

900k for 15-30 minutes  
d x conscious pain from crash  
injury in MVA Page 1

Westlaw

247 A.D.2d 333  
247 A.D.2d 333, 669 N.Y.S.2d 529, 1998 N.Y. Slip Op. 02074  
(Cite as: 247 A.D.2d 333, 669 N.Y.S.2d 529)

▷

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

Bella RAMOS, as Administratrix of the Estate of Carlos A. Ramos, Deceased, Plaintiff-Respondent,  
v.

LA MONTANA MOVING & STORAGE, INC., et al., Defendants-Appellants.  
Feb. 26, 1998.

Wrongful death action was brought arising out of accident in which pedestrian was killed when she was hit and run over by trailer truck. The Supreme Court, Bronx County, Thompson, J., entered judgment granting defendants' motion to set aside jury's verdict unless plaintiff stipulated to reduced damages. Plaintiff appealed. The Supreme Court, Appellate Division held that: (1) trial court reduction of damages for pedestrian's conscious pain and suffering from \$3 million to \$250,000 was more substantial than warranted, \$900 award was reasonable, and (2) reduced damage award of \$150,000 for pecuniary injury to plaintiff was reasonable.

Conditionally affirmed.

West Headnotes

[1] Death 117 ↪99(2)

117 Death

117III Actions for Causing Death

117III(H) Damages or Compensation

117k94 Measure and Amount Awarded

117k99 Excessive Damages

117k99(2) k. Suffering of Deceased. Most Cited Cases

Trial court's reduction of \$3 million award to \$250,000, for conscious pain and suffering experienced by pedestrian during 15 to 30 minutes she lived after sustaining severe crushing injuries when she was run over by trailer truck, was more substantial than warranted; award of \$900,000 was reasonable.

[2] Death 117 ↪99(4)

117 Death

117III Actions for Causing Death

117III(H) Damages or Compensation

117k94 Measure and Amount Awarded

117k99 Excessive Damages

117k99(4) k. Allowance to Surviving Husband, Wife or Children. Most Cited Cases  
Damage award of \$150,000 was reasonable in wrongful death action, where decedent regularly provided babysitting services to plaintiff's infant grandchildren, decedent imparted family, cultural and language traditions to grandchildren; and decedent provided regular counseling and guidance to plaintiff's children.

\*\*529 Alyne I. Diamond, for Plaintiff-Respondent.  
Thomas Torto, for Defendants-Appellants.

Before MILONAS, J.P., and ELLERIN, WILLIAMS and TOM, JJ.

MEMORANDUM DECISION.

\*333 Judgment, Supreme Court, Bronx County (Kenneth Thompson, J.), entered September 12, 1996, awarding plaintiff the principal sums of \$150,000 for decedent's wrongful death, \$250,000 for decedent's conscious pain and suffering and \$5,000 for funeral expenses, and bringing up for review an order of the same court and Justice, entered on June 21, 1996, which, *inter alia*, granted defendants' motion to set aside the jury's verdict unless plaintiff filed a written stipulation accepting damages in the above reduced amounts, unanimously modified, on the facts, to the extent of remanding the matter for a new trial only on the issue of damages for decedent's conscious pain and suffering and otherwise affirmed, without costs, unless defendants stipulate, within 30 days of the date of this order, to increase the award therefor to \$900,000 and to entry of an amended judgment in accordance therewith, in which event the judgment, as so

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Page 2

amended, affirmed, without costs. Appeal from the order, unanimously dismissed, without costs, as subsumed within the appeal from the judgment.

Ramos v. La Montana Moving & Storage, Inc.  
247 A.D.2d 333, 669 N.Y.S.2d 529, 1998 N.Y. Slip  
Op. 02074

[1] The decedent was struck and killed by a driver who had consumed excessive amounts of alcohol. Decedent was initially struck by the back end of defendant's trailer truck and was then twice run over by the trailer truck's two rear wheels. He suffered excruciating crushing injuries and lived for approximately 15 to 30 minutes, during which time he suffered extreme pain. The jury awarded \$3,000,000 damages for decedent's conscious pain and suffering, which the trial court reduced to \$250,000, an amount to which plaintiff stipulated. In the circumstances, we find the trial court's reduction of damages to be more substantial than warranted by the record \*334 and, pursuant to our power under CPLR 5501(a)(5) (see, *Desa v. City of New York*, 188 A.D.2d 313, 314, 590 N.Y.S.2d 483, *lv. denied* \*\*53081 N.Y.2d 706, 597 N.Y.S.2d 936, 613 N.E.2d 968; *Perez v. Farrell Lines Inc.*, 223 A.D.2d 388, 637 N.Y.S.2d 360, *lv. denied* 88 N.Y.2d 803, 645 N.Y.S.2d 445, 668 N.E.2d 416) modify to increase the award to the extent indicated.

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[2] Plaintiff established a claim for pecuniary injuries where the proof established that decedent regularly provided baby sitting services to the three infant children of his daughters; imparted family, cultural and language traditions to these grandchildren; taught the grandchildren the Spanish language; provided regular counseling and guidance to his daughters and son; and provided emergency financial assistance to one of his daughters. The reduced award of \$150,000 for such pecuniary injury is appropriate (*cf.*, *Gonzalez v. New York City Hous. Auth.*, 77 N.Y.2d 663, 666, 569 N.Y.S.2d 915, 572 N.E.2d 598; *Korman v. Public Serv. Truck Renting*, 116 A.D.2d 631, 497 N.Y.S.2d 480).

We have considered defendants' remaining contentions and find them to be without merit.

N.Y.A.D. 1 Dept., 1998.