Jones v City of New York

2011 NY Slip Op 00279

Decided on January 20, 2011

Appellate Division, First Department

Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.

This opinion is uncorrected and subject to revision before publication in the Official Reports.

Decided on January 20, 2011
Tom, J.P., Mazzarelli, Friedman, Renwick, DeGrasse, JJ.

4087 8009/05

[*1]Lucille Jones, Plaintiff-Respondent,

v

The City of New York, Defendant-Appellant.

Michael A. Cardozo, Corporation Counsel, New York
(Elizabeth S. Natrella of counsel), for appellant.
Kramer & Dunleavy, LLP, New York (Denise M. Dunleavy of
counsel), for respondent.

Judgment, Supreme Court, Bronx County (Dominic R. Massaro, J.), entered October 30, 2009, upon a jury verdict awarding plaintiff the principal amount of $800,000 for past emotional pain and suffering arising from a loss of sepulcher, unanimously modified, on the facts, to vacate the award and order a new trial as to damages, unless plaintiff, within 30 days of service of a copy of this order with notice of entry, stipulates to accept a reduced award in the amount of $400,000 and to entry of an amended judgment in accordance therewith, and otherwise affirmed, without costs.

The evidence adduced at this trial on the issue of damages established that after informing plaintiff that her 51-year-old son had died and after two of plaintiff's other children identified the decedent's body at the office of the medical examiner, defendant improperly released the body of the decedent to a funeral home in Pennsylvania, where he was ultimately buried. Several days later, the decedent's body was exhumed and returned to New York, where, because of the passage of time, cremation of the body was required. Under these circumstances, the award of $800,000 deviates materially from what is reasonable compensation to the extent indicated (*see Duffy v New York*, 178 AD2d 370 [1991], *lv denied* 81 NY2d 702 [1993]; *see also Emeagwali v Brooklyn Hosp. Ctr.*, 60 AD3d 891 [2009]).

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: JANUARY 20, 2011

CLERK

Return to Decision List