



52 A.D.3d 340, 861 N.Y.S.2d 13, 2008 N.Y. Slip Op. 05541

(Cite as: 52 A.D.3d 340, 861 N.Y.S.2d 13)

Supreme Court, Appellate Division, First Department, New York.

Amber Lee LAMANNA, Plaintiff-Appellant,

v.

Joseph JANKOWSKI, et al., Defendants-Respondents.

June 17, 2008.

Background: Motorist brought an action to recover damages for personal injuries sustained in a motor vehicle accident. The Supreme Court, Bronx County, [Nelson S. Roman](#), J., granted defendants' motion to set aside a jury verdict rendered in the motorist's favor, and directed judgment in the defendants' favor as a matter of law. Motorist appealed.

Holding: The Supreme Court, Appellate Division, held that the jury's verdict was inconsistent, thus mandating retrial on all issues. Reversed and remanded.

West Headnotes

New Trial 275 9

[275](#) New Trial

[275I](#) Nature and Scope of Remedy

[275k9](#) k. New Trial as to Part of Issues. [Most Cited Cases](#)

New Trial 275 60

[275](#) New Trial

[275II](#) Grounds

[275II\(E\)](#) Irregularities or Defects in Verdict or Findings

[275k60](#) k. Inconsistent Findings. [Most Cited Cases](#)

Jury's finding that, as a result of a motor vehicle accident, a motorist sustained "a permanent consequential limitation of use of a body organ or member" could not be reconciled with its failure to award any damages for future pain and suffering, thus mandating retrial on all issues; there was a strong likelihood that the verdict resulted from a trade-off on a finding of liability in return for a compromise on damages. [McKinney's Insurance Law § 5102\(d\)](#).

**13 Pollack, Pollack, Isaac & De Cicco, New York ([Brian J. Isaac](#) of counsel), for appellant.

Wilson, Elser, Moskowitz, Edelman & Dicker, LLP, New York ([Jamie C. Kulovitz](#) of counsel), for Joseph Jankowski, respondent.

Camacho Mauro & Mulholland LLP, New York ([Kathleen M. Mulholland](#) of counsel), for Diakaite Ousseine and France Croissant, Ltd., respondents.

[LIPPMAN](#), P.J., [SAXE](#), [GONZALEZ](#), [NARDELLI](#), JJ.

***340** Order, Supreme Court, Bronx County (Nelson S. Roman, J.), entered January 26, 2007, which, in an action for personal injuries sustained in a motor vehicle accident, inter alia, granted defendants' motion to set aside the jury verdict rendered in plaintiff's favor, and directed judgment in defendants' favor as a matter of law, unanimously reversed, on the law and the facts, without costs, and the matter remanded for a new trial.

The jury found that as a result of the motor vehicle accident, plaintiff sustained “a permanent consequential limitation of use of a body organ or member” ([Insurance Law § 5102](#)[d]), yet failed to award any damages for future pain and suffering. Since the failure to award such damages cannot be reconciled with a finding of permanent injury, retrial is mandated on all issues as ***341** there is a strong likelihood that the verdict results from a trade-off on a finding of liability in return for a compromise on damages (*see McKenna v. Lehrer McGovern Bovis*, 302 A.D.2d 329, 330, 756 N.Y.S.2d 181 [2003]; *Patrick v. New York Bus Serv.*, 189 A.D.2d 611, 612, 592 N.Y.S.2d 311 [1993]).

N.Y.A.D. 1 Dept.,2008.

Lamanna v. Jankowski

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