

Patel v. Miller & United States, No. 99-cv-3938 (E.D. Pa., filed May 31, 2000)

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JYOTIKABEN PATEL  
and ARUN PATEL, h/w,  
Plaintiffs

v.

LEE ROY MILLER,  
and UNITED STATES OF AMERICA,  
Defendants

CIVIL ACTION

No. 99-cv-3938

**COMPLAINT**

Plaintiffs, JYOTIKABEN PATEL and ARUN PATEL, husband and wife, for their complaint against defendants LEE ROY MILLER and UNITED STATES OF AMERICA, state as follows:

**PARTIES**

1. Plaintiffs JYOTIKABEN PATEL and ARUN PATEL are husband and wife and are adult individuals residing within the Eastern District of Pennsylvania at 2828 Egypt Road, Apartment N-103, Audobon, Pennsylvania.
2. Defendant LEE ROY MILLER is an adult individual residing at 5019 Branston Road, Ooltewah, Tennessee.
3. Defendant UNITED STATES OF AMERICA, at all times material hereto, acted by and through its agent, servant, workman and/or employee, defendant MILLER,

who was then and there acting within the scope of his agency, servitude, work and/or employment.

### **JURISDICTION AND VENUE**

4. Plaintiffs incorporate herein by reference the allegations of paragraphs 1 through 3 above as though fully set forth at length.

5. Jurisdiction of this matter is premised upon 28 U.S.C. Sections 1346, 1392 and principles of pendent and/or ancillary jurisdiction. Plaintiffs' administrative claim was denied by the appropriate administrative agency on or about May 12, 2000, and a true and correct copy of the notice of denial is attached hereto as Exhibit "A."

6. Venue of this matter is premised upon 28 U.S.C. Section 1402.

### **FACTS**

7. Venue of this matter is premised upon 28 U.S.C. Section 1402.

8. On or about June 3, 1997, plaintiff-wife was operating a 1991 Chevrolet Cavalier owned by plaintiff-husband south on Allendale Road, approaching the intersection of Allendale Road and Keebler Road in the Township of Upper Merion, Montgomery County, Pennsylvania.

9. At the aforesaid place and time, defendant MILLER was operating a rental car north on Allendale Road approaching the intersection of Keebler Road.

10. At the aforesaid place and time, defendant attempted to execute a left-hand turn from the northbound lane of Allendale Road into a private driveway.

11. As defendant did so, he turned suddenly and without warning directly into plaintiffs' motor vehicle.

12. As a result of the aforesaid collision, plaintiff-wife was thrown about violently within her motor vehicle causing her to sustain serious personal injuries more fully set forth below.

13. The aforesaid collision was due solely to the negligence, carelessness and recklessness of defendants, and due in no manner whatsoever to any act or failure to act on the part of plaintiffs.

**COUNT I – JYOTIKABEN PATEL v. DEFENDANTS**

14. Plaintiff-wife incorporates the allegations of paragraphs 1 through 13 above herein by reference as though fully set forth at length.

15. The negligence, carelessness and/or recklessness of Defendants consisted of the following:

- (a) operating motor vehicle at an excessive rate of speed;
- (b) operating motor vehicle in excess of the prima facie speed limit;
- (c) failing to maintain an adequate lookout for vehicles upon the highway,  
including the vehicle of Plaintiffs;
- (d) failing to operate his motor vehicle in a manner which would enable him to  
stop within the assured clear distance ahead;
- (e) negligently applying the brakes of the motor vehicle;
- (f) failing to maintain control of his motor vehicle;
- (g) negligent entrustment of a motor vehicle;

- (h) failing to maintain the motor vehicle in an adequate state of repair;
- (i) disregarding posted warnings and restrictions governing travel on Allendale Road at or near its intersection with Keebler Road, at or near the scene of the accident;
- (j) operating his motor vehicle in a manner which violated the statutes and ordinances of the Commonwealth of Pennsylvania;
- (k) being otherwise negligent, careless and/or reckless under the circumstances.

16. As a result of the negligence, carelessness and/or recklessness of defendants, jointly and/or severally, plaintiff-wife sustained serious personal injuries including, but not limited to the following: cervical sprain and strain with cervical disc bulging; post-traumatic cephalgia; myofascial pain syndrome; shoulder strain and sprain; thoracic sprain and strain; post-traumatic stress reaction; together with other complications, the full extent of which are not yet known.

17. As a further result of the negligence, carelessness and/or recklessness of the defendants, jointly and/or severally, plaintiff-wife, has incurred and may in the future incur, medical expenses in and about endeavoring to cure herself of the aforesaid injuries.

18. As a further result of the negligence, carelessness and/or recklessness of the defendants, jointly and/or severally, plaintiff-wife has suffered and may in the future suffer, a loss of earnings and earning capacity, some or all of which may be permanent in nature.

19. As a further result of the negligence, carelessness and/or recklessness of defendants, jointly and/or severally, plaintiff-wife has experienced and may in the future

experience pain, suffering, inconvenience, emotional distress and a loss of life's pleasures.

WHEREFORE, Plaintiff, JYOTIKABEN PATEL, demands judgment in her favor, and against Defendants, jointly and/or severally in an amount not in excess of One Hundred and Fifty Thousand (\$150,000.00) Dollars, together with such further relief as deemed appropriate by the Court.

**COUNT II – ARUN PATEL v. DEFENDANTS**

20. Plaintiff-husband incorporates the allegations of paragraphs 1 through 19 above herein by reference as though fully set forth at length.

21. As a consequence of the conduct of defendants as aforementioned, plaintiff-husband has been, and may in the future be, deprived of the society, companionship, services and assistance of his wife, JYOTIKABEN PATEL.

22. As a further result of the conduct of defendants as aforesaid, plaintiff-husband sustained damage to his automobile.

WHEREFORE, Plaintiff, ARUN PATEL, demands judgment in his favor, and against Defendants, jointly and/or severally in an amount not in excess of One Hundred Fifty Thousand (\$150,000.00) Dollars, together with such further relief as deemed appropriate by the Court.

SOLOMON, BERSCHLER, WARREN,  
SCHATZ & FLOOD, P.C.

BY: \_\_\_\_\_  
JEFFRY S. PEARSON  
Attorney for Plaintiffs



OFFICE OF THE  
GENERAL COUNSEL

UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

May 12, 2000

VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Jeffry S. Pearson  
Solomon, Berschler, Warren, Shatz & Flood, P.C.  
522 Swede Street  
Norristown, PA 19401-4834

SUBJECT: Tort Claim No. 144 - Jyotika Patel

Dear Mr. Pearson:

The Nuclear Regulatory Commission (NRC) has considered your administrative claim dated May 8, 1999, presented under the Federal Tort Claims Act, as amended, 28 U.S.C. § 2671 et. seq.. The claim seeks \$255,000.00 in damages for your client, Ms. Patel.

The NRC has determined that your administrative claim fails to state a claim upon which relief can be granted. Therefore, your administrative claim is denied.

If you are dissatisfied with the NRC's action on this claim, you may file suit in an appropriate United States District Court not later than six months after the date of mailing of this notification of final denial of your claim. 10 C.F.R. § 14.37 (2000).

Sincerely,

A handwritten signature in cursive script, appearing to read "Donald F. Hassell".

Donald F. Hassell  
Assistant General Counsel  
for Administration

EXHIBIT "A"