

Ramos v New York City Tr. Auth.
2011 NY Slip Op 08986
Decided on December 13, 2011
Appellate Division, First Department
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Decided on December 13, 2011

Mazzarelli, J.P., Andrias, Renwick, Freedman, Manzanet-Daniels, JJ.

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[*1]Luis Ramos, Plaintiff-Respondent,

v

New York City Transit Authority, Defendant-Appellant.

Gruvman, Giordano & Glaws, LLP, New York (Charles T. Glaws of counsel), for appellant.
Alexander J. Wulwick, New York, for respondent.

Judgment, Supreme Court, Bronx County (Stanley Green, J.), entered April 15, 2010, upon a jury verdict, apportioning liability at 100% to defendant and awarding plaintiff, *inter alia*, the principal amounts of \$270,000 for past pain and suffering and \$325,000 for future pain and suffering over nine years, unanimously affirmed, without costs.

The verdict was based on legally sufficient evidence and was not against the weight of the evidence (*see generally McDermott v Coffee Beanery, Inc.*, 9 AD3d 195, 206 [2004]).

The jury reasonably concluded that defendant's bus was negligent in striking the partially opened door and front panel of plaintiff's car, and rejected the defense theory that plaintiff caused the accident by opening the door into the side of the passing bus. While the jury apparently found that plaintiff was negligent in leaving his door partially open, it fairly found that such negligence was not a substantial factor in causing the accident, in light of the photographic evidence.

Defendant's assertion that the verdict was irreconcilably inconsistent is unpreserved since it failed to raise this issue before the court discharged the jury (*see Gavitt v Citnalta Constr. Corp.*, 33 AD3d 406 [2006]). Were we to review this argument, we would find that "the verdict can be reconciled with a reasonable view of the evidence" (*Rodriguez v New York City Tr. Auth.*, 67 AD3d 511, 511 [2009]).

The awards for past and future pain and suffering do not deviate materially from what would be reasonable compensation (CPLR 5501[c]). The evidence showed that as a result of the accident, plaintiff, who was 59 years old at the time, sustained multiple disc herniations in his lumbar spine, and four years after the accident underwent a combined discectomy, laminectomy and spinal fusion of his lumbar spine, with insertion of metal plates and screws, which did not provide relief (*see e.g. Vargas v ML 1188 Grand Concourse, L.P.*, 24 AD3d 104 [2005]; *Valentin v City of New York*, 293 AD2d 313 [2002]). Furthermore, plaintiff's medical expert testified with respect to the permanency of plaintiff's pain, his loss of function, and [*2] nerve damage, and defendant did not challenge this testimony by calling its own expert (*see Rubin v First Ave. Owners*, 209 AD2d 367 [1994]).

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

ENTERED: DECEMBER 13, 2011

CLERK

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