

[Cite as *Ahmad v. Ohio Dept. of Transp.*, 2004-Ohio-1352.]

IN THE COURT OF CLAIMS OF OHIO

SHAHEED AHMAD :  
 :  
 Plaintiff :  
 :  
 v. : CASE NO. 2003-11321-AD  
 :  
 OHIO DEPARTMENT OF : MEMORANDUM DECISION  
 TRANSPORTATION :  
 :  
 Defendant :  
 :  
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FINDINGS OF FACT

{¶1} 1) On October 24, 2003, at approximately 1:40 p.m., plaintiff, Shaheed Ahmad, was traveling on Interstate Route 75 south, between mileposts 6.47 and 7.91 in Hamilton County, when his automobile struck an object lying in the roadway, causing property damage to the vehicle.

{¶2} 2) Plaintiff has filed this complaint seeking to recover \$500.00, his insurance coverage deductible for automobile repair, which he contends he incurred as a result of negligence on the part of defendant, Department of Transportation, in failing to maintain the roadway. Plaintiff submitted the filing fee on November 14, 2003.

{¶3} 3) Defendant has denied liability based on the fact that it had no knowledge that the debris was present in the roadway prior to the incident. Furthermore, defendant asserts that plaintiff has failed to show, by a preponderance of the evidence, that defendant, in a general sense, maintains its highways negligently.

{¶4} 4) Plaintiff has submitted no evidence to indicate the length of time that the debris existed in the roadway prior to his encountering it.

CONCLUSIONS OF LAW

{¶5} 1) Defendant has the duty to keep roads in a safe, drivable condition. *Amica Mutual v. Dept. of Transportation* (1982), 81-02289-AD.

{¶6} 2) Defendant must exercise due care and diligence in the proper maintenance and repair of highways. *Hennessey v. State of Ohio Highway Department* (1985), 85-02071-AD. Breach of this duty, however, does not necessarily result in liability. Defendant is only liable when plaintiff proves, by a preponderance of the evidence, either: 1) defendant had actual or constructive notice of the debris and failed to respond in a reasonable time or responded in a negligent manner, or 2) that defendant, in a general sense, maintains its highways negligently. *Denis v. Department of Transportation* (1976), 75-0287-AD; *O'Hearn v. Ohio Department of Transportation* (1985), 84-03278-AD.

{¶7} 3) There is no evidence that defendant had actual notice of the existence of the debris.

{¶8} 4) The trier of fact is precluded from making an inference of defendant's constructive notice, unless plaintiff presents evidence in respect to the time the debris appeared on the roadway. *Spires v. Highway Department* (1988), 61 Ohio Misc. 2d 262.

{¶9} 5) In order for there to be constructive notice, plaintiff must show sufficient time has elapsed after the dangerous condition appears, so that under the circumstances, defendant should have acquired knowledge of its existence. *Guiher v. Jackson* (1978), 78-0126-AD.

{¶10} 6) No evidence has shown defendant had constructive notice of the debris.

{¶11} 7) Furthermore, plaintiff has failed to show defendant negligently maintained its highways.

{¶12} Having considered all the evidence in the claim file and, for the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

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DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

Shaheed Ahmad  
1121 Imprint Lane  
Forest Park, Ohio 45240

Plaintiff, Pro se

Gordon Proctor, Director  
Department of Transportation  
1980 West Broad Street  
Columbus, Ohio 43223

For Defendant

DRB/RDK/laa  
2/24  
Filed 3/3/04  
Sent to S.C. reporter 3/19/04