

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

November 15, 2023

Lyle W. Cayce
Clerk

No. 22-30750

TAMIKO SMITH-JORDAN,

Plaintiff—Appellant,

versus

RPM PIZZA, L.L.C.,

Defendant—Appellee.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:19-CV-14699

Before HIGGINBOTHAM, SMITH, and ELROD, *Circuit Judges.*

PER CURIAM:*

On March 23, 2019, LePaul Love, a pizza delivery driver for RPM Pizza (“RPM”),¹ was completing a delivery near Howard Avenue in New Orleans, Louisiana when he collided with Tamikso Smith-Jordan. Smith-Jordan later sued RPM Pizza, Love’s employer, arguing that RPM was liable for

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

¹ RPM Pizza is a Domino’s Pizza, LLC (“Domino’s”) franchise.

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Love’s negligence under a respondeat superior theory of liability.² RPM admitted that Love was driving in the course of his employment, and the case proceeded.

Evidence presented at trial included testimony regarding the accident, as well as Smith-Jordan’s injuries and medical treatment. RPM also introduced testimony of an accident reconstruction expert, evidence as to any “potential bias on the part of [Smith-Jordan’s] treating physician,” and competing medical testimony. The district court excluded evidence of RPM’s hiring, training, supervision, and employment policies; Love’s employment file; and the New Orleans’ Police Department Officer’s initial accident report (in favor of live testimony). The court allowed RPM to present evidence related to Smith-Jordan’s legal counsel, medical providers, medical payments and related arrangements, mitigation efforts, and her future medical needs.

After the six-day trial, the jury unanimously found Love bore no fault for the accident and thus declined to award Smith-Jordan damages. Smith-Jordan moved for a new trial, which the district court denied.

Before this Court, Smith-Jordan appeals the judgment, the trial rulings, and the order denying the motion for a new trial.

² Smith-Jordan also asserted claims against Love (individually) and Domino’s, but these claims were voluntarily dismissed before trial.

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A district court’s denial of a motion for a new trial “will be affirmed unless there is a clear showing of an absolute absence of evidence to support the jury’s verdict, thus indicating that the trial court had abused its discretion in refusing to find the jury’s verdict contrary to the great weight of the evidence.”³

We have reviewed the briefs, the applicable law, and pertinent parts of the record; we have also heard oral argument. The judgment is **AFFIRMED**, essentially for the reasons stated in the district court’s “Order and Reasons” issued on October 28, 2022, denying Smith-Jordan’s motion for a new trial.

³ *Vital v. Nat’l Oilwell Varco, L.P.*, 685 F. App’x 355, 359 (5th Cir. 2017) (unpublished) (per curiam) (quoting *Lane v. R.A. Sims, Jr., Inc.*, 241 F.3d 439, 444 (5th Cir. 2001)).