



2008 WL 7023461 (N.Y.Sup.)

Supreme Court of New York.

Queens County

Eun Sook MAING and Soo Maing and Daniel Maing, an Infant by his Parents and Natural Guardians Eun Sook Maing and Soo Maing, Plaintiff,

v.

Dr. Po Ching FONG, Dr. Faramarz Roshnfehr, and St Vincent's Hospital and Medical Center, Defendant.

No. 16150/01.

December 23, 2008.

Motion Cal. No.: 14

Motion Seq. No.: 3

Short Form Order

Hon. Peter J. O'Donoghue, J.S.C.

Motion Date: 10/08/08

The following papers numbered 1 to 12 read on this motion by defendants Dr. Po Ching Fong ("Fong") and St. Vincent's Hospital and Medical Center ("St. Vincent's") for an Order pursuant to CPLR § 4404(a) and § 5501:

- (1) conditionally reducing the awards for past and future pain and suffering because they deviate materially from what would be reasonable compensation;
- (2) Vacating the awards for past and future psychological counseling and for past and future lost earnings on the ground that they were not established with reasonable certainty, or, alternatively, conditionally reducing these awards on the grounds that they are excessive;
- (3) Vacating the jury verdict with respect to interrogatories 7a, 7c, 8a, and 8b;
- (4) Staying the entry of judgment pending(a) a decision on this motion; (b) a hearing pursuant to CPLR § 4545 and 4546 and (c) a hearing to determine the proper calculation of the judgment under CPLR § 5031;

and cross-motion by plaintiff Soo Maing for an order setting aside jury's finding that plaintiff Soo Maing is not entitled to recover damages for the loss of his wife's services and consortium on the ground that it is against the weight of the credible evidence, and for a new trial limited to that issue and an award for that item of damage.

PAPERS NUMBERED

Notice of Motion-Affidavits-Exhibits.	1-4
Notice of Cross Motion-Affidavits-Exhibits.	5-8
Memorandum of Law	
Opposition Papers-Affidavits-Exhibits.	9-10

Upon the foregoing papers it is ordered that this motion for for an Order pursuant to CPLR § 4404(a) and § 5501 and cross motion for an Order setting aside jury's finding that plaintiff Soo Maing is not entitled to recover for the loss of his wife's services and consortium are decided as follows:

The first branch of the motion seeks an order setting aside the verdict as contrary to the weight of the evidence (CPLR § 4404[a]) and as deviating materially from what would be reasonable compensation (CPLR § 5501) with respect to the jury awards for past and future pain and suffering. In the case at bar, the plaintiff Eun Sook Maing was awarded 4.5 million dollars for past pain and suffering and 6.5 million dollars for future pain and suffering over a 34 year period. The infant plaintiff Daniel was awarded \$ 150,000.00 for past pain and suffering and 7 million dollars over a 65 year period.

“A jury award for damages may be set aside when it deviates materially from what would be material compensation. The applicable standard for making that determination is whether the record evidence preponderates so greatly in the movants' favor that the jury could not have reached its conclusion on any fair interpretation of the evidence. Furthermore, because the amount of damages to be awarded is primarily a question of fact considerable deference should be accorded to the interpretation of the evidence by the jury.” (*Marshal v. Lomedico*, 292 AD2d 669 [2002].) Additionally, a jury verdict for damages may be set aside, if the Court finds that the verdict is contrary to the weight of the evidence. (CPLR § 4404[a].) It has been held that “a jury verdict should not be set aside as against the weight of the evidence unless the jury could not have reached the verdict by any fair interpretation of the evidence.” (*Beaumont v City of New York*, 2008 NY Slip OP 9013 [Nov 18, 2008] citing *Lolik v Big v Supermarkets*, 86 NY2d 744 [1995]; *Ahr v Kardewski*, 48 AD3d 919 [2008]; *Nicastro v. Park*, 113 AD2d 129 [1985].)

Applying these principals to the present case, the Court finds that the jury's verdict with respect to the awards to plaintiff Eun Sook Maing for past pain and suffering in the sum of 4.5 million dollars and future pain and suffering in the sum of 6.5 million dollars deviate materially from what would be reasonable compensation and are contrary to the weight of the evidence. Accordingly, the Court grants that branch of the defendants' motion for an order setting aside the jury's findings *unless*, within 30 days after service upon the plaintiffs of a copy of this decision and order, plaintiffs shall serve and file in the office of the clerk of the Supreme Court Queens County, a written stipulation consenting to reduce the damages to plaintiff Eun Sook Maing for past pain and suffering from 4.5 million dollars to 3 million dollars and future pain and suffering from 6.5 million dollars to 2 million dollars for a total pain and suffering award of 5 million dollars.

Applying the same principles, the Court finds that the jury's verdict with respect to the award to infant plaintiff Daniel for past pain and suffering in the sum of \$ 150,000.00 does not deviate materially from what would be reasonable compensation nor is this verdict contrary to the weight of the evidence. However, the award for future pain and suffering in the sum of 7 million dollars does deviate materially from what would be reasonable compensation and is contrary to the weight of the evidence. Accordingly, the Court grants that branch of the defendants' motion for an order setting aside the verdict with respect to the jury award for future pain and suffering *unless*, within 30 days after service upon the plaintiffs of a copy of this decision and order, plaintiffs shall serve and file in the office of the clerk of the Supreme Court Queens County, a written stipulation consenting to reduce the damages to plaintiff Daniel Maing from 7 million dollars to 2.5 million dollars for a total pain and suffering award of 2.65 million dollars.

The branch of the motion for an order vacating the jury's award to the plaintiff Eun Sook Maing for future psychological counseling in the sum of \$500,000.00 is granted and the award is vacated.

The branch of the motion for an order vacating the jury's award to the infant plaintiff Daniel Maing for future psychological counseling in the sum of \$500,000.00 is denied.

The branch of the motion for an order vacating the jury's award to plaintiff Eun Sook Maing for past and future lost earnings is granted and these awards are vacated.

The branch of the motion for an order vacating the jury verdict with respect to interrogatories 7a,7c,8a and 8b is denied.

The branch of the motion for an order granting a collateral source/income tax offset hearing is denied as moot.

The cross motion for an order setting aside jury's finding that plaintiff Soo Maing is not entitled to recover damages for the loss of his wife's services and consortium on the ground that it is against the weight of the credible evidence, and for a new trial limited to that issue and an award for that item of damage is granted *unless*, within 30 days after service upon defendants of a copy of this decision and order, defendants Fong and St. Vincent's Hospital shall serve and file in the office of the clerk of the Supreme Court, Queens County, a written stipulation consenting to increase the award to Soo Maing to 1 million dollars.

Dated: December 23, 2008

<<signature>>

J.S.C.

HON. PETER J. O'DONOGHUE

Maing v. Fong
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