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Jones, ex rel. Alicea v. New York City Transit Authority

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N.Y.A.D. 1 Dept. 2009.

--- N.Y.S.2d ----2009 WL 3349855, 2009 N.Y. Slip Op. 07464

This opinion is uncorrected and subject to revision before publication in the printed Official Reports.

Leonari Jones, an Infant by Her Mother and Natural Guardian, Barry Alicea, et al., Plaintiffs-Respondents,

v.

New York City Transit Authority, Defendant-Appellant.

OPINION

1216 20150/03

Supreme Court, Appellate Division, First Department, New York

Decided on October 20, 2009

Tom, J.P., Buckley, Catterson, Freedman, Abdus-Salaam, JJ.

APPEARANCES OF COUNSEL

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

DeSimone, Aviles, Shorter & Oxamendi, LLP, New York (Dara L. Warren of counsel), for respondents.

Judgment, Supreme Court, Bronx County (Lucy Billings, J.), entered on July 1, 2008, inter alia, after a jury trial on the issue of damages, awarding infant plaintiff \$1.5 million for past pain and suffering, \$1.5 million for future pain and suffering and \$110,783 over four years for future medical expenses, upon plaintiff's stipulation, in lieu of a new trial on future medical expenses, to reduce that award from \$133,000 to \$110,783, unanimously affirmed, without costs.

Infant plaintiff was injured when, while attempting to exit defendant's train, the door closed on her right foot and she was dragged along the length of the platform as the train departed from the station. As a result of the accident, infant plaintiff, who was 10 years old at the time, sustained, inter alia, a distal tibia fracture which resulted in one leg being 20mm shorter than the other, repeated knee dislocation with concomitant pain, second degree burns on ten percent of her body from scraping on the cement platform, as well as permanent scarring and severe psychological injuries. Under the circumstances, the awards of \$1.5 million for past pain and suffering and \$1.5 million for future pain and suffering did not deviate materially from what would be reasonable compensation ([CPLR 5501\[c\]](#); see e.g. [Lopez v Gomez, 305 AD2d 292 \[2003\]](#); [Carl v Daniels, 268 AD2d 395 \[2000\]](#), *lv denied* [96 NY2d 704 \[2001\]](#)).

The award of \$110,783 for future medical expenses for four years was properly reduced *2 by the trial court from \$133,000 in light of the evidence before it, and we find no basis for a further reduction.

THIS CONSTITUTES THE DECISION AND ORDER

OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: OCTOBER 20, 2009

CLERK

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