



Suit: Bus's driver should have seen child before fatal accident

Amount: \$1,600,000

Type: Settlement

State: California

Venue: Alameda County

Court: Superior Court of Alameda County, Oakland, CA

Injury Type(s):

- *head* - fracture, skull
- *other* - death; crush injury

Case Type:

- *Wrongful Death*
- *Motor Vehicle* - Bus; Pedestrian
- *Emotional Distress* - Negligent Infliction of Emotional Distress

Case Name: Mary Annete Belcher, individually; Sosifa Joan Esera, individually; and Victoria Esera and Sosifa Esera Jr., by and through their Guardian ad Litem, Herb Thomas v. Alameda-Contra Costa Transit District, a public entity; Kelvin Watson, an individual; and Does 1 through 50, inclusive

Date: September 24, 2019

Plaintiff(s):

- Mary Belcher
- Sosifa Esera
- Victoria Esera
- Sosifa Esera Jr.
- Estate of Jeremiah Esera (Male, 2 Years)

Plaintiff Attorney(s):

- Michael E. Gatto; Van Blois & Associates; Oakland CA for Estate of Jeremiah Esera, Mary Belcher, Sosifa Esera, Victoria Esera, Sosifa Esera Jr.

Plaintiff Expert(s):

- Eric Rossetter Ph.D., P.E.; Accident Reconstruction; San Francisco, CA called by: Michael E. Gatto
- Jason Fries; Forensic Analysis; San Francisco, CA called by: Michael E. Gatto

Defendant(s):

- Kelvin Watson
- Alameda-Contra Costa Transit District

**Defense
Attorney(s):**

- Angela G. Mariveles; Alameda-Contra Costa Transit District; Oakland, CA for Alameda-Contra Costa Transit District, Kelvin Watson

**Defendant
Expert(s):**

- Louis Y. Cheng Ph.D.; Accident Reconstruction; Alameda, CA called by: for Angela G. Mariveles

Facts:

On Sept. 20, 2016, plaintiffs' decedent Jeremiah Esera, 2, and four other children were playing in a parking lot of an apartment complex on 35th Avenue, in the Fruitvale section of Oakland, near Penniman. The adjoining roadway had one lane in each direction and was generally residential. Near the apartment complex, street parking was allowed, and the speed limit was 25 mph. While Jeremiah was playing, he ran after a ball onto the roadway, which had numerous parked cars at that time, and he was struck by a bus driven by Kelvin Watson. Jeremiah died at the scene.

Jeremiah's parents, Mary Belcher and Sosifa Esera, and his minor siblings, Victoria Esera and Sosifa Esera Jr., acting by and through their guardian ad litem, Herb Thomas, sued Watson and Watson's employer, the Alameda-Contra Costa Transit District. Jeremiah's family alleged that Watson was negligent in the operation of the bus and that the Alameda-Contra Costa Transit District was vicariously liable for Watson's actions.

Jeremiah's family claimed that Watson should have seen Jeremiah prior to striking him and that Watson could have prevented or mitigated the collision.

Plaintiffs' counsel contended that Watson stopped to let a passenger off the bus about 160 feet before the point of impact and that Watson did not apply his brakes until after he had struck Jeremiah. The bus had multiple cameras, including one facing front, and they took the bus video, laser scanned the bus and the collision scene, and created an animation to establish what was "available to be seen" by Watson. Plaintiffs' counsel asserted that the animation established that Jeremiah was "available to be seen" from 4.2 to 3.1 seconds before impact, but that there was a large van parked along the curb immediately before the driveway to the apartment complex, where Jeremiah had been playing, and that as the bus and Jeremiah moved, Jeremiah was not "available to be seen." However, counsel asserted that the animation next showed that the ball first appeared in front of the bus 2.1 seconds before impact and that Jeremiah appeared in front of the bus 1.8 seconds before impact. The bus video had a "brake" light that appeared on the screen of the video when the brakes were applied. Plaintiffs' counsel contended that a review of the video suggested that Watson responded to the sound of Jeremiah bouncing off of the pavement into the undercarriage of the bus and that animation and videos established that Watson had a perception and reaction time of 1.3 seconds.

Defense counsel noted that Jeremiah's mother, Belcher, testified that she was using her cell phone while watching the children and that she had not seen Jeremiah for five minutes before she saw him running toward the street, when it was too late to stop him. Defense counsel also contended that Watson did not see Jeremiah prior to striking him and that the bus was traveling approximately 11 to 12 mph at the time of the incident. Counsel noted that law enforcement cited Vehicle Code § 21954A -- jaywalking -- as the primary collision factor and that three eyewitnesses reported to law enforcement that Watson had no chance to avoid the incident. Defense counsel asserted that Watson complied with the applicable standard of care and was not negligent in his operation of the bus. In addition, counsel asserted that Jeremiah's mother and father were at fault for not properly supervising their 2-year-old son.

Injury:

Jeremiah's skull was crushed and his brain was ejected. He died at the scene. Jeremiah was 2 years old. He was survived by his mother, Mary Belcher; father, Sosifa Esera; his 7-year-old sister, Victoria Esera; and his 4-year-old brother, Sosifa Esera Jr.

Belcher witnessed the bus strike and kill Jeremiah. She picked him up and held him until first responders arrived. Plaintiffs' counsel asserted that, based upon the negligent-infliction-of-emotional-distress claims, the photos of Jeremiah's injuries would be admitted at trial. However, the photos were tremendously graphic, and Belcher's clothing was covered in blood and cerebrospinal fluid, and caked with brain matter. Belcher testified in deposition that she was the only person that witnessed the incident. Her two children and Jeremiah's father were inside the apartment at the time of the incident. Esera did not witness the incident, but it was never established whether Victor and Sosifa Jr. saw the incident. However, the children saw and/or knew about the aftermath.

Jeremiah's family sought recovery of wrongful death damages for the loss of Jeremiah. Belcher, Victoria and Sosifa Jr. also sought recovery for the negligent infliction of emotional distress.

Result:

The parties agreed to a \$1.6 million settlement prior to trial. The Alameda-Contra Costa Transit District agreed to pay \$1.5 million to Belcher and Esera, and \$100,000 to Victoria and Sosifa Jr.

Trial Information:**Editor's
Comment:**

This report is based on information that was provided by plaintiffs' and defense counsel.