



58 A.D.3d 552

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(Cite as: 58 A.D.3d 552, 872 N.Y.S.2d 107)

Smith v. Manhattan and Bronx Surface Transit Operating Authority
58 A.D.3d 552, 872 N.Y.S.2d 107
NY,2009.

58 A.D.3d 552872 N.Y.S.2d 107, 2009 WL 173485, 2009 N.Y. Slip Op. 00435

Samee M. Smith, Respondent
v
Manhattan and Bronx Surface Transit Operating Authority, Appellant et al., Defendants.
Supreme Court, Appellate Division, First Department, New York

January 27, 2009

CITE TITLE AS: Smith v Manhattan & Bronx Surface Tr. Operating Auth.

HEADNOTE

Damages

Inadequate and Excessive Damages

Awards of \$100,000 for past pain and suffering and \$800,000 for future pain and suffering were reasonable; plaintiff suffered severe damage to her knee, underwent arthroscopic surgery, experienced chronic pain, swelling and buckling of knee, and surgeon testified that injuries were permanent and would require knee replacement.

Wallace D. Gossett, Brooklyn (Anita Isola of counsel), for appellant.

Friedman & Moses, LLP, New York (I. Bryce Moses of counsel), for respondent.

Judgment, Supreme Court, Bronx County (Alexander W. Hunter, Jr., J.), entered October 25, 2007, upon a jury verdict awarding plaintiff \$100,000 for past pain and suffering and \$800,000 for future pain and suffering, unanimously affirmed, without costs.

The trial evidence established that plaintiff suffered severe damage to her left knee, including tears of the medial and lateral menisci, a torn ligament, torn cartilage in various places, and damage to the patella, with permanent osteochondral defect. She underwent arthroscopic surgery some months after the accident, and, while her knee improved to some degree, it never functioned normally again. Indeed, plaintiff continued to experience chronic pain, swelling and buckling of the knee, and her treating orthopedic surgeon, who testified at trial as her expert witness, recommended a second arthroscopic surgery. The *553 surgeon testified that the injuries to plaintiff's knees were permanent and would continue to progress, and that arthritic changes would probably develop, requiring further surgical procedures, including perhaps knee replacement. The damages awarded to plaintiff for past and future pain and suffering in connection with the foregoing injuries do not "deviate [] materially from what would be reasonable compensation" ([CPLR 5501](#) [c]; see e.g. **2*Urbina v 26 Ct. St. Assoc., LLC*, 46 AD3d 268 [2007]; *Nassour v City of New York*, 35 AD3d 556

[\[2006\];Calzado v New York City Tr. Auth., 304 AD2d 385 \[2003\]](#). Concur-Saxe, J.P., Gonzalez, Sweeny, Renwick and DeGrasse, JJ.

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NY,2009.

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