

James C. Costello, Individually & a/n/f of James Roscoe Costello, Deceased vs. Gerrit Mulder, Jr. and R&B Towing, Inc. d/b/a RB Towing Service; 1999 Jury Verdicts LEXIS 56580

November 22, 1999

Published Date: February 23, 2002

Topic: Medical Malpractice - Wrongful Death - Survival - Negligence - Gross Negligence

Practice Area: Torts

State: Texas

Court: Harris County District Court, 280th

Plaintiff Counsel

Gerald Graves

Firm Name: Graves & Graves

Address: Houston, TX

Plaintiff Name: (James C. Costello)

Tom Fillion

Firm Name: Tom Fillion & Associates

Address: Houston, TX

Plaintiff Name: (James C. Costello)

Defendant Counsel

Glenn J. Fahl

Firm Name: Fahl & Takeuchi

Address: Houston, TX

Defendant Name: (Gerrit Mulder, Jr. and R&B Towing, Inc. d/b/a RB Towing Service)

Judge: [Tony Lindsay](#)

Case Summary

Injury Text:

James Roscoe Costello was a 76-year-old man on a mo-ped who pulled out from a parking lot. Gerrit Mulder was a wrecker driver on a call on his way to an accident driving down Bissonnet in the left lane. The wrecker driver attempted to stop leaving 60 feet of skid marks prior to point of impact, and then continued on through the point of impact and spun out hitting Mr. Costello killing him. Decedent and his mo-ped were knocked 63 feet down the road. There was testimony from one witness that he was conscious at the scene. EMS records and the police report showed the decedent being unconscious. He was resuscitated one time en route to Ben Taub and pronounced dead upon arrival at the hospital. The speed limit was 35 mph. Defendant testified to traveling 35 to 40 mph. The police reconstructionist determined a minimum speed of 36.6 mph if just the rear brakes locked up and a maximum speed of 43.3 if the front brakes also locked up (which he could not determine). He indicated that the speed could have been as high as 47 mph if the brakes were in great working order. Plaintiffs' expert opined that the proportioning valve which affects pressure to the rear brakes was not in the proper position and that the hydro boost that power assists all brakes was not functioning properly either. This

was based on police photographs showing unequal rear wheel skid marks and an inspection of the vehicle three years after the accident. The Plaintiffs' accident reconstructionist felt that if the brakes were working perfectly, the speed of the Defendant would have been 45 mph. If the brakes were moderate, then 40 mph. If the brakes were poor, then 35 mph. Under either scenario, Plaintiffs' experts felt the driver could have stopped in time to avoid the accident had he been going the speed limit and the brakes were good. The coroner's report showed the deceased had a .024 blood alcohol level.

James C. Costello, an adult son of decedent, sought loss of companionship and mental anguish damages only. The estate sought pain and mental anguish, medical expenses of approximately \$1,000 and funeral expenses of approximately \$12,000.

Plaintiff Expert(s)

[Tom Truss](#)

Specialty: Brakes

Award: \$ 0

Award Details: The Court granted a directed verdict as to improper maintenance claims against the wrecker company, all gross negligence and punitive damage allegations. Jury found decedent 100% negligent. 11 - 1 (3 day trial + 35 minute deliberations) Pre-trial demand: \$350K Pre-trial offer: None

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