

IN THE CIRCUIT COURT OF THE 17th
JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

CASE NO.: 04-01894 21 CACE

PATSY SEETARAM and INDAR
SEETARAM, as co-personal
representatives of the ESTATE OF
KERRY SEETARAM, deceased,

Plaintiffs,

vs.

UNITED RENTALS, INC., a foreign
corporation for profit, d/b/a Advance
Barricades and Signing, Inc., and
RUPERT C. LENNON,

Plaintiffs,

ARBITRATION AWARD

The arbitration hearing in this matter was held on the 21st day of October, 2004. Having considered the pre-hearing briefs of the parties, the testimony of witnesses, the exhibits offered for consideration and arguments on behalf of the parties, and based upon the evidence presented at the arbitration hearing concerning the cause of action for the wrongful death of Kerry Seetaram, deceased, I hereby make the following findings:

This wrongful death action arises out of an automobile accident that occurred on January 2, 2004, between a truck owned by United Rentals, Inc., and operated by its employee, Rupert C. Lennon, and a Honda Civic owned and operated by Narendra Badrinarain. The Honda Civic contained four people. Kerry Seetaram, age 19, was seated in the backseat of the Honda Civic, behind the driver. The Honda Civic was

traveling southbound on the Florida Turnpike near the Hollywood Boulevard exit, at approximately 60-65 mph, according to two eyewitnesses. The speed limit is 65 mph. At approximately 3:25 p.m., Rupert C. Lennon, traveling in a northbound lane of the Florida Turnpike near the Hollywood Boulevard exit, made a u-turn at a break in the median, designated as an "Official Use Only" u-turn. Mr. Rupert was not working on the turnpike when he made the u-turn. Mr. Lennon made his u-turn directly into the path of the Honda Civic. According to the affidavits of the eyewitnesses, Catherine M. Kehlenbeck and Mario E. DeJesus, "[a]s soon as the pick up truck made the unexpected left turn directly in front of the Honda, I saw Mr. Badrinarain's brake lights turn on as he attempted to avoid striking the truck. Approximately one second later, I saw the front of his vehicle crash into the right front side of the pick up truck. Upon impact, the Honda bounced off the truck to the right and stopped between the right lane and the paved shoulder. The truck made a 180-degree turn to the left and came to a final rest facing northbound in the right lane."

The Defendant, United Rentals, Inc., concedes liability for causing the accident of January 2, 2004. It is undisputed that the Honda Civic in which the decedent was a passenger was modified. All of the seatbelts had been removed from the Honda Civic. The Defendants have raised as an affirmative defense the comparative negligence of, or the apportionment of fault with, the owner/driver of the Honda Civic and other unidentified non-parties who were responsible for modifying the car.

Dr. Rick Robertson, the Defendants' biomechanical expert, testified that if Kerry Seetaram had been utilizing a fully operational three-point seatbelt, she would have sustained injuries, "but they would not have cost her her life." He opined that the type

of injuries Kerry Seetaram would have sustained with a seatbelt include rib fractures, fracture of the sternum, soft tissue neck injuries, knee injuries, and injuries to the feet. He concurred with the Defendant's accident reconstruction expert, Phil Van Herle, that if Kerry Seetaram had been wearing a seatbelt, she would have been subjected to 30 to 40 G forces in the chest area. Dr. Robertson further opined that this is a survivable level of G forces in the chest area, and that 60 G forces is the level that one needs to stay below to survive.

Dr. Robertson also testified that if Kerry Seetarm had been wearing a seatbelt, her head would have been subjected to 40 to 50 G forces, another survivable level. He stated that 80G forces is the level that one needs to stay below to survive.

Dr. Robertson conceded that some people who wear a three point seatbelt in a high impact collision such as this one sustain fatal injuries. He also testified that when one sustains rib fractures, it is possible that a loose piece of the rib can puncture a lung. It was noted during his testimony that according to the medical examiner's autopsy report, Kerry Seetarm sustained multiple rib fractures, including a fracture of the right anterior rib 7, and laceration of the lower lobe of the right lung with extensive hemorrhage associated with the laceration. Dr. Robertson also stated that in a high impact collision, there is a greater concentration of load in the chest area with a three point seatbelt. Dr. Robertson did not personally inspect the Honda. He was told by Phil Van Herle, Defendants' accident reconstruction expert, that there was no major intrusion into the left rear compartment of the car, where Kerry Seetaram was seated.

Dr. Brian J. Benda, the Plaintiffs' biomedical engineer, testified that he personally inspected the Honda, which lasted from "mid-morning 'till late in the afternoon." Dr.

Benda opined that if Kerry Seetaram had worn a fully operational seatbelt, she would have sustained severe, if not fatal injuries, such as injury to the brain, spinal chord, and paraplegia. His opinion was based upon an aspect of the collision that was not considered by the Defendants' experts; namely, the fact that located in the cargo compartment of the Honda was a 14 ½" by 14" by 14" speaker, which he estimated to weigh approximately 20 pounds. Dr. Benda stated that during the collision the speaker pushed through the left rear seat back, the seatback flexed forward and the speaker went upward in a ramp effect, hitting the ceiling area above Kerry Seetaram's seat. Dr. Benda took photographs of gouge-type marks in the ceiling of the Honda that matched the measurements of the speaker and supported his opinion. Dr. Benda further stated that if Kerry Seetaram had been wearing a fully operational seatbelt, the seatback would not have flexed forward, the speaker would not have ramped upward, and the forces between the speaker and the rear seat would have created an augmentation or an additional loading into the torso. In other words, if Kerry Seetaram had been wearing a seatbelt, she would have been compressed between her seatbelt, the seatback, and the speaker. Dr. Benda conceded that he could not state that there was a more than 50% chance that death would have resulted if Kerry Seetaram had been wearing a seatbelt.

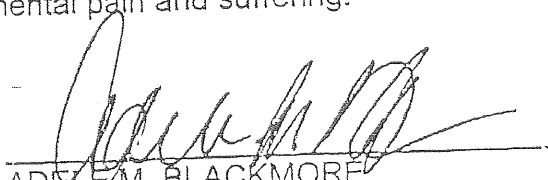
Having taken into consideration the testimony of the Defendants' expert witnesses and the Plaintiff's expert witness regarding the mechanism and degree of injury likely to have resulted with a fully, operational seatbelt available, I am not able to apportion any percentage of responsibility to the non-parties for the death of Kerry Seetaram. I find the greater weight of the evidence to be that under all the conditions

present at the time of the collision, Kerry Seetaram would have sustained severe or fatal injuries if she had been wearing a seatbelt. Therefore, I find that the modification of the Honda was not the proximate cause of the untimely death of Kerry Seetaram. I further find that based upon the evidence presented, the fatal injuries suffered by Kerry Seetaram were within the scope of the danger created by the negligent conduct of Rupert C. Lennon. *Gibson v. Avis Rent-A-Car System, Inc.*, 386 So. 2d 520 (Fla. 1980).

With regard to damages, there is no doubt that Kerry Seetaram was the pride and joy of her parents, Indar and Patsy Seetaram. Kerry Seetaram was a beautiful and vibrant 19 year-old young woman who enjoyed a close and loving relationship with both of her parents. Her tragic and untimely death is a profound loss that Indar and Patsy Seetaram will suffer for the rest of their lives.

Based upon the foregoing, I find the Defendants 100% responsible for the death of Kerry Seetaram, and as such, award the sum of \$6,347.00 to the estate for medical and funeral expenses; the sum of \$3,468,960.00 to Indar Seetaram for loss of support and service and mental pain and suffering; and the sum of \$4,520,160.00 to Patsy Seetaram for loss of support and service and mental pain and suffering.

Awarded this 28th day of October, 2004. -


ADELE M. BLACKMORE
Arbitrator

Copies furnished to:

John Elliott Leighton, Esq. (Counsel for Plaintiffs)
Randy R. Dow, Esq. (Counsel for Plaintiffs)