

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Hon. EILEEN A. RAKOWER

PART 15

Justice

MARK GRINBERG,

Plaintiff,

- v -

C&L CONTRACTING CORPORATION

Defendants.

INDEX NO. 110264-2009

MOTION DATE _____

MOTION SEQ. NO. 1

MOTION CAL. NO. _____

FILED
AUG 29 2012
COUNTY CLERK'S OFFICE
NEW YORK

Mark Grinberg ("Plaintiff") brings this action for personal injuries he sustained when, in the course of his duties as a project manager for the URS Corporation, he slipped and fell on a plastic covered piece of plywood at a construction site. As a result of the slip and fall, Plaintiff sustained a fracture of the tibia and a fracture of the fibula. Plaintiff underwent surgery with the insertion of a metal plate and screws. One year post accident, plaintiff underwent a second surgery to remove hardware. Plaintiff, born in 1948, testified regarding his pain and suffering and the effects of the injury on his ability to enjoy life. The jury awarded Plaintiff \$75,000 for past pain and suffering, representing the period from the date of the accident, March 2, 2009, until the date of the verdict, June 8, 2012. Additionally, the jury awarded plaintiff \$35,000 for future pain and suffering for a period of 17.3 years. The parties agreed that past medical expenses totaled \$19,526.56, and there was no request for future medical expenses.

Plaintiff brings this post-trial motion pursuant to CPLR §4044(a) and CPLR §5501(c) seeking an order to set aside the jury verdict as against the weight of the evidence and deviating materially from what is reasonable compensation.

The court finds that the jury award for past pain and suffering of \$75,000 and for future pain and suffering of \$35,000 does not deviate materially from what would be reasonable compensation where the Plaintiff's treating doctor, Dr. Weiner, agreed that by the time Plaintiff was cleared to return to work after the first surgery, "in that period of time [he] made a very good recovery at that point." Additionally, counsel asked "In fact, considering this injury and how serious that's a rather exceptional recovery, is it not?" Dr. Weiner answered "yes." Dr. Weiner

explained that plaintiff did not suffer any complications. His recovery was similar after his second surgery, and again, he suffered no complications.

The court notes that the jury had the opportunity to weigh plaintiff's own demeanor and his description of his condition. When asked about how he physically felt when he returned to work in June or July of 2009 as compared to how he felt before his accident ever happened, plaintiff answered "Physically, okay. I felt much better than right after the surgery." Additionally, plaintiff testified: "Well, once the hardware was removed, the main pain was gone. The one that was causing this tremendous discomfort for the year between the first surgery and the second surgery, that pain was gone." When asked if plaintiff "currently take[s] any medication," he responded that he takes ibuprofen "twice a week, roughly." He described that, at the time of his testimony, "I do have occasional pain when I walk on uneven surfaces, or if I walk on a prolonged basis or stand too long, and I do get occasional swelling."

Wherefore, it is hereby

ORDERED that plaintiff's motion to set aside the jury verdict is denied.

This constitutes the decision and order of the court. All other relief requested is denied.

Dated: August 8, 2012



HON. EILEEN A. RAKOWER
J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL
DISPOSITION

Check if appropriate: DO NOT POST

REFERENCE

FILED

AUG 29 2012

COUNTY CLERK'S OFFICE
NEW YORK