

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )  
 )  
Taliah Shabazz, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
Bertha Rodriguez, )  
 )  
Defendant. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS

Civil Action No. 2015-CP-40-02395

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NOV 08 2016

SC Court of Appeals

ORDER DENYING PLAINTIFF'S MOTION  
FOR NEW TRIAL NISI ADDITUR OR A  
NEW TRIAL ABSOLUTE

RICHLAND COUNTY  
FILED  
6 OCT 10 AM 10:55  
JENNIFER W. NOBLE  
C.C.P. & G.S.

This matter comes before me on Plaintiff's Motion for a New Trial *Nisi Additur* or a New Trial Absolute, pursuant to Rule 59 of the South Carolina Rules of Civil Procedure.

For the reasons set forth below, the Plaintiff's motion is DENIED.

STATEMENT OF THE CASE

The retrial of this case was conducted before me on August 29 and 30, 2016. The case is one of admitted liability in which the defendant admits to failing to yield the right of way to Plaintiff's vehicle causing the collision that brings this suit to bar.

The Plaintiff was taken to Palmetto Health Richland Hospital after the accident, where she treated for soft tissue shoulder and neck pain. Plaintiff followed up this initial medical attention with visits to her primary care physician at Waverly Family Practice, where she continued to treat for soft tissue shoulder pain issues. Plaintiff then sought additional treatment for her shoulder with Dr. Kevin Nahigian at Carolina Shoulder & Knee Specialist. Dr. Nahigian referred Plaintiff to physical therapy which she participated in for six (6) months.

Almost a full year after the accident, Plaintiff began complaining of chronic migraine headaches and sought treatment with a pain management specialist, Dr. Eleanya Ogburu-

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Ogbonnaya. At trial, Plaintiff introduced her medical bills into evidence amounting to \$16,230.44. Defense counsel argued that the migraine headaches, that Plaintiff did not begin to treat for until nearly a year after the accident, were not causally related to the accident. Dr. Ogburu-Ogbonnaya testified that if the Plaintiff genuinely had been suffering from the migraine headaches from the date of loss, she should have mentioned them much earlier on in her treatment. Additionally, he testified that he did not think that it was likely that someone suffering from the types of headaches of which the Plaintiff was complaining would be able to sustain them for nearly a year without mentioning them during *any* doctor's visits throughout the year or seeking treatment for the headache issue earlier. Accordingly, defense counsel requested that the jury award a verdict around \$8800.00 that excluded the treatment with Dr. Eleanya Ogburu-Ogbonnaya for the migraine headaches.

The jury seemingly agreed with the defense's version of the facts— that the headaches were unrelated to the accident— and awarded a verdict of \$12,500.00.

Plaintiff subsequently filed this motion for new trial *nisi additur* or a new trial absolute.

#### LEGAL STANDARDS AND ANALYSIS

“Power of the court” is the power to determine the law, whereas the ‘power of the jury’ is the power to determine the facts.” Dimick v. Schiedt, 293 U.S. 474, 55 S. Ct. 296, 79 L. Ed. 603 (1935).

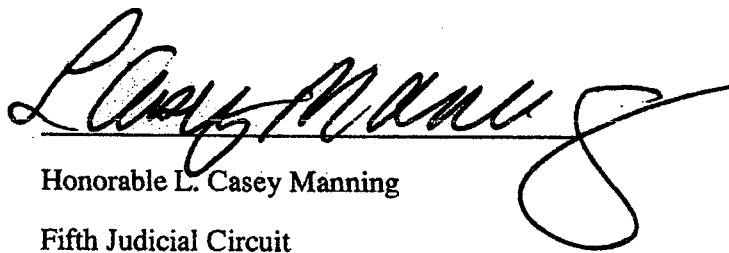
“The grant or denial of a motion for a new trial *nisi* rests within the discretion of the trial judge and his decision will not be disturbed on appeal unless his findings are wholly unsupported by the evidence or the conclusions reached are controlled by error of law.” Waring v. Johnson, 341 S.C. 248, 533 S.E.2d 906 (Ct. App. 2000).

Both Plaintiff and Defendant had the opportunity to make their case to the jury. After the presentation of the evidence, the jury sided with the defense and determined that the Plaintiff had not met her burden of proof. Accordingly, the verdict reached compensates the Plaintiff for the medical expenses the jury concluded were causally connected to this accident and also awarded approximately \$4,000.00 in general damages. <sup>1</sup>

CONCLUSION

For all of the reasons set forth above, the Plaintiff's motion for a new trial *nisi additur* or a new trial absolute is DENIED.

**AND IT IS SO ORDERED.**

  
Honorable L. Casey Manning  
Fifth Judicial Circuit

October 10, 2016

Columbia, South Carolina

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<sup>1</sup> Plaintiff contends the jury considered matters outside of the scope of the evidence presented. Plaintiff bases this contention on a question posed by the jury regarding whether insurance covered any of plaintiff's medical expenses. The trial judge strictly instructed the jury to only consider the evidence that was presented during the trial and to continue their deliberations as if the question regarding insurance had never been asked. No mention of insurance was made during the trial and plaintiff's counsel did not object to the instruction given to the jury regarding the question.

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MELISSA G. MOSIER  
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KEVIN R. HORTON  
SARAH W. GUTHRIE  
AMANDA N. PITTMAN

October 18, 2016

Taliah K Shabazz  
6289 US Highway 321 S  
Winnsboro, SC 29180-6155

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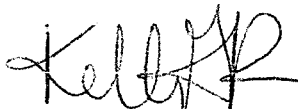
Re: Taliah K. Shabazz vs. Bertha I. Rodriguez  
2015-CP-40-02395

Dear Ms. Shabazz:

Enclosed please find a copy of the Filed Order Denying our Motion for New Trial. Please let me know if I can assist you any further.

It has been a pleasure working with you.

Sincerely yours,



Kelly G. Purvis  
Paralegal to J. Tyler Lee Jr.

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**Allyce Bailey**  
**PO Box 1473**  
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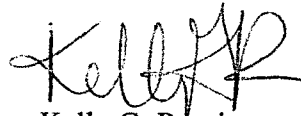
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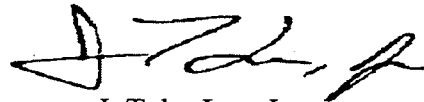
**SC Court of Appeals**

Dear Ms. Shabazz:

Enclosed please find a copy of the judge's order denying our motion for a new trial and motion for an additur. We do not intend to handle any appeals in this case. If you intend to appeal to a higher court, I strongly recommend that you seek legal counsel with another law firm as soon as possible. You have only 30 days from the date of this order to file an appeal, after which time you will be forever barred from doing so.

If you have any questions about this, please call me immediately.

Sincerely,



J. Tyler Lee, Jr.

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**FORM 11**  
**LETTER ORDERING TRANSCRIPT FROM COURT REPORTER**

November 8, 2016

Crystal Holmes  
Post Office Box 611  
Columbia, South Carolina, 29202

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NOV 08 2016

SC Court of Appeals

RE: Bertha Rodriguez/ Liberty Mutual Insurance Company, v. Taliah K. Shabazz, Appellant, Case No.2015-CP-40-02395

Dear Ms. Holmes:

On August 29, 2016 and August 30, 2016, the above case was tried before the Honorable Casey L. Manning, Circuit Court Judge, in Richland County. My records indicate that you were the court reporter for this case.

I request that you provide me with a transcript of the proceedings. Please transcribe the entire record including the following parts:

- (1) Selection and swearing of the jury;
- (2) Opening statements of counsel for appellant and respondent;
- (3) Closing arguments of counsel for appellant and respondent].\*

I agree to pay the per page charge for this transcript as provided by Rule 607, SCACR.

Sincerely,  
s/ Taliah K. Shabazz  
Taliah K. Shabazz  
6289 U.S Highway 321 S  
Winnsboro, South Carolina, 29180  
(803) 635-1457  
Appellant

cc: Jenny Kitchings  
Clerk, South Carolina Court of Appeals,  
Allyce Bailey, Attorney for Respondent

\* Unless all the parties to the appeal agree, a transcript of the entire proceedings must be ordered. Form 10 contains a sample agreement to order less than the entire transcript.