

MEMORANDUM

FILED  
MAR 28 2014  
COUNTY CLERK  
QUEENS COUNTY

ORIGINAL

MDEC

SUPREME COURT - QUEENS COUNTY  
IAS PART 36

-----X  
ANIL SEHGAL and RENU SEHGAL,

Plaintiff(s),

-against-

WWW.NYAIRPORTBUS.COM, INC, and  
SHEIKH S. ISLAM,

Defendant(s).  
-----X

Index No.: 26872/10

Motion Date CMP: 1/11/13  
(Rev'd Pt. 36 1/19/13)

Motion Cal. No. CMP: 122

Motion Seq. No.: 7

Settlement Conference  
Date 1/9/14

In the interest of judicial economy, this matter was set down for a settlement conference for January 9, 2014, by order dated November 22, 2013. However, despite the Court's best efforts, no settlement was reached.

Defendants' now move, pursuant to CPLR 4404, 4545 and 5041, to set aside the verdict from July 3, 2013, reduce the awarded damages, and for a collateral source hearing.

Plaintiffs cross move to enter their proposed judgment and bill of costs.

Defendants argue that the \$505,050 granted to plaintiff Anil Sehgal for future medical expenses "are excessive, not supported by the evidence, and are based upon uninformed speculation and must be dismissed." Similarly, they allege that the award of \$100,000 to plaintiff Renu Sehgal for loss of her husband's services was "excessive, shock

the conscience, and should be reduced." However, defendants failure to include a copy of the trial transcript renders it impossible for the Court to divine precisely how the damages were unsupported by the evidence, based on "uninformed speculation" or shocked anyone's conscience (see e.g. *Gerhardt v New York City Tr. Auth.*, 8 AD3d 427 [2004]).

Even overlooking this fatal defect, defendants' motion would nevertheless be denied. Defendants cite to a litany of cases to suggest that the verdict in this case was excessive and should, at the very least, be reduced (see *Mohammed v New York City Tr. Auth.*, 80 AD3d 677 [2d Dept 2011]; *Flores v Parkchester Preservation Co., L.P.*, 42 AD3d 318 [1st Dept 2007]; *Grant v City of New York*, 4 AD3d 158 [1st Dept 2004]; *Strangio v New York Power Auth.*, 275 AD2d 945 [4th Dept 2000]). Yet, plaintiffs counter this assertion first by factually distinguishing defendants' cases or demonstrating why they are not controlling in the Second Department, and next by citing to a number of cases of their own where comparable damages were found proper (see *Kayes v Liberati*, 104 AD3d 739 [2d Dept 2013]; *Deandino v New York City Tr. Auth.*, 105 AD3d 801 [2d Dept 2013]; *Gualpa v Key Fat Corp.*, 98 AD3d 650 [2d Dept 2012]; *Nunez v City of New York*, 85 AD3d 885 [2d Dept 2011]).

Moreover, plaintiffs provide portions of the trial transcript and admitted evidence establishing that the jury was provided with ample expert testimony to justify their monetary awards. It is settled law that the question of damages is the province of the jury and that their finding "will not be disturbed unless the award deviates materially from what would be reasonable compensation" (*Graves v New York City Tr. Auth.*, 81 AD3d 589, 589

[2d Dept 2011]), or unless it is "contrary to the weight of the evidence" (*Smith v Bywise Holding, LLC*, 106 AD3d 902, 903[2d Dept 2013]). Defendants proffer no conclusive proof that either of these scenarios occurred here.

Defendants also argue that they are entitled to a collateral source hearing, pursuant to CPLR 4545, because the award should be offset by anticipated contributions from Medicare. However, "those benefits provided under title XVIII of the Social Security Act cannot be used to offset a plaintiff's award" (*Bryant v New York City Health and Hosps. Corp.*, 93 NY2d 592, 609 [1999]; see also CPLR 4545[a]; Alexander, Practice Commentaries, McKinney's Cons Laws of NY, 2008 Electronic Update, CPLR C4545:2). Title XIII of the Social Security Act deals expressly with Medicare, rendering the subject of that branch of defendant's motion moot. Though it is possible that other collateral sources exist, the lack of any supporting evidence for this contention would require the Court to speculate on the appropriateness of granting a collateral source hearing.

Plaintiffs' cross motion to have their proposed judgment, reduced to present value, and bill of costs entered is granted.

Submit judgment.

FILED  
MAR 20 2014  
COUNTY CLERK  
QUEENS COUNTY

DICCIA T. PINEDA-KIRWAN, J.S.C.

Dated: March 6, 2014