

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PP1

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DENISE MORALES,

Plaintiff,

-against-

Index No.
23764/04

MANHATTAN AND BRONX SURFACE TRANSIT
OPERATING AUTHORITY, THE NEW YORK
CITY TRANSIT AUTHORITY and "JOHN DOE",

Defendants.

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J. Danziger:

Defendants' motion seeking to set aside a jury's verdict which awarded plaintiff \$400,000 for past pain and suffering and \$300,000 for future pain and suffering is decided as follows:

A brief history of this matter reveals that upon the selection of a jury, this action was assigned to this Court for trial. After both sides presented their cases, the court gave its charge and the jury commenced deliberations. After deliberating, the jury returned a signed verdict sheet to the Court. As contained therein, the jury found that defendants were negligent, that their negligence was a substantial factor in causing injuries to the plaintiff and that said injuries satisfied the "serious injury" threshold as defined by the Insurance Law. After the verdict was announced, counsel for defendants sought to set aside the finding of negligence and that plaintiff satisfied the serious injury requirement. Further, defendants' counsel sought to set aside the award as excessive. At that time the court denied the branch of the application as to liability and serious injury. As a result, the court need not address those issues. However, the branch of the application as to excessiveness was reserved for determination after the submission of papers to be submitted on notice and is decided herein.

During the trial, evidence was introduced to illustrate the extent of the injuries plaintiff sustained when she fell on defendants' bus. Ms. Morales testified as to the extent of the pain and suffering she has experienced to her back and shoulder. Evidence was heard that she underwent

surgery due to a rotator cuff tear of her right shoulder which included an acromioplasty as well as decreased range of motion to her back and shoulder. Now, defendants seek to reduce the award given by the jury asserting that same was excessive.

As set forth in CPLR 4494 and 5501, the standard to be applied by the court in determining whether a jury verdict should be found to be excessive shall be when the award "deviates materially from what should be reasonable compensation", See *Wendell v. Supermarkets Gen. Corp.*, 189 AD2d 1063 and *Shurga v. Tedesco*, 179 AD2d 805. Here, defendants assert that said award shall be set aside as excessive.

In support of this motion, defendant alerts this Court to the case of *Murakami v. Machinist*, 3 Ad3d 336. There, the plaintiff sustained a fractured clavical which required surgical repair. As a result therein, plaintiff's clavical was left shortened and weakened. There, the Appellate Division, First Department found that a jury award for past pain and suffering of \$130,000 and \$130,000 for future pain and suffering was warranted. Defendants herein opine that the injury sustained by the plaintiff in *Murakami* was more severe than the injury sustained by Ms. Morales mandating the reduction of the award given herein.

Defendants also site *Sanchez v. Morrisania Associates*, 63 Ad2d 605. There, the then 32 year old female plaintiff suffered a fracture of her ankle requiring her to be casted for 6-8 weeks and a rotator cuff injury which required surgery. In that case, the jury awarded \$100,000 for past pain and suffering and did not make an award for future damages. There, the Appellate Division, First Department, increased the award for past pain and suffering to \$250,000 and did not award future damages. Additionally, defendants in support of this application cites *DeSimone v. Royal GM, Inc.*, 49 AD3d 490, *Sankar v. Jamaica Hospital Medical Center*, 68 AD3d 844 and *Robinson v. Cambridge Realty Co., LLC.*, 58 AD3d 582.

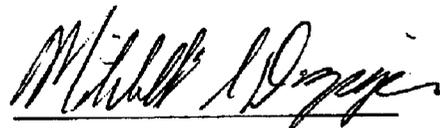
Plaintiff in opposition points the court to other jury awards. However, said cases are not controlling as same do not reflect determinations by the Appellate Division as to whether said awards deviated materially from reasonable compensation.

Pursuant to the cases reviewed and the facts herein, defendants' motion to reduce the jury's award, (CPLR 4404), is granted to the following extent. All parties shall appear for a new trial on the issue of damages unless plaintiff stipulates in writing to the reduction of the award for past pain and suffering from \$400,000 to \$175,000 and the amount of future pain and suffering to

\$35,000 from \$300,000. Said stipulation shall be filed with the Court within thirty (30) days after the date of service of the judgment to be settled herein with notice upon defendants' counsel. If plaintiff elects not to stipulate to same, then in such event, plaintiff's counsel shall serve a copy of this order with notice of entry upon the Supreme Court Clerk who shall restore this matter to the Special Trial Part's calendar to schedule the date for a new trial on the issue of damages.

The above constitutes the decision and order of the court.

November 23, 2011



Mitchell J. Danziger, AJSC

MITCHELL J. DANZIGER