

MASSACHUSETTS Lawyers Weekly

Type of Action:	Negligence - rear-end motor vehicle accident
Injuries Alleged:	cervical and lumbar radiculopathy
Name of Case:	Dias v. Arbella Insurance
Judge or jury:	N/A - Underinsured Arbitration
Damages Awarded:	None
Date:	July 8, 2021
Demand:	\$225,000.00
Highest Offer:	\$5,000.00
Special Damages:	\$62,163.91 and continuing
Attorney for plaintiff:	Withheld
Attorney for defendant:	Jason R. Scopa, Law Offices of Peter E. Flynn, P.C., Saugus

The plaintiff was rear-ended while slowing to enter a rotary in Revere on January 9, 2019. After receiving the \$25,000 policy limit from the carrier for the motorist that hit the plaintiff, as well as approximately \$5,000 in PIP benefits, she filed this underinsured claim with her own carrier.

The plaintiff submitted medical bills totaling \$15,633.91. In addition, she claimed to have suffered lost wages so far totaling \$46,530.00 along with a continuing reduction in her annual income since the accident since she had to change careers.

Prior to the accident, according to the plaintiff, she earned \$58,000 per year as a manicurist / pedicurist and she was also extremely active. She testified as to her treatment with urgent care, physical therapy, primary care, and a pain management specialist, none of whom were able to alleviate the neck pain radiating into the upper extremities or the low back pain radiating into her legs. Lumbar MRI results indicated a disc bulge with mild impingement, but no medical expert specifically related this finding to the accident. Ms. Dias testified that

she was unable return to the same employment since she was no longer able to sit or bend for more than a few minutes without pain. She ultimately secured employment at a clothing store earning less than she had been before the accident.

The arbitrator ultimately found that the plaintiff's accident-related damages did not exceed the \$30,000 she had already received. No compensation was awarded. The most critical factors seemed to be (a) tax returns and W2 forms did not support the wage claim, and (b) the plaintiff's PCP examined her three months after the accident and noted in her chart that there seemed to be no clinical reason she could not be back at work.