

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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MAY 26 2015

APPEAL FROM CHESTER COUNTY

S.C. Supreme Court

Court of Common Pleas

Sixth Circuit Court

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MAY 26 2015

J. Ernest Kinard, Jr., Chief Administrative Judge

SC Court of Appeals

Unpublished Opinion No. 2015-UP-127 (S.C. Ct. App., filed March 11, 2015)

T. B. Patterson, Jr.,

Petitioner,

v.

Justo Carmona Ortega,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the Petition for Rehearing was made and finally denied by the Court of Appeals on April 24, 2015.

QUESTIONS PRESENTED

1. Did the Court of Appeals err in affirming the court of common pleas and the magistrate's refusals to award complete relief for loss of use of his vehicle to petitioner?
2. Did the Court of Appeals err in affirming the court of common pleas and the magistrate's refusals to award any sum for lost income to petitioner?

STATEMENT OF THE CASE

The parties were involved in a motor vehicle accident on September 21, 2009, in Lancaster County, South Carolina. The petitioner filed a complaint in tort for negligence in the Magistrate's Court of Chester County seeking damages for the loss of use of his vehicle and for loss of income, requesting \$7,500.00 plus costs; the respondent answered and subsequently admitted liability. Both parties waived jury trial, respondent waived his personal appearance, and the Honorable Yale Zamore, Chester County Magistrate, heard the issue of damages in a bench trial on April 12, 2013. Judge Zamore filed his judgment and final order on May 16, 2013, awarding \$526.39 for the rental expense for a replacement vehicle for one week while denying any compensation for the other sixteen days of loss of use of petitioner's vehicle during repairs, \$100.00 as a "token award" for inconvenience, while denying entirely petitioner's claim for \$4,925.00 for time lost from his work as an attorney, at \$300.00 per hour, and \$80.00 costs. The total award was \$706.39.

Petitioner filed a notice of appeal in the Magistrate Court of Chester County and in the Court of Common Pleas of Chester County; it requested that the court modify the order of the magistrate court to award petitioner the compensation due for his entire loss of use, in the amount of \$1,776.27, and \$5,723.73 for his billable time lost (maximizing the amount to the jurisdictional limit of the magistrate court), together with his costs in the magistrate and common pleas courts, \$80.00 and \$150.00 respectively. The Honorable J. Ernest Kinard, Jr., Chief Administrative Judge of the Court of Common Pleas of Chester County heard the appeal on July 17, 2013. Judge Kinard, noting that he had read the brief of petitioner, invited the respondent to state his position, and permitted the parties to argue at length. He denied any relief from the order of the magistrate.

A final order, which stated the findings of the court and denied the petitioner's request for relief, was signed by Judge Kinard on September 14, 2013, and filed by the Clerk of Court, Chester County. Petitioner served his notice of appeal of Judge Kinard's decision and subsequently filed it and proof of service in the Court of Appeals and in the Court of Common Pleas of Chester County.

The Court of Appeals affirmed the judgement of the Court of Common Pleas. *T. B. Patterson, Jr. v. Justo Carmona Ortega*, Unpublished Opinion No. 2015-UP-127 (S.C. Ct. App., filed March 11, 2015). Petitioner requests a writ of certiorari to review that decision.

ARGUMENTS

The Court of Appeals erred in that it failed to apply the authorities cited in its unpublished opinion filed March 11, 2015, to the facts and matters of record in this case. Specifically, it upheld the circuit court opinion that affirmed the magistrate court decision

when the magistrate court refused to award damages in accordance with the standard for determining damages in South Carolina; that standard was argued to both courts below, and the record contained all the evidence necessary to determine damages properly.

The opinion of the Court of Appeals, filed March 11, 2015, under the provisions of Rule 220 (b), SCACR, in effect, declared that there was no error of law in the courts below; by citations, it also at least implied that petitioner, plaintiff and appellant below, failed to prove damages proximately resulting from the negligence of defendant and failed to present evidence that would allow the trial court to determine damages with reasonable certainty.

However, the magistrate documented that petitioner argued for his damages and provided evidence of those damages, both in the Magistrate's Return on Appeal (A. 6 to 7) and the Judgment and Final Order (A. 8 to 14), and then refused to determine those damages in accordance with South Carolina law. All of this is preserved in the record and was presented to the Court of Common Pleas and to the Court of Appeals. Both of those courts joined the magistrate in error and this Court should rectify those errors.

1.

THE COURT OF APPEALS ERRED IN AFFIRMING THE COURT OF COMMON
PLEAS AND THE MAGISTRATE'S REFUSALS TO AWARD COMPLETE RELIEF
FOR LOSS OF USE OF HIS VEHICLE TO PETITIONER

The magistrate court noted that petitioner was without the use of his vehicle for three weeks and two days, and a receipt showing a total billing in the amount of \$526.39 for one week's use of a 2009 Chevrolet Tahoe. (Magistrate's judgment, May 16, 2013, page 3; A. 10; Plaintiff's exhibit, April 12, 2013; A. 52 and 53), and noted the request for

a total of \$1,776.27 (three weeks at \$526.39 plus two days at \$98.55) (Magistrate's judgment, May 16, 2013, page 5; A. 12). The magistrate then stated that [Petitioner] clearly sustained the loss of use while his vehicle was being repaired and that it was proximately caused by the accident, but went on to add that "the record before the court substantiates only the expense for a replacement vehicle for one week and not for the entire time for the repairs." It further stated that [Petitioner] had proved "an amount equal to one-week's rental expense but nothing more," adding that, "There was no way to reliably quantify 'loss of use' as a general circumstance under these conditions." (Magistrate's judgment, May 16, 2013, page 6; A. 13).

The magistrate stated that [Petitioner] clearly sustained the loss of use while his vehicle was being repaired and that it was proximately caused by the accident, but went on to add that "the record before the court substantiates only the expense for a replacement vehicle for one week and not for the entire time for the repairs." It further stated that [Petitioner] had proved "an amount equal to one-week's rental expense but nothing more," adding that, "There was no way to reliably quantify 'loss of use' as a general circumstance under these conditions." (Magistrate's judgment, May 16, 2013, page 6; A. 13). This Court held long ago that "As bearing on the question of the value of the use of the property of which the owner was deprived, the rental value or expense of hiring a substitute for that of which he was deprived is a pertinent consideration." *Coleman v. Levkoff*, 128 S.C. 487, 491, 122 S.E. 875, _____ (1924). Sixty years later, this court noted that a daily rental was a proper measure of loss of use (a stipulated rental value). *Hutson v. Cummins Carolinas, Inc.*, 280 S.C. 552, 314 S.E.2d 19 (Ct.App. 1984). In *Newman v. Brown et al.*, 228 S.C. 472, 476, 90 S.E.2d 649, _____ (1955), this Court

also cited *Coleman, supra*, in approving the charge of the trial court that included the following:

Now in addition to that, you could award **a reasonable sum of money to compensate the owner of the automobile for the loss of the use of her automobile** for a reasonable length of time during which it would have taken her to have the same repaired. (Emphasis added).

Ralph King Anderson, Jr., *South Carolina Requests to Charge—Civil*, 2009, § 13-14, Damages—Automobile—Negligence Cause of Action, in discussing loss of use, specifies that “In other words, recovery for loss of use based on customary rental charges is allowable even though a substitute is not rented. Rental value is the amount for which the property in question could have been rented on the market.”

The magistrate court made an error of law in that it did not determine damages in accordance with established South Carolina law; this court should correct that failure and award petitioner the amount for loss of use of his vehicle to put him in the same position he would have been if the appellee had not caused him to incur the loss of use of his vehicle. *Austin v. Transp. Servs., Inc.*, 358 S.C. 298, 312, 594 S.E.2d 867, 874. (Ct. App. 2004).

2.

THE COURT OF APPEALS ERRED IN AFFIRMING THE COURT OF
COMMON PLEAS AND THE MAGISTRATE’S REFUSALS TO AWARD ANY SUM
FOR LOST INCOME TO PETITIONER

The same argument applies to the failure of the magistrate to award any damages to petitioner for his time lost in dealing with the accident and its consequences. Under *Austin, supra*, the magistrate should have awarded damages in “the amount needed to compensate the plaintiff for the losses proximately caused by the defendant’s wrong so

that the plaintiff will be in the same position he would have been in if there had been no wrongful injury.” Petitioner testified that he had lost sixteen hours and twenty-five minutes of available work time because of the accident caused by the respondent and that his standard rate at the time was \$300.00 per hour (Magistrate’s Judgment, May 16, 2013, page 2 and 3; A. 9 and 10); petitioner valued that lost time at \$4,925.00 (magistrate’s judgment, May 16, 2013, page 5; A. 12). The magistrate stated that petitioner “has not proven any tangible and quantifiable losses sustained as a result. (Magistrate’s judgment, May 16, 2013, page 6; A. 13).

Petitioner clearly quantified his loss as to income; his sworn testimony specified the time he lost and his hourly rate; the magistrate clearly knew how much petitioner claimed, but refused to award any damages, other than a “token” \$100.00 for inconvenience. Again, the magistrate failed to determine damages in accordance with South Carolina law, and this Court should correct that failure.

CONCLUSION

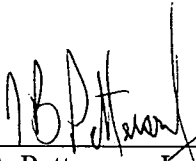
In a jury trial, the parties and the courts look beyond the verdict only in the rarest of cases; the process of the exercise of its judgment by the jury, after it hears the evidence and the instructions of the court, deliberates in private, and delivers its verdict, cannot be examined except indirectly. In this bench trial case, the magistrate documented his errors of law in detail, when he refused to accept the standard of proof specified in South Carolina law and award the measure of damages that it was his duty to award; both as to the loss of use of his vehicle incurred by petitioner and his lost time that could have been used for earning income. Neither the Court of Common Pleas nor the Court of Appeals corrected his error, thereby permitting the magistrate to substitute his own arbitrary

notion of the measure of damages for that established by the precedents of this Court and documented in standard jury instructions that explain those rules to a jury. When a jury chooses to ignore those instructions, only in fairly extreme cases is its verdict disturbed. In this case, the magistrate did not utilize his discretion to assess damages, he substituted an arbitrary standard of his own for measuring them, which the Court of Common Pleas and the Court of Appeals upheld. This Court should correct those errors and uphold its standards for damages in negligence cases, and require the courts below to make a fair attempt at putting petitioner in the position he would have been had he not been injured by the negligence of the respondent.

Petitioner requests this Court grant him a writ of certiorari to the Court of Appeals and either modify the judgment to award the correct amount of damages or remand to the trial courts to assess damages in accordance with the law of South Carolina.

Respectfully submitted,

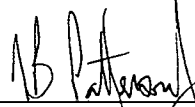
May 26, 2015



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CERTIFICATE OF SERVICE

In accordance with the provisions of Rule 242(c) SCACR, I hereby certify that a copy of this petition was mailed to Mr. Michael S. Traynham and Mr. George V. Hanna, IV, Post Office Box 12009, Columbia, South Carolina 29211-2009, on May 26, 2015.



T. B. Patterson, Jr.