IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

CARRIE L. JACKSON, PERSONAL REPRESENTATIVE FOR THE ESTATE OF ROBERT A. JACKSON	:	SUPERIOR COURT OF PENNSYLVANIA
	:	No. 3735 EDA 2015
v.	:	
	:	Civil Division
CONSOLIDATED RAIL CORPORATION and NORFOLK SOUTHERN RAILWAY COMPANY	:	March Term, 2014, No. 002160

June 8, 2016

OPINION

Plaintiff, Carrie L. Jackson, as personal representative for the estate of Robert A. Jackson, appeals the jury verdict that Defendants, Consolidated Rail Corporation and Norfolk Southern Railway Company ("Conrail"), were not negligent.

FACTUAL HISTORY

Robert A. Jackson was hired by Conrail as a track man in 2008. Video Deposition ("V.D.") 4/12/12 p. 8. He began work on a 'tie-gang,' and was supervising a tie gang at the Bayonne Depot on March 28, 2011, when he had a heart attack. Oral Deposition ("O.D.") 4/12/12 p. 69, N.T. 6/23/15 p. 91. In his videotaped testimony, Mr. Jackson described feeling "something" in his chest in the late afternoon, when he picked up a jackhammer. V.D. 4/12/12 p. 21. His coworkers brought him back to his vehicle and a coworker, Jorge DaSilva, drove back to headquarters. O.D. 4/12/12 p. 75, 77, V.D. 4/12/12 p. 23. Mr. Jackson declined an offer to go to Concentra, a walk-in medical facility and opted instead to go to a "real" hospital near his home. O.D. 4/12/12 p. 78-79, V.D. 4/12/12 pp. 27-28. Mr. Jackson had surgery and was hospitalized

three to four weeks, and did not return to work. V.D. 4/12/12 p. 33. Mr. Jackson died on July 12, 2014.

PROCEDURAL HISTORY

On March 14, 2014, Plaintiff filed a Complaint.

On April 9, 2014, Defendant, Conrail, filed an Answer with New Matter.

On April 29, 2014, Plaintiff filed a Reply to New Matter.

On August 11, 2014, a Praecipe to Substitute Carrie L. Jackson for Robert A. Jackson was filed.

On March 25, 2015, Defendants filed a Motion in Limine to preclude evidence and argument regarding their alleged failure to provide medical assistance to Robert A. Jackson. The Motion was denied on June 23, 2015.

On April 20, 2015, Plaintiff filed a Motion in Limine to preclude evidence or testimony collateral source benefits. The Motion was granted on June 22, 2015.

On June 4, 2015, Defendant filed a Motion in Limine to preclude Plaintiff's expert, Dr. Donald Rubenstein, from testifying that Robert A. Jackson's heart attack was the result of his employment. On June 23, 2015, the Court entered an Order limiting the expert testimony of Dr. Rubenstein.

The matter went to trial with twelve jurors on June 22, 2015. Plaintiff presented five witnesses: Carrie Jackson, Brian Beck, John Cunha, Richard Kvartek, John Falcao and videotaped deposition testimony of Robert A. Jackson, Jorge DaSilva, and Donald Rubenstein, M.D. Defendant presented the videotaped deposition testimony of Howard Cobert, M.D. On June 26, 2015, the jury returned a verdict in favor of Defendant. No damages were awarded to Plaintiff. This appeal followed.

On July 2, 2015, Plaintiff filed a post-trial motion, which the Court denied on October 29, 2015.

On November 27, 2015, Plaintiff filed a Notice of Appeal to the Superior Court of Pennsylvania.

ISSUE ON APPEAL

In her 1925(b) statement, Plaintiff posits that: "[t]he jury verdict of 10 to 2 finding that Conrail was not negligent was against the weight of the evidence.[1]" Statement at ¶3.

DISCUSSION

When reviewing the sufficiency of evidence presented at trial, this Court must determine whether the evidence and all reasonable inferences therefrom, viewed in the light most favorable to the verdict winner, was sufficient to enable the factfinder to find against the losing party. Reichman v. Wallach, 452 A.2d 501 (Pa. Super. 1982). The decision to grant or deny a new trial based upon a claim that the verdict is against the weight of the evidence rests with the trial court. Dierolf v. Slade, 581 A.2d 649, 652 (Pa. Super. 1990). On appeal, the test is not whether the appellate court would decide the case in the same way but, rather, whether the jury's verdict was so contrary to the evidence as to shock one's sense of justice and "to make the award of a new trial imperative, so that right may be given another opportunity to prevail." Id. (quoting Commonwealth v. Taylor, 471 A.2d 1228, 1230 (Pa. Super. 1984)); Vattimo v. Eaborn Truck Service, Inc., 777 A.2d 1163, 1164-65 (Pa. Super. 2001).

[1] In her Concise Statement of Errors submitted pursuant to Rule 1925(b)(1), Appellant included twenty-two (22) separate issues. In six, (Nos.4, 5, 10, 16, 17, and 21), she argues the jury "improperly determined", "improperly listened" or "disregarded" testimony, argument or legal instructions during the trial. Many of the remaining issues revisit matters raised pre-trial in *motions in limine* or complain about arguments made by counsel during the trial. The Court considers Number 3, "The jury verdict of 10 to 2 finding that Conrail was not negligent was against the weight of the evidence" as the gravamen of Appellant's appeal.

"[T]he issue of negligence is one for juries to determine according to their finding of whether an employer's conduct measures up to what a reasonable and prudent person would have done under the same circumstances." Wilbert at 409.

In the instant matter, it was Plaintiff's burden to prove that Defendants were negligent and that Defendants' negligence caused or was a contributing factor to Mr. Jackson's harm. Plaintiff established only that Mr. Jackson's injury occurred during the scope of his employment and that his employment was in furtherance of the railroad's commerce. The evidence established that Mr. Jackson was a railroad employee on March 28, 2011 working at Defendants' track in Bayonne, New Jersey. N.T. 6/25/15 p. 78. Evidence established that Mr. Jackson suffered a heart attack on March 28, 2011. O.D. 4/12/12 p. 69, N.T. 6/23/15 p. 91. Evidence did not establish that Defendant was negligent and/or that Defendant's negligence played any part in Mr. Jackson's heart attack. *See* Lehman.

The jury verdict demonstrates that it found that the conduct of the Conrail employees was "what a reasonable and prudent person would have done under the same circumstances." *See* Wilbert at 409. The jury heard evidence that Mr. Jackson thought he pulled a muscle or was getting sick and believed he would be fine, and that his arm and chest hurt and that he felt something pop. N.T. 6/23/15 pp. 72, 106. He was provided aspirin. N.T. 6/23/15 pp. 96, 106, V.D. 11/19/14 pp. 19-20. Various Conrail employees asked Mr. Jackson several times if he wanted to go to the hospital or wanted an ambulance called. N.T. 6/23/15 pp. 73, 82, 126-127, 135, V.D. 11/19/14 p. 21. Mr. Jackson refused repeated offers and requested to be taken home. N.T. 6/23/15 pp. 73, 83. He effectively communicated in a clear manner to the people around him, stated that he wanted to go home, repeatedly refused offers to call an ambulance or to be taken to Concentra, or to a hospital. N.T. 6/23/15 pp. 73, 82-83, 108, 126-127, 135, V.D.

11/19/14 p. 21. He never stated that he believed he was having a heart attack. N.T. 6/23/15 p. 83-84. His words or actions did not give his coworkers any indication that he had a heart attack. V.D. 5/12/15 pp. 45-46, N.T. 6/23/15 p. 136. There was no evidence presented to indicate that Mr. Jackson was in a "helpless condition" and that his coworkers were aware of it.[2] Based on the above, the jury's verdict was not contrary to the weight of the evidence as to shock one's sense of justice, and the verdict was consistent with the competent evidence presented.

CONCLUSION

For all of the reasons stated above, this Court's decision should be affirmed.

By the Court:

ANN M. BUTCHART, J.

[2] In FELA cases, an employer must render medical assistance "when an employee, to the employer's knowledge, becomes so seriously ill while at work as to render him helpless to obtain medical aid or assistance for himself...." Bell v. Norfolk Southern Railway Company,476 S.E.2d 3, 5 (1996) (*citing* Handy v. Union Pacific Railroad, 841 p.2d 1210, 1221 (Utah Ct. App. 1992).