

TORT NOTES

By: James J. Morici, Jr.

DAMAGE TO VEHICLE INADMISSIBLE ABSENT EXPERT MEDICAL TESTIMONY IN AUTO NEGLIGENCE CASE

The Appellate Court of Illinois, First District, recently held in DiCosola v. Bowman, 794 N.E.2d 875, 276 Ill.Dec. 625 (1st Dist, 2003), that evidence as to the dollar amount of property damage to the vehicles in question and photographs regarding the damage (or lack thereof) was inadmissible in an automobile negligence case absent expert testimony opining that the apparent minimal damage to Plaintiff's vehicle was relevant to the issue of the nature and extent of the Plaintiff's injury.

The majority opinion written by Justice Gallagher found that the trial court acted within its discretion in granting Plaintiff's motions in limine to exclude photographs depicting the apparent minimal damage to Plaintiff's post-collision vehicle and prohibiting the Defendant from arguing, without expert testimony, that a correlation existed between the amount of damage to the vehicle and the extent of Plaintiff's injuries. 794 N.E.2d 875, 877.

The case arose out of a March 19, 1997 motor vehicle collision in a grocery store parking lot when Defendant's vehicle struck the driver's side of Plaintiff's vehicle which had been stopped for approximately 20 seconds. Id. Photographs of the Plaintiff's post-occurrence vehicle showed little or no damage. Id. at 878.

The Appellate Court relied upon the rationale used by the Illinois Supreme Court in Voykin v. DeBoer, 192 Ill.2d 49, 733 N.E.2d 1275 (2000) which rejected the "same part of the body rule" relative to personal injury actions and instead required that for evidence of a prior injury to the same part of the body to be relevant and admissible, there must be testimonial sponsorship of an expert witness since such a correlation is beyond the ken of the average lay person. Id. at 880.

The court distinguished Cancio v. White, 297 Ill.App.3d 422, 697 N.E.2d pg. 749 (1st Dist., 1998), stating that that court, while allowing the introduction of photographs it believed to be relevant did not state that such photographs are always or automatically relevant. The court stated that Cancio did not create a bright line relevancy standard nor did it hold that excluding such evidence constitutes reversible error, but, while not specifically stating, acknowledged that the rule of admissibility of photographs is discretionary with the trial court. Id. at 879. In distinguishing Cancio, the court noted that the court there was not presented with, nor did it consider at all the issue of whether expert testimony should have been required with respect to the admissibility of the photographs. Id. at 879. The court thus held that "contrary to Defendant's contention, no Illinois case stands for the proposition that photographs showing minimal damage to a vehicle are automatically relevant and must be admitted to show the nature and extent of a Plaintiff's injuries." Id. In further support of its ruling, Justice Gallagher recounted a history of case law in Illinois on the subject of relevancy. This case is must reading for

law students and/or practitioners struggling with the competing concepts of “relevancy v. probative value”. The court went on to specifically state: “We do not hold that expert testimony must always be required for such photograph evidence to be admissible. We hold that the trial court *in this case* (italics supplied in original) did not abuse its discretion in requiring expert testimony to show a correlation between the extent of the vehicular damage and the extent of Plaintiff’s injuries.”

Again, citing Voykin, the Court wrote “a Defendant who wishes to introduce evidence as part of his defense is required to ‘demonstrate that the evidence he wishes to present is relevant to the question at issue.’” Voykin 192 Ill.2d at 56.

Justice Frossard was equally eloquent in her dissent maintaining that the principals espoused in Voykin were distinguishable from the ability of the average juror to draw conclusions as to the nature and extent of personal injury based upon the physical damage observed to the motor vehicles involved. Justice Frossard forecasted that the majority opinion would be interpreted as requiring expert testimony anytime a Defendant wishes to challenge Plaintiff’s personal injuries by showing minor damages to the vehicle. Id. at 887. Further, she wrote that the rule espoused by the majority would fly in the face of common sense in everyday experience by requiring a Defendant to utilize expert testimony in order to be able to elicit direct testimony from the parties about the nature of the impact.

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