

Davison v New York City Tr. Auth.
2011 NY Slip Op 06244
Decided on August 16, 2011
Appellate Division, Second Department
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Decided on August 16, 2011

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND JUDICIAL DEPARTMENT
PETER B. SKELOS, J.P.
ARIEL E. BELEN
L. PRISCILLA HALL
SHERI S. ROMAN, JJ.

2010-04190
(Index No. 39291/04)

[*1]Clyde Davison, appellant,

v

New York City Transit Authority, respondent.

Friedman, Khafif & Sanchez, LLP (Arnold E. DiJoseph, P.C.,
New York, N.Y., of counsel), for appellant.
Wallace D. Gossett (Steve S. Efron, New York, N.Y., of
counsel), for respondent.

DECISION & ORDER

In an action to recover damages for personal injuries, the plaintiff appeals from a

judgment of the Supreme Court, Kings County (Bayne, J.), entered March 18, 2010, which, upon a jury verdict on the issue of liability finding that the defendant was 70% at fault in the happening of the accident and a jury verdict on the issue of damages finding that he sustained damages in the principal sums of only \$150,000 for past pain and suffering and \$66,000 for future pain and suffering, is in favor of him and against the defendant in the principal sums of only \$105,000 (70% of \$150,000) for past pain and suffering and \$46,200 (70% of \$66,000) for future pain and suffering.

ORDERED that the judgment is reversed, on the facts and in the exercise of discretion, with costs, and a new trial is granted on the issue of damages, unless within 30 days after service upon the defendant of a copy of this decision and order, the defendant shall serve and file in the office of the Clerk of the Supreme Court, Kings County, a written stipulation consenting to increase the verdict on the issue of damages as to past pain and suffering from the principal sum of \$150,000 to the principal sum of \$275,000, and as to future pain and suffering from the principal sum of \$66,000 to the principal sum of \$175,000, and to the entry of an appropriate amended judgment; in the event the defendant so stipulates, then the judgment, as so increased and amended, is affirmed, without costs or disbursements.

The plaintiff was struck by a train and sustained personal injuries, including a fractured clavicle and a fractured scapula. Based upon the evidence presented at the trial, the award of damages for past and future pain and suffering deviated from what would be reasonable compensation to the extent indicated herein (*see* CPLR 5501[c]).

In light of our determination, we need not reach the plaintiff's alternative contentions.
SKELOS, J.P., BELEN, HALL and ROMAN, JJ., concur. [*2]

ENTER:

Matthew G. Kiernan

Clerk of the Court

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