on scene, he was initially taken to the local hospital in Dillon but then transferred to the trauma unit at McLeod Regional Medical Center in Florence, spending nine days at that facility. Plaintiff testified to being in great pain initially and throughout his stay and expressed concerns about taking pain medication due to his being more than thirty-three (33) years sober. Prior to this incident, Plaintiff testified he had never been hospitalized at fifty-nine (59) years of age. His hospital course was painful and difficult, he was on a liquid diet for days, was in constant fear of his lung collapsing, and could get no rest for being awakened continually for diagnostic scans and lab work. It was

painful to breathe and his oxygen levels remained consistently low during that time, making it even more difficult and urgent to breathe. He was discharged on October 25, 2021, with a number of prescription medications and testified his family rented a van to take him back home to Florida but had to stop every hour to check his oxygen levels.

Plaintiff testified in detail concerning his injuries, notably a partially collapsed lung, broken rib and sternum, and a small fracture in his spine. He understands the bullet was lodged deep in his body and to this day has not been removed due to the difficulty and danger of that surgery. He further testified it is his understanding his body may eventually attempt to dislodge the bullet which causes him a fear of having to undergo a complicated, expensive and extensive surgery in the future. The cost of such a procedure, should it be required, is a significant concern.

Prior to the shooting, Plaintiff testified to being very active, including bench pressing more than 300 pounds and doing physical labor in the construction field. Since the shooting, he has had significantly less energy and stamina and still has pain and discomfort where he was shot. Plaintiff testified he now stays home much more, as opposed to frequently traveling around the country and the world as he did prior to this incident. Plaintiff is an avid motorcycle rider and since the shooting has not left the state of Florida on his bike, whereas prior to the shooting he would drive thousands of miles on his motorcycle around the country. Plaintiff testified he is a member of a motorcycle group consisting of clean and sober motorcyclists who travel around the country, perform charity work, and help others with sobriety. He has been unable to participate in these fulfilling activities since the shooting and testified specifically of his regret about missing local charity events where the club would deliver toys to children and spend time at a local orphanage during the holiday season.

Plaintiff is also an avid pilot with commercial experience and has not been able to fly for most of the past year since the shooting. Additionally, he has been unable to play with his young grandchildren, causing him significant distress.

Plaintiff testified all these activities gave him a sense of freedom he had sought his entire life. Since the shooting and being hurt, he has had to either eliminate or scale back these activities. Physically, Plaintiff testified he is doing better, but is still physically and mentally nowhere near where he was before the shooting and does not know whether he will ever be there again. He expressed anxiety and uncertainty about his future.

Plaintiff testified about significant mental anguish as a result of the shooting. The night before the damages hearing in this matter was the first time he had checked into a hotel since the shooting and he testified he was very nervous about it to the point he nearly asked a staff member to accompany him to the room. He testified to living his life in fear of unexpected injury and avoiding parts of town near his home that are known to have high crime rates, to being nervous on the roadways, and to generally feeling fearful, something that has never been an issue with him prior to the shooting. Plaintiff has seen a therapist and undergone treatment, and while it has helped with these issues, they are still present. Plaintiff additionally testified before getting shot he had not experienced depression and did not know what it was exactly, but now understands it because he often feels depressed.

According to the therapist's record, Plaintiff remains in a significant amount of physical pain and is not able to work as he had before the shooting and not able to do fun things or exercise the way he had prior to the shooting. It was noted Plaintiff has become hyperaware of his surroundings, experiences bouts of anger, and has a fear of traveling. Plaintiff is diagnosed

as suffering from post-traumatic stress disorder, remains in therapy and believes this will be required into the future to combat ongoing issues arising from the shooting.

CONCLUSIONS OF LAW

“It is well settled that by suffering a default, the defaulting party is deemed to have admitted the truth of the plaintiff’s allegations and to have conceded liability.” *Roche v. Young Bros.*, 332 S.C. 75, 81, 504 S.E.2d 311, 314 (1998). Defendant’s default and decision not to appear at the damages hearing in this matter deprived any finder of fact of the benefit of Defendant’s perspective on how this event occurred and what steps could or should have been undertaken to prevent it. Based on the pleadings, evidence, law, testimony, and exhibits presented at the hearing, I find Defendants’ joint and several conduct proximately caused Plaintiff’s injuries, including medical bills that will continue into the future, past and future damages for pain and suffering, mental anguish, and loss of enjoyment of life. I find Plaintiff sustained severe and permanent injuries as a result of the shooting proximately caused by Defendants’ joint actions. Further, I further find Plaintiff’s injury, although certainly unexpected in the moment, was a foreseeable consequence of Defendants’ negligence. See *Whitlaw v. Kroger Co.*, 306 S.C.51, 410 S.E.2d 251(1991).

Plaintiff’s claims of extensive pain and suffering as a result of this injury are entirely credible. “An award for pain and suffering compensates the injured person for the physical discomfort and the emotional response to the sensation of pain caused by the injury itself.” *Boan v. Blackwell*, 343 S.C. 498, 501-02, 541 S.E.2d 242, 244 (2001). Plaintiff’s pain has not resolved since the shooting and the bullet remains lodged inside his body. As of the hearing, Plaintiff’s counsel submitted into evidence \$57,036.95 in medical bills related to this incident with an expectation of future bills to accrue.

Plaintiff also pled loss of enjoyment of life as an element of his damages and the evidence and testimony on this element of damages is found to be extensive, compelling, and highly credible. In South Carolina, a plaintiff may recover for both loss of enjoyment of life and pain and suffering. “[D]amages for ‘loss of enjoyment of life’ compensate for the limitations, resulting from the defendant's negligence, on the injured person’s ability to participate in and derive pleasure from the normal activities of daily life, or for the individual’s inability to pursue his talents, recreational interests, hobbies, or avocations.” *Id.* at 502, 541 S.F.2d at 244. *See also McNeill v. U.S.*, 519 F.Supp. 283 (D.S.C. 1981).

Plaintiff also pled mental anguish as an element of his damages and it is clear from this record this was an extremely traumatic event and Plaintiff suffered and continues to suffer a significant amount of mental anguish. “Separate damages are given for mental anguish where the evidence shows, for example, that the injured person suffered shock, fright, emotional upset, and/or humiliation as the result of the defendant’s negligence.” *Id.*

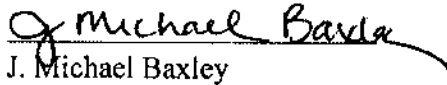
Likewise, the evidence was persuasive as to Plaintiff’s future damages for pain and suffering, mental anguish, and loss of enjoyment of life. Mr. McAuley testified he is presently 60 (sixty) years of age and pursuant to S.C. Code Ann. § 19-1-150, has a life expectancy of 20.64 years. Plaintiff was otherwise in good health prior to this incident and testified his father is still alive and well at the age of 92 and he has grandparents who lived beyond the age of 100. Thus, this record contains credible evidence of life expectancy beyond the statutory benchmark.

IT IS HEREBY ORDERED for all the reasons above Plaintiff is granted joint and several judgment against all Defendants in the total amount of One Million Five Hundred Thousand and No/100 (\$1,500,000.00) Dollars in actual damages.

SIGNATURE PAGE TO FOLLOW

IT IS SO ORDERED.

November 2, 2022


J. Michael Baxley
Special Referee