

Hammond v Diaz
2011 NY Slip Op 01802
Decided on March 8, 2011
Appellate Division, Second Department
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Decided on March 8, 2011

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND JUDICIAL DEPARTMENT
WILLIAM F. MASTRO, J.P.
PETER B. SKELOS
JOHN M. LEVENTHAL
SHERI S. ROMAN, JJ.

2010-02334
(Index No. 6383/04)

[*1]Raymond Hammond, et al., respondents,

v

Lea M. Diaz, et al., appellants.

Leahey & Johnson P.C., New York, N.Y. (Peter James Johnson, Jr., James P. Tenney, Gabriel M. Krausman, Joann Filiberti, and Andrew Pistor of counsel), for appellants.
Barry E. Greenberg, P.C., Farmingdale, N.Y., for respondents.

DECISION & ORDER

In an action to recover damages for personal injuries, etc., the defendants appeal from a

judgment of the Supreme Court, Queens County (Grays, J.), entered February 1, 2010, which, upon a jury verdict on the issue of liability finding them 100% at fault in the happening of the accident, upon the denial of their motion pursuant to CPLR 4404(a), inter alia, to set aside the jury verdict on the issue of liability and for judgment as a matter of law, and upon a jury verdict on the issue of damages finding that the plaintiff Raymond Hammond sustained damages in the sums of \$2,000,000 for past pain and suffering, and \$2,000,000 for future pain and suffering over a 40-year period, and that the plaintiff Selina Archibald-Hammond sustained damages in the sums of \$500,000 for past loss of services, and \$500,000 for future loss of services over a 40-year period, is in favor of the plaintiffs and against them.

ORDERED that the judgment is modified, on the facts and in the exercise of discretion, by deleting the provisions thereof awarding the plaintiff Raymond Hammond the sum of \$2,000,000 for past pain and suffering, and awarding the plaintiff Selina Archibald-Hammond the sums of \$500,000 for past loss of services, and \$500,000 for future loss of services over a 40-year period; as so modified, the judgment is affirmed, with costs to the defendants, and a new trial is granted with respect to those damages only unless, within 30 days after service upon the plaintiffs of a copy of this decision and order, the plaintiff Raymond Hammond serves and files in the office of the Clerk of the Supreme Court, Queens County, a written stipulation consenting to reduce the verdict as to damages for past pain and suffering from the sum of \$2,000,000 to the sum of \$1,500,000, and the plaintiff Selina Archibald-Hammond serves and files in the office of the Clerk of the Supreme Court, Queens County, a written stipulation consenting to reduce the verdict as to damages for past loss of services from the sum of \$500,000 to the sum of \$100,000, and future loss of services from the sum of \$500,000 over a 40-year period to the sum of \$100,000 over a 40-year period; in the event that the plaintiffs so stipulate, then the judgment, as so reduced and amended, is affirmed, without costs or disbursements.

On the afternoon of February 4, 2004, the plaintiff Raymond Hammond (hereinafter the plaintiff), was crossing the street at the T-intersection of 79th Avenue and 146th Street in Queens, when he was struck by a car owned by the defendant Lea M. Diaz and driven by her son, the defendant Michael Diaz (hereafter the defendant driver). The defendant driver was turning left onto 146th Street when he struck the plaintiff, who was in the middle of the unmarked crosswalk, causing the plaintiff to sustain various [*2]painful and permanently disabling injuries that led to, among other treatment, a 3½-month hospital stay and an

approximately 1-month stay in a residential rehabilitation center.

Before a court can conclude that a jury verdict is not supported by legally sufficient evidence, it must first find that there is "simply no valid line of reasoning and permissible inferences which could possibly lead rational [people] to the conclusion reached by the jury on the basis of the evidence presented" (*Cohen v Hallmark Cards*, 45 NY2d 493, 499). The evidence must be viewed in the light most favorable to the prevailing party (*see Dublis v Bosco*, 71 AD3d 817). Here, the proof established that the defendant driver, inter alia, failed to see that which he should have seen through the proper use of his senses when he turned left into the subject intersection, striking the plaintiff (*see Barbieri v Vokoun*, 72 AD3d 853; *Domanova v State of New York*, 41 AD3d 633, 634; *Larsen v Spano*, 35 AD3d 820, 822). Accordingly, there was legally sufficient evidence supporting the jury's verdict in favor of the plaintiffs and against the defendants. Further, the apportionment of 100% fault to the defendants was based on a fair interpretation of the evidence and, thus, was not contrary to the weight of the evidence (*see Nicaastro v Park*, 113 AD2d 129, 133; *De La Cruz v New York City Tr. Auth.*, 48 AD3d 508; *Won Sok Kim v New York City Tr. Auth.*, 29 AD3d 984).

The damages awards, except as to future pain and suffering, deviate materially from what would be reasonable compensation to the extent indicated herein.

MASTRO, J.P., SKELOS, LEVENTHAL and ROMAN, JJ., concur.

ENTER:

Matthew G. Kiernan

Clerk of the Court

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