

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

LAURIE FIDLER and JAMIE BROWN,	:	NO. 13 – 03,182
Plaintiffs	:	
	:	CIVIL ACTION - LAW
vs.	:	
	:	
AARON REIDELL and PIZZA TO GO, LLC,	:	
Defendants	:	Petition to Open Judgment

OPINION AND ORDER

Before the Court is the Motion in Limine filed by Plaintiffs on June 16, 2015. Argument on the petition was heard July 20, 2015.

In their Complaint, Plaintiffs allege they were rear-ended by Defendant Aaron Reidell while he was driving a vehicle for the purpose of delivering pizzas for Defendant Pizza To Go. Plaintiffs allege that Pizza To Go is vicariously liable for Aaron Reidell’s negligence, and that Pizza To Go is itself negligent for failing to provide liability insurance knowing that Arron Reidell had no liability insurance himself. Defendant Reidell did not file a response and a default judgment was entered against him on March 5, 2014. Defendant Pizza did not file a response either, and a default judgment was entered against it on April 2, 2014. The issue of damages was previously scheduled for a jury trial, but in the instant motion, Plaintiffs indicate they wish to submit the claims to arbitration. The relaxed rules of evidence will therefore be applied in addressing the instant motion.

Plaintiffs seek a determination of (1) whether Plaintiffs may testify regarding their experiences during the accident and the subsequent medical treatments, the expenses incurred for said treatments, the frequency and nature of the treatments themselves, and the amount of time missed from work after the accident, (2) whether the medical records may be admitted without testimony from any doctor, (3) whether the medical records may be admitted without the testimony of any custodian of records, (4) whether any release of Defendant Aaron Reidell affects Plaintiffs’ ability to pursue a judgment against Defendant Pizza To Go, (5) whether Pizza To Go is precluded from raising a “limited tort election” defense, and, finally, (6) whether any judgment in favor of Plaintiff Jamie Brown would be reduced by any amount

recovered by Ms. Brown from her own uninsured motorist coverage. These issues will be addressed seriatim.

(1) Plaintiffs do not need expert testimony to establish that they suffered injuries to particular parts of their bodies as a result of the accident because those injuries manifested themselves through pain and swelling immediately after the accident. *See McArdle v. Panzek*, 396 A.2d 658 (Pa. Super. 1978)(where the injury complained of appeared *immediately* after the occurrence of the accident, a number of cases have allowed plaintiffs to recover damages for personal injuries in the absence of medical opinion that their injuries were caused by defendant's negligence). Therefore, the proposed testimony as contained in Plaintiffs' motion in limine filed April 16, 2015,¹ Paragraphs 1 and 2, will be admissible.

(2) As long as Plaintiffs comply with the notice provisions of Pa.R.C.P. 1305(b)(1), pursuant to subparagraph (iii), which allows the admission of records and reports of hospitals and licensed health care providers, the medical records referenced in Plaintiffs' motion in limine filed April 16, 2015, Paragraph 3, may be admitted without testimony from any doctor.

(3) Pursuant to the same rule as referenced in Paragraph (2), above, the medical records may also be admitted without the testimony of any custodian of records.

(4) Plaintiffs obtained a judgment against Pizza To Go on claims of *respondeat superior* and direct negligence. With respect to the first claim, if Aaron Reidell is released, the claim against Pizza To Go falls. *See Olita v. Kleiber*, 1987 U.S. Dist. LEXIS 5659 (E.D. Pa. 1987)(a plaintiff's release of a servant has the effect of releasing the master as well), citing *Litz v. McGrath*, 16 Pa. D. & C. 3d 239 (1980). With respect to the second claim, however, since Plaintiffs obtained a judgment on such, and such does not depend on the liability of Aaron Reidell, the claim may proceed.

(5) Plaintiffs contend Pizza To Go is precluded from raising a "limited tort election" defense for two reasons. First, they assert that the fact that Aaron Reidell was uninsured negates the limited tort election under 75 Pa.C.S. Section 1705(d)(1)(iv). Second, they argue the defense has been waived.

¹ This motion was not ruled on in light of the parties' agreement at the time of argument on that motion to postpone the case to the next trial term.

It should be noted at the outset of this discussion that if Aaron Reidell is released, only the claim of direct negligence will be at issue, and in that event, liability is not based on the act of operating a motor vehicle and therefore the “limited tort election” defense is not applicable. If Aaron Reidell is not released, and Plaintiffs proceed against Pizza To Go on the claim of *respondeat superior*, the court believes the defense is also not available to Pizza To Go because no responsive pleading was filed and thus the defense was not raised in New Matter as was required. Pa.R.C.P. 1030 requires the affirmative defense of immunity from suit to be included in New Matter, and the court believes the instant proposed defense to be sufficiently similar such that it also should have been included in New Matter. If the defense is viewed as more similar to lack of capacity to sue, it should have been raised in preliminary objections. Pa.R.C.P. 1028. Either way, the defense has been waived. Pa.R.C.P. 1032(a).

In light of the finding of waiver, the court will not address the issue of whether Aaron Reidell should be considered to not have been insured since the insurance he did have did not cover him while driving as an employee for Pizza To Go.

(6) With respect to the issue of whether any judgment in favor of Plaintiff Jamie Brown would be reduced by any amount recovered by Ms. Brown from her own uninsured motorist coverage, the court considers the question not appropriate for a motion in limine and therefore such will not be addressed at this time.

ORDER

AND NOW, this day of August 2015, further proceedings shall be conducted in accordance with the foregoing.

cc: Marc Drier, Esq.
 Joseph Orso, III, Esq.
 Aaron Reidell, 18 Sylvan Ave., Avis, PA 17721
 Gary Weber, Esq.
 Hon. Dudley Anderson

BY THE COURT,

Dudley N. Anderson, Judge