

Diouf v New York City Tr. Auth.
2010 NY Slip Op 07696
Decided on October 28, 2010
Appellate Division, First Department
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This opinion is uncorrected and subject to revision before publication in the Official Reports.

Decided on October 28, 2010

Saxe, J.P., Acosta, Freedman, Richter, Abdus-Salaam, JJ.

3517 108095/04

[*1]Matar Diouf, Plaintiff-Respondent,

v

New York City Transit Authority, Defendant-Appellant.

Wallace D. Gossett, Brooklyn (Lawrence Heisler of counsel),
for appellant.

Kahn Gordon Timko & Rodriques, P.C., New York (Nicholas
I. Timko of counsel), for respondent.

Judgment, Supreme Court, New York County (Paul G. Feinman, J.), entered May 6, 2009, insofar as appealed from as limited by the briefs, upon a jury verdict, awarding plaintiff \$800,000 for future pain and suffering, unanimously affirmed, without costs.

Plaintiff, a 55-year-old tailor, sustained painful fractures to both wrists after falling on uneven stairs leading into a subway station. The fracture to the left wrist was a comminuted intra-articular fracture of the distal radius and ulnar styloid, which required reduction

surgery and a second surgical procedure to remove the metal hardware inserted into his wrist. Following a course of occupational therapy, plaintiff's fractures healed but he had reduced ranges of motion, tenderness and reduced grip strength, and traumatic arthritis causing pain in both wrists. Under the circumstances presented, the award for future pain and suffering did not deviate materially from what is reasonable compensation (*see Karwacki v Astoria Med. Anesthesia Assoc., P.C.*, 23 AD3d 438 [2005]; *Hayes v Normandie LLC*, 306 AD2d 133 [2003], *lv dismissed* 100 NY2d 640 [2003]; *Cabezas v City of New York*, 303 AD2d 307 [2003]; CPLR 5501[c]).

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: OCTOBER 28, 2010

CLERK

[Return to Decision List](#)