

<b>Bouzas v Kasher Deluxe Rest.</b>
2011 NY Slip Op 03123
Decided on April 19, 2011
Appellate Division, First Department
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Decided on April 19, 2011

Andrias, J.P., Saxe, Moskowitz, Richter, Manzanet-Daniels, JJ.

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**[\*1]Bill Bouzas, et al., Plaintiffs-Appellants, —**

**v**

**Kasher Deluxe Restaurant, et al., Defendants-Respondents.**

Sullivan Papain Block McGrath & Cannavo, P.C., New York  
(Stephen C. Glasser of counsel), for appellants.

Thomas D. Hughes, New York (David D. Hess of counsel), for  
respondents.

Judgment, Supreme Court, New York County (Eileen A. Rakower, J.), entered March 22, 2010, insofar as appealed from, upon a jury verdict, awarding plaintiffs the principal amount of \$10,000 for past pain and suffering and \$0 for future pain and suffering, unanimously modified, on the facts, to vacate the award for past pain and suffering and direct a new trial on the issue of such damages only, and otherwise affirmed, without costs, unless defendants, within 30 days of service of a copy of this order with notice of entry, stipulates to increase the award for past pain and suffering to \$100,000.

Plaintiff Bill Bouzas sustained injuries when he slipped and fell on a wet floor inside defendants' restaurant. Following the accident, plaintiff was taken to the hospital where X-rays showed that he suffered an acute dislocation of the right shoulder, which through closed reduction, was put back in place. Plaintiff's arm remained immobilized for some time, and he began physical therapy. Plaintiff alleged that he made scant progress in his recovery, and sought further medical attention. Several months after the accident, he underwent surgery which, inter alia, repaired a torn rotator cuff.

The determination that plaintiff did not sustain a permanent injury as a result of the accident was supported by the weight of the evidence (*see generally McDermott v Coffee Beanery, Ltd.*, 9 AD3d 195, 206 [2004]). Due to his fall, plaintiff sustained a dislocated shoulder, and the evidence demonstrated that his residual rotator cuff injury was preexisting and not caused by the dislocation.

However, we find that the award of \$10,000 for past pain and suffering deviates materially from what would be reasonable compensation under the circumstances (CPLR [\*2]5501[c]; *see e.g. Shifrel v Singh*, 61 AD3d 401 [2009]; *Miller v Tocopina*, 34 AD3d 254 [2006]).

We have considered plaintiffs' remaining arguments and find them unavailing.

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

ENTERED: APRIL 19, 2011

CLERK

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