

Ortiz v New York City Tr. Auth.
2013 NY Slip Op 04281
Decided on June 11, 2013
Appellate Division, First Department
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Decided on June 11, 2013

Mazzarelli, J.P., Sweeny, Moskowitz, Manzanet-Daniels, Gische, JJ.

10316 101007/02

[*1]Olga Ortiz, Plaintiff-Respondent,

v

New York City Transit Authority, Defendant-Appellant.

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

Pollack, Pollack, Isaac & DeCicco, New York (Brian J. Isaac of counsel), for respondent.

Judgment, Supreme Court, New York County (Eileen A. Rakower, J.), entered March 21, 2012, after a jury trial, awarding plaintiff the principal amounts of \$300,000 for past pain and suffering over 11 years and \$100,000 for future pain and suffering over 10 years, unanimously affirmed, without costs.

Plaintiff was injured in October 2000, when she slipped on a broken concrete step

and fell down the stairway of a subway station. Plaintiff was diagnosed with lumbar radiculopathy, and an injury to her coccyx. Plaintiff's injuries are permanent, cause her severe pain, and inhibit her from engaging in such normal activity as bending, walking, lifting and sitting. Plaintiff's orthopedic surgeon referred her to a spinal surgeon to explore the possibility of removing her coccyx, as her pain never subsided. Under these circumstances, the awards for past and future pain and suffering do not deviate materially from what is reasonable compensation (*see e.g. Rutledge v New York City Tr. Auth.*, 103 AD3d 423 [1st Dept 2013]; *James v Farhood*, 96 AD3d 503 [1st Dept 2012]; *Turuseta v Wyassup-Laurel Glen Corp.*, 91 AD3d 632 [2d Dept 2012]).

It is noted that while defendant argued that plaintiff had sustained prior injuries to her back, plaintiff's orthopedic surgeon opined that plaintiff's back condition was "significantly exacerbated" by her fall, as "the fall caused compression of the discs, causing the disc to expand [*2] into the nerve." Defendant's own medical expert examined plaintiff, and defendant did not call its expert as a witness to rebut the findings of plaintiff's orthopedic surgeon.

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

ENTERED: JUNE 11, 2013

CLERK

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