



STORAGE NAME: h6017.CJS

DATE: 3/17/2023

(March 16, 2023)

SPECIAL MASTER'S FINAL REPORT

The Honorable Paul Renner
Speaker, The Florida House of Representatives
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

Re: HB 6017 - Representative Chaney
Relief/Maria Garcia/Pinellas County School Board

THIS IS A SETTLED CLAIM FOR \$2.8 MILLION AGAINST THE PINELLAS COUNTY SCHOOL BOARD FOR INJURIES AND DAMAGES SUFFERED BY MARIA GARCIA WHEN SHE WAS STRUCK BY A PINELLAS COUNTY SCHOOL BUS ON FEBRUARY 13, 2019.

FINDINGS OF FACT:

Accident and Investigation

At or around 7:00 a.m. on February 13, 2019, Maria Garcia (Garcia), a then-41-year-old single mother of two daughters, left her home to walk her usual route to a convenience store located at the intersection of U.S. Highway 19 and Curlew Road in Clearwater, Florida, to catch a bus to take to work.¹ This route required Garcia to walk north along U.S. Highway 19, then to cross Curlew Road and continue along the highway. Because it was raining lightly, Garcia was wearing a bright red jacket and holding a large blue umbrella over her head.

When she came to Curlew Road, Garcia entered the marked crosswalk; at the time she did so, the "walk" icon on the pedestrian traffic signal gave her the right of way. However, while she was in the crosswalk, Garcia was struck by the right front side of and run over by a Pinellas County school bus attempting to make a right turn onto Curlew Road, which bus was driven by Patricia Gavin ("Gavin"), a Pinellas County

¹ The record indicates that, at the time of the accident, Garcia worked 40 hours per week as a stocker at a local thrift store making \$9 an hour. She also cleaned houses and dreamed of opening her own cleaning business.

School Board ("School Board") employee.²

As a result of the collision, Garcia was thrown out of the crosswalk and into the westbound lanes of Curlew Road; she did not lose consciousness at any point but was unable to call for help on her own. However, Gavin did not stop the bus, instead continuing on to drop off her passengers at school; she also failed to report anything unusual to her supervisors.³ When questioned by investigators, Gavin would state that she "heard a thump" but thought she had hit a curb, and she later admitted that she had not followed her authorized route⁴ the morning of the accident and was unable to see Garcia because the school bus's front windshield had fogged up, obscuring her vision.

Passers-by observed Garcia in the roadway and called 911, and emergency medical responders arrived on the scene. The Florida Highway Patrol would later investigate the accident and ultimately cited Gavin for failing to exercise due care causing serious bodily injury, a violation of s. 316.130(15), F.S.; she was later found guilty of the offense and received a fine and a three-month driver's license suspension.

Physical Injuries

Garcia was transported to Bayfront Hospital in St. Petersburg, Florida, the closest trauma center to the scene of the accident. Upon arrival to the hospital and in the months that followed, Garcia was treated for multiple life-threatening injuries and conditions, including:

- Bilateral hip and left ankle abrasions;
- Tachycardia;
- Bilateral pneumothoraxes;
- Traumatic shock;
- Rib, hip, lumbar spine, and pelvic fractures;
- Bilateral thigh degloving injuries;
- A right knee soft tissue and ligament injury;
- A Grade IV splenic laceration;
- Hydroperitoneum;
- Retroperitoneal mesenteric hematoma;
- Traumatic brain injury likely due to a post-traumatic stroke; and
- Hemorrhagic shock.⁵

Garcia was ultimately hospitalized for over two months, one month of which she spent in intensive care. During this time, she underwent:

- Placement of a bilateral chest tube, a tracheostomy

² The record indicates that, at the time of the accident, the Pinellas County School Board employed Gavin as a school bus operator.

³ According to the record, there were 28 children on the school bus at the time of the accident.

⁴ Gavin testified that she deviated from her usual route to avoid having to make a left turn into the school.

⁵ The record indicates that Garcia lost 75 percent of her blood volume as a result of the accident.

- tube, and a feeding tube;
- The insertion of a line for ongoing blood transfusions;
- An exploratory laparotomy;
- A spleen removal;
- A pelvic fracture repair using screws;
- Irrigation and excisional debridement of necrotic skin, subcutaneous tissue, and muscle;
- Repairs of the vastus lateralis, rectus femoris, and tensor fascia latae muscles in her right thigh; and
- Skin grafts with negative pressure wound therapy.

After her discharge, Garcia continued to receive significant medical care and underwent additional procedures. She was also diagnosed with wound infections, which led to her re-hospitalization, nerve damage in her right arm, and microcytic anemia for which she received IV iron infusions.

According to the record, Garcia's medical bills for past care totaled \$1,988,328.11; however, it appears that all but \$140,759.64 of these bills have been paid, and that there are outstanding subrogation and health insurance liens totaling \$135,806.85. Further, Dr. Gloydian Cruz-Gomez, a Physical Medicine and Rehabilitation specialist, evaluated Garcia to determine her future medical care requirements, estimating the amount of such medical care at \$1,206,645.99.

Lost Wages and Future Earning Potential

As a result of her accident-related injuries and conditions, Garcia exhibits deficits in memory, executive function, concentration, and language skills. She also struggles to keep her balance, cannot walk more than the length of the room without assistance, cannot use her right hand, and cannot stand on her feet for any great length of time. Consequently, Garcia is unable to work in any capacity, and the record indicates that she is now entirely dependent upon her eldest daughter for financial support.

The record also indicates that Garcia's lost wages total \$60,000 for three years during which she could not work, and that, due to her work-life expectancy of 24 more years, she has a lost future earning potential of \$432,000.

Non-Economic Damages

Garcia suffers from PTSD, depression, and insomnia and was described by her daughter as not being the confident woman she once was. According to testimony presented at the Special Master hearing held in this matter, Garcia is now afraid to go out and to travel in a car, and she worries about what other people might do to her. She also has vivid memories of lying in the roadway in immense pain as the rain fell down upon her face, thinking she would die without seeing her daughters

again. So strong is this memory that taking a shower sometimes triggers flashbacks, as the feeling of the falling water on her face reminds her of the rain.

Garcia also expressed feeling guilt over her inability to provide for her family, and sadness over the active lifestyle she lost, which once included cooking for her family, a task she can no longer manage. However, she also testified that she wants to be the best she can be for her family, and that it is this desire that motivates her each day.

Litigation History

On December 30, 2019, Garcia filed a negligence lawsuit against the school board, seeking damages for her physical injuries; pain and suffering; mental anguish; emotional distress; loss of capacity to enjoy life; disfigurement; disability; loss of income and earning capacity; and past and future medical expenses. On April 7th, 2020, the School Board filed a stipulation as to its liability for the accident, leaving open for litigation only the issues of causation, permanency, and damages.

However, on May 16, 2022, Garcia entered into a consent judgment with the School Board for \$3 million, and the School Board subsequently paid the \$200,000 sovereign immunity limits. The School Board reserved its right to defend against or oppose a claim bill for the balance owed.

CONCLUSIONS OF LAW:

Pursuant to House Rule 5.6(b), stipulations entered into by the parties to a claim bill (including settlement agreements) are not binding on the Special Master or the House or any of its committees of reference. Thus, each claim is heard de novo, and the Special Master must make findings of fact and conclusions of law which support the claim. In the instant matter, the Claimant raises a negligence claim, the elements of which are duty, breach, causation, and damages.

Duty

The driver of a motor vehicle has a duty to take reasonable care and to follow all applicable laws to prevent harm to those within the vehicle's path.

Section 316.130(15) F.S., provides that any person operating a vehicle shall exercise due care to avoid colliding with any pedestrian or any person propelling a human-powered vehicle and give warning when necessary and exercise proper precaution upon observing any child or any obviously confused or incapacitated person.

Breach

The evidence presented demonstrates that Gavin breached the duties described above when she failed to yield to a pedestrian in a marked pedestrian crosswalk and to keep a lookout for such pedestrians, causing the school bus she was driving to collide with and run over Garcia.

Causation

Garcia's injuries were the direct and proximate result of Gavin's breach of the duties described above. But for Gavin's failure to yield to a pedestrian in a marked pedestrian crosswalk and to keep a lookout for such pedestrians, the traffic crash which caused Garcia's injuries on February 13, 2019, would not have occurred.

Damages

The Claimant settled the instant matter with the Pinellas County School Board for \$3 million, \$200,000 of which the County has already paid as part of the settlement agreement; thus, this claim bill is for \$2.8 million to compensate the Claimant for her severe and permanent physical injuries; past and future medical expenses; lost wages and future earning capacity; and other non-economic damages due Gavin's negligence. I find the settlement amount is reasonable based on the evidence presented, case law, and comparable jury awards.

Respondeat Superior

Under the common law *respondeat superior* doctrine, an employer is liable for the negligence of its employee when the:

- Individual was an employee when the negligence occurred;
- Employee was acting within the scope of his or her employment; and
- Employee's activities were of a benefit to the employer.⁶

For conduct to be considered within the course and scope of the employee's employment, such conduct must have:

- Been of the kind for which the employee was employed to perform;
- Occurred within the time and space limits of his employment; and
- Been due at least in part to a purpose serving the employment.⁷

Because Gavin was at all times relevant to the instant matter employed by the School Board and was acting within the scope

⁶ *Iglesia Cristiana La Casa Del Senor, Inc. v. L.M.*, 783 So. 2d 353 (Fla. 3d DCA 2001).

⁷ *Spencer v. Assurance Co. of Am.*, 39 F.3d 1146 (11th Cir. 1994).

of her employment, which employment benefitted the County, the County is liable for Gavin's negligence under the common law *respondet superior* doctrine.

CLAIMANT'S POSITION:

The Claimant asserts that she is entitled to the remaining \$2.8 million authorized by the settlement agreement.

RESPONDENT'S POSITION:

Counsel for the School Board did not present a case in the Special Master hearing held in this matter but indicated that the School Board takes no position on the claim bill. Under the terms of the settlement agreement, the School Board reserved the right to defend against or oppose the claim bill.

RESPONDENT'S ABILITY TO PAY:

The School Board maintains a self-insurance program and has an excess liability insurance policy. Counsel for the School Board did not know whether paying the claim would impact the School Board's operations.

ATTORNEY'S/
LOBBYING FEES:

If the claim bill passes, attorney fees relating to the claim bill may not exceed \$660,000, while lobbying fees relating to the claim bill may not exceed \$304,000.⁸

LEGISLATIVE HISTORY:

The claim bill is presented to the Legislature for the first time.

RECOMMENDATIONS:

Based on the foregoing, I recommend that House Bill 6017 be reported FAVORABLY.

Respectfully submitted,

CAITLIN R. MAWN,
House Special Master

cc: Representative Chaney, House Sponsor
Senator Rouson, Senate Sponsor
Alexander Brick, Senate Special Master

⁸ Although there is no cap on lobbying fees specified in the claim bill, an affidavit submitted by the Claimant's counsel indicates that lobbying fees are capped at 8 percent of the total award.