

DOCKET NO.: X03-HHD-CV11-6032094-S : SUPERIOR COURT
: :
JAMES J. DESALLE, ET AL. : COMPLEX LITIGATION DOCKET
: :
v. : JUDICIAL DISTRICT OF HARTFORD
: :
WAL-MART STORES EAST, LP, ET AL. : October 3, 2016

ORDER ON WAL-MART'S MOTION IN LIMINE
RE: LOST WAGES OR DIMINISHED EARNING CAPACITY

Before the Court are defendant Wal-Mart Stores East, LP's (Wal-Mart) motion in limine re: preclusion of evidence of lost wages or diminished earning capacity (motion), by way of its August 22, 2016 joinder (#395.00) to Cooper Tire & Rubber Company's motion in limine (#380.00), plaintiffs' opposition thereto (#428.00) and plaintiffs' supplemental memorandum (#446.00).¹ In its motion, Wal-Mart seeks to preclude any testimony or other evidence concerning any claims for lost wages or diminished earning capacity by plaintiffs Juveniano Videira, Eleanor Videira, and Maria Videira. For the reasons stated below, Wal-Mart's motion is granted. See Practice Book § 15-3.

First, as it concerns plaintiffs Juveniano Videira and Eleanor Videira, the plaintiffs do not oppose Wal-Mart's motion. (#428.00.) For that reason, Wal-Mart's motion is granted as to Juveniano Videira and Eleanor Videira.

Second, with respect to plaintiff Maria Videira, the Court has reviewed the operative complaint, which is plaintiffs' Second Amended Complaint dated October 3, 2014 (#214.00). Simply put, such complaint contains no allegation, even under the broadest construction, to suggest that plaintiff Maria Videira is making a claim for lost wages or diminished earning capacity. Instead, the only allegations therein relating to any plaintiff seeking damages for lost

¹ Oral argument took place on September 23, 2016.

wages or diminished earning capacity are contained in Count One, ¶ 12, and Count Two, ¶ 13, which set forth the following identical allegation: “As still further result of the crash, JAMES DESALLE has suffered lost wages and an impairment or destruction of his earning capacity.” The Court further notes that this allegation’s predecessor in the plaintiffs’ Amended Complaint dated August 12, 2011 (#129.00) included Juveniano Videira, Eleanor Videira, and Maria Videira, in addition to James DeSalle.

As acknowledged by the plaintiffs in their supplemental memorandum (#446.00), “[i]t is fundamental in our law that the right of a [party] to recover is limited to the allegations in his [pleading]. . . .” (Alterations in original; citation omitted; internal quotation marks omitted.) *Boccanfuso v. Conner*, 89 Conn. App. 260, 286, 873 A.2d 208, cert. denied, 275 Conn. 905, 882 A.2d 668 (2005); see also *Doyle v. Russell*, 5 Conn. App. 480, 482, 499 A.2d 1169 (1985) (affirming judgment to the extent trial court did not submit to jury plaintiff’s loss of future earning capacity where “[i]n his substituted complaint, the plaintiff failed to allege a loss of future earning capacity”). For this reason, as it concerns plaintiff Maria Videira, Wal-Mart’s motion is granted.

It is so ordered.

 10/3/16

Ingrid L. Moll
Superior Court Judge