

Southern California Jury Hits Plaintiff With 60% Fault For Accident And Rejects Brain Damage Claim

Martin Olvera Anguiano v. Home Depot U.S.A., Inc.
Kern County Superior Court
Case No 1500-CV-284023
Judge Sidney Chapin

Plaintiff: Martin Olvera Anguiano
Plaintiff's Counsel: Nicholas Rowley, Haytham Faraj, and Henry Peacor of Carpenter, Zuckerman & Rowley, 8827 West Olympic Blvd, Beverly Hills CA, 90211-3613

Defendant: Home Depot, USA, Inc.
Defendant's Counsel: Paul Caleo and Aimee Hamoy-Perera of Burnham Brown, PLC 1901 Harrison Street, 14th Floor, Oakland, CA 94612
Daniel Clifford of Clifford & Brown, 1430 Truxtun Ave, Bakersfield, CA 93301

Case Facts

Plaintiff Martin Olvera Anguiano, a 53-year-old restaurant owner from Ridgecrest, California, alleged that he suffered a slip/trip-and-fall at the Home Depot in Ridgecrest on June 12, 2013 while shopping on an aisle where a Home Depot employee was working. Plaintiff testified at trial that he was looking at some products on a shelf and took a step backwards. As he stepped backwards, Plaintiff testified felt "something" under his foot, lost his balance, and landed across the aisle onto a large pallet of tile that a Home Depot employee was stocking onto another shelf.

As he fell, Plaintiff claimed he struck his lower back, his shoulder, and his head before coming to rest between the pallet and the shelf. The pallet was moved out of the way and paramedics arrived to provide emergency care to Mr. Anguiano at the store. He was transported to the local emergency room and then eventually to a trauma hospital in Bakersfield. All radiological studies, including CT Scan and MRI of the brain were normal. After 36 hours, he was discharged from the hospital with a diagnosis of possible syncope.

Liability Phase

Because there was no evidence as to what actually caused Plaintiff to fall, the parties bifurcated the trial as to liability and damages. During the liability phase, Plaintiff and his wife testified that he had suffered a blow to his head during the fall, claiming he had a large red and swollen area on the back of his head in the weeks following the accident. It was this purported head trauma that Plaintiff relied upon to support his claim that he suffered a mild traumatic brain injury (mTBI). Plaintiff's liability expert/safety engineer, Brad Avrit testified that the aisle was messy and that Defendant had failed to maintain a safe shopping environment for Plaintiff.

Defendant Home Depot disputed both liability and the extent of Plaintiff's injuries, particularly his mTBI. Defendant's employee, Robert Barksdale, who was working on the aisle had warned Plaintiff to be careful as he was maneuvering around the pallet of tile. Defendant's engineering expert, Kirsty White, testified that there was no evidence Plaintiff slipped on anything in the aisle and that there was no sign of any trauma to his head. Moreover, Plaintiff had no idea what caused him to lose his balance, therefore Defendant argued that there was no evidence of any dangerous condition and therefore Defendant was not negligent. Even if there was "something" on the aisle that caused Plaintiff to fall, Defendant's employee had also warned Plaintiff to be careful while traversing the aisle.

The Kern County jury of 4 men and 8 women deliberated for 3 days on the issue of liability and found Plaintiff 60% at fault for the accident and Defendant 40% at fault.

Damages Phase

The case then proceeded to the damages phase. After being released from the hospital, Plaintiff sought treatment 3 weeks after the accident from Dr. David Ledesma, a Ridgecrest chiropractor. At trial, Dr. Ledesma, testified that he also recalled seeing a swollen, red area on the back of Plaintiff's head, even though no such observation was noted anywhere in Plaintiff's medical records. On cross-examination, Dr. Ledesma admitted that his notes indicated Plaintiff was mostly pain free and back to work within a few months after the accident.

Plaintiff presented evidence from several retained experts, including neurologist Dr. Ronald Fisk who testified that Plaintiff had suffered an mTBI which resulted in his ongoing complaints of headaches, memory and concentration difficulties, as well as mood swings, irritability, and depression. Plaintiff's wife, sister, and brother all testified that his personality had changed after the accident. They claimed he was forgetful, difficult to be around, and often had to rest or lay down because of headaches and back pain. Plaintiff testified that he had difficulty running his restaurant business, remembering orders, and had initially been off work for 3 months after the accident. His brother and sister also claimed that Plaintiff was less involved at the restaurant after the accident and that he no longer interacted with customers with the same friendliness and energy he had before the accident.

Defendant presented evidence from Dr. Tony Strickland (neuropsychologist) and Dr. David Hoenig (neurologist) to support its theory that Plaintiff suffered only orthopedic injuries in the fall. Dr. Strickland testified extensively that Plaintiff gave poor effort during his neuropsychological testing and that Plaintiff suffered from depression related to his lower back and shoulder pain from the accident. In addition, Dr. Hoenig testified that Plaintiff also gave poor effort during his physical examination and that Plaintiff 1) did not suffer a concussion or mTBI and 2) the orthopedic injuries from the accident resolved in a few months. Defendant also called the paramedics and emergency department doctors who all confirmed they saw no sign of head trauma. In addition, Defendant presented testimony for a customer who had seen Plaintiff working at the restaurant within a few weeks of the accident. The customer testified Plaintiff seemed a bit tired, but otherwise was himself. Finally, Defendant challenged Plaintiff's claims about changes in personality through cross-examination of his wife. Plaintiff's wife, his girlfriend at the time of the accident, was impeached with a prior statement submitted in support

of a restraining order requested one day after the Home Depot accident. In the statement, Plaintiff's wife stated she was afraid of Plaintiff and that he had been controlling and angry in the past.

Plaintiff also sought damages injuries to his low back, his shoulder, as well as past and future wage loss. He presented expert testimony that he would need ongoing treatment for his mTBI for the next 20 years. Plaintiff ultimately asked the jury to award him \$11.8 million, of which over \$10 million was sought for pain and suffering. Plaintiff blackboarded economic damages (past and future medical expenses as well as past and future wage loss) at \$800,000.00.

Defendant argued that Plaintiff did not suffer a mTBI and that his orthopedic injuries resolved after chiropractic care, citing the medical records and the lack of any objective evidence that Plaintiff suffered any head trauma in the fall. Defendant also pointed out the inconsistencies among witnesses regarding Plaintiff's demeanor and ability to work. Defendant asked the jury to award up to \$208,000.00 for his orthopedic injuries.

The jury deliberated for 1.5 days and concluded that Plaintiff did not suffer any past wage loss and did not suffer a mTBI. Their verdict was as follows:

Past wage loss = 0
Past medical expenses = 98,517.31
Future wages = 36,000.00
Future medical = 285,000.00
Past Noneconomic = 150,000.00
Future Noneconomic = 350,000.00
TOTAL AWARD = 919,517.31

**REDUCED BY PLAINTIFF'S COMPARATIVE of 60% = TOTAL JUDGMENT =
\$367,806.92 Settlement Negotiations**

THD served 998 offer of \$350,001.00 prior to trial.
Plaintiff made a demand prior to the jury's verdict on liability of \$1.5M.

Trial Dates
Judge Sidney Chapin
February 4, 2017 to February 15, 2017 (phase 1)
February 21, 2017 to March 8, 2017 (phase 2)