

April 24, 2019

An ALM Publication

# TEXAS

## HIDALGO COUNTY

### MOTOR VEHICLE

Broadside; Left Turn; Multiple Vehicle

## Plaintiff claimed motorist drove into his path, causing crash

**Amount** **\$536,007**  
**CASE** Jose Simon Arriaga Jr. v. Emily Montemayor, No. CL-17-8104-H  
**COURT** Hidalgo County Court at Law No. 8, TX  
**DATE** 4/24/2019  
**JUDGE** Omar Maldonado

#### PLAINTIFF

**ATTORNEY(S)** Candelario S. Trevino Jr.; Trevino Injury Law; San Antonio TX for Jose Simon Arriaga, Jr.  
Billy Loreda; Loreda Law Firm PLLC; Edinburg TX for Jose Simon Arriaga, Jr.

#### DEFENSE

**ATTORNEY(S)** John M. Schulz; Susan L. Florence & Associates; McAllen, TX for Emily Montemayor

**FACTS & ALLEGATIONS** On Jan. 13, 2017, plaintiff Jose Arriaga Jr., 32, a windshield repairman, was driving a sport utility vehicle in the inside northbound lane of North 10th Street, a two-lane road with a center lane for turns only, in Hidalgo County. Emily Montemayor pulled out from a

driveway on Arriaga's right and tried to turn left into the center lane. Arriaga struck the left side of her vehicle. Arriaga claimed that he suffered injuries of his back, a finger and his neck.

Arriaga sued Montemayor. He alleged that Montemayor was negligent in the operation of her vehicle.

Arriaga testified that Montemayor maneuvered through a gap in traffic on the outside lane to his right and then crossed into his lane. Arriaga claimed that he braked and steered to the right but was unable to avoid the collision. At the time of the impact, he said only the front half of Montemayor's vehicle was in the center turn lane and that the entire rear half was in his lane.

Montemayor claimed that a driver in the outside lane waved her across and when she looked for cars in the inside lane, it was clear. She did not see Arriaga until just before the impact, she said. She estimated that the front 80 to 85 percent of her vehicle was in the center turn lane at the time of the impact.

Defense counsel argued that it was just an accident and that Montemayor acted reasonably under the circumstances. He also argued that Arriaga failed to keep a proper lookout and that he was driving too fast for the traffic conditions.

**INJURY** On Feb. 9, about three weeks after the accident, Arriaga went to an injury clinic and a chiropractic clinic. He complained of neck, back and hand pain. Conservative care was recommended.

Arriaga ultimately claimed that he suffered cervical, thoracic and lumbar sprains, strains and stiffness; radicular pain in his shoulders; cervical and lumbar muscle spasms; protrusions or herniations of the L3-4, L4-5 and L5-S1 intervertebral discs; and a sprain of the radial collateral ligament of the proximal interphalangeal joint of the left ring finger, from contact with the steering wheel. He also claimed that the disc protrusions or herniations impinged on the thecal sac and that the L5-S1 protrusion or herniation impinged on a nerve root.

Arriaga underwent physical therapy until May 2017. He also claimed that he underwent an epidural steroid injection. He went to an orthopedic clinic and followed up with the pain management clinic in February 2018 and February 2019. Two additional epidural steroid injections were recommended, but Arriaga said he declined them to keep his medical bills down.

The pain management clinic's records indicated that Arriaga's lumbar and shoulder pain impaired his functions of daily living and that the lumbar pain was aggravated by standing, walking or sitting. The records also said that his finger pain was aggravated by sudden movements and work activity and that anti-inflammatory injections, which would cost \$7,000 to \$27,000, might help.

The orthopedic clinic's records said that Arriaga experienced cervical discomfort when lifting or

carrying and lumbar pain when lifting or stretching.

The treating pain management doctor testified that Arriaga's lumbar injury was permanent and likely would worsen over time. He further testified that Arriaga likely would experience at least one flare-up every other year and that he would need a round of treatment, including epidural steroid injections, for each flare-up. He estimated that the cost of all future treatment would be \$390,000.

Arriaga testified that he has difficulty getting in and out of bed, doing housework, sleeping, dressing and walking up stairs.

Plaintiff's counsel asked the jury to award \$23,669 for past medical expenses, \$390,000 for future medical expenses, \$23,669 for past physical pain and mental anguish, \$390,000 for future physical pain and mental anguish, \$23,669 for past physical impairment, and \$390,000 for future physical impairment.

The defense denied causation. Both vehicles sustained minor damage, and the defense argued that the property damage did not support a mechanism of injury. The defense also pointed to the gaps in treatment as showing that the injuries, if any, were minor.

**RESULT** The jury found that Montemayor was liable for the accident. It awarded Arriaga \$536,007.

**EDITOR'S NOTE** This report is based on information that was provided by plaintiff's counsel. Defense counsel did not respond to the reporter's phone calls.