

Perone v City of New York
2011 NY Slip Op 06024
Decided on July 19, 2011
Appellate Division, Second Department
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Decided on July 19, 2011

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND JUDICIAL DEPARTMENT
DANIEL D. ANGIOLILLO, J.P.
THOMAS A. DICKERSON
L. PRISCILLA HALL
SHERI S. ROMAN, JJ.

2010-03530
(Index No. 19458/06)

[*1]Maria Perone, respondent,

v

City of New York, defendant, New York City Transit Authority, et al., appellants.

Wallace D. Gossett (Steve S. Efron, New York, N.Y., of counsel),
for appellants.
Certain & Zilberg, PLLC, New York, N.Y. (Michael Zilberg
of counsel), for respondent.

DECISION & ORDER

In an action to recover damages for personal injuries, the defendants New York City

Transit Authority, Metropolitan Transportation Authority, and Frank D. Simpson appeal, as limited by their brief, from so much of a judgment of the Supreme Court, Queens County (Kelly, J.), entered February 22, 2010, as, upon a jury verdict on the issue of damages finding that the plaintiff sustained damages in the principal sums of \$65,000 for past pain and suffering and \$115,000 for future pain and suffering, is in favor of the plaintiff and against them in the principal sum of \$180,000.

ORDERED that the judgment is modified, on the facts and in the exercise of discretion, by deleting the provision thereof awarding the plaintiff the principal sum of \$115,000 for future pain and suffering; as so modified, the judgment is affirmed insofar as appealed from, with costs to the appellants, and the matter is remitted to the Supreme Court, Queens County, for a new trial on the issue of damages for future pain and suffering only, unless within 30 days after service upon the plaintiff of a copy of this decision and order, the plaintiff shall serve and file in the office of the Clerk of the Supreme Court, Queens County, a written stipulation consenting to reduce the amount of damages for future pain and suffering from the principal sum of \$115,000 to the principal sum of \$30,000, and to the entry of an appropriate amended judgment; in the event that the plaintiff so stipulates, then the judgment, as so reduced and amended, is affirmed insofar as appealed from, without costs or disbursements.

On March 8, 2006, at approximately 2:30 P.M., the plaintiff was struck by a bus owned by the defendants New York City Transit Authority and the Metropolitan Transportation Authority, and driven by the defendant Frank D. Simpson (hereinafter collectively the defendants). At the time of the accident, the bus was traveling at a speed of approximately three miles per hour. The plaintiff sustained a minimally displaced left clavicle fracture and a nondisplaced fracture of the greater trochanter, the non-weight bearing part of the hip joint. The fractures did not require surgery or a hospital stay, and healed completely. At the time of the trial, the plaintiff complained only of pain, for which she took prescription-strength Motrin a few days per week, shoulder snapping, and some shoulder instability and weakness. The plaintiff did not limp and did not have any arthritis in [*2]either her shoulder or her hip. A jury found in favor of the plaintiff and against the defendants and awarded the plaintiff the principal sums of \$65,000 for past pain and suffering and \$115,000 for future pain and suffering for a period of five years, for a total principal sum of \$180,000. The Supreme Court entered a judgment in accordance with the jury verdict. The defendants appeal from the judgment, arguing that the award of damages was excessive. We modify.

The award for past pain and suffering does not deviate from what would be considered reasonable compensation under the circumstances (*see* CPLR 5501[c]). However, based on the plaintiff's lack of severe residual problems, the award for future pain and suffering deviated materially from what would be reasonable compensation under the circumstances to the extent indicated herein (*see Shaperonovitch v City of New York*, 49 AD3d 709, 709-710, *revd on other grounds* 11 NY3d 581; *Vanini v Ramtol Serv. Corp.*, 22 AD3d 232, 232-233; *Duncan v Hillebrandt*, 239 AD2d 811, 814).

ANGIOLILLO, J.P., DICKERSON, HALL and ROMAN, JJ., concur.

ENTER:

Matthew G. Kiernan

Clerk of the Court

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