

<b>Victor v New York City Tr. Auth.</b>
2013 NY Slip Op 08518
Decided on December 19, 2013
Appellate Division, First Department
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Decided on December 19, 2013

Tom, J.P., Andrias, Saxe, DeGrasse, Richter, JJ.

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**[\*1]Michael N. Victor, Jr., etc., Plaintiff-Respondent, —**

**v**

**New York City Transit Authority, Defendant-Appellant.**

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

Robert Stein, New York, for respondent.

Judgment, Supreme Court, New York County (Martin Shulman, J.), entered April 5, 2012, awarding plaintiff, after a jury verdict, the principal amounts of \$400,000 for past pain and suffering and \$450,000 for future pain and suffering over 6 years, unanimously affirmed, without costs.

The jury's determination finding defendant liable and plaintiff's decedent free from culpable conduct was neither legally insufficient (*see Szczerbiak v Pilat*, 90 NY2d 553

[1997]) nor against the weight of evidence (*Cerasuoli v Brevetti*, 166 AD2d 403, 404 [2nd Dept 1990]). Decedent's testimony that the doors suddenly closed on her while the train conductor was making announcements concerning whether the train would be proceeding local or express was unrebutted. Defendant's conductor, who did not testify at trial, testified at her deposition that such an action would be improper, and that a conductor should finish such an announcement, closing the door a safe time thereafter.

Decedent suffered a fractured hip requiring surgery, and she testified that it changed her lifestyle, as she was no longer able to regularly travel into Manhattan to visit museums and attend cultural events and lectures. Thus, the jury's award for future pain and suffering was not excessive. Furthermore, the jury's award for past pain and suffering does not deviate materially from what would constitute reasonable compensation under the circumstances (*see e.g. Luna v New York City Tr. Auth.*, AD3d , 2013 NY Slip Op 07819).

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

ENTERED: DECEMBER 19, 2013

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