

<b>Molina v New York City Tr. Auth.</b>
2014 NY Slip Op 01415
Decided on March 4, 2014
Appellate Division, First Department
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Decided on March 4, 2014

Tom, J.P., Friedman, Acosta, Andrias, Richter, JJ.

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**[\*1]Luis Molina, Plaintiff-Respondent,**

**v**

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

Steve S. Efron, New York, for appellant.

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

Judgment, Supreme Court, Bronx County (Robert E. Torres, J.), entered on or about July 25, 2012, which, to the extent appealed from as limited by the briefs, following a jury verdict, awarded plaintiff total compensatory damages of \$2,610,000, including \$600,000 for past pain and suffering, and \$1,300,000 for future pain and suffering over 27 years, unanimously modified, on the facts, to vacate the award for future pain and suffering and remand the matter for a new trial solely on the issue of such damages unless plaintiff, within 30 days of service of a copy of this order, with notice of entry, stipulates

to reduce the award of damages for future pain and suffering to \$800,000 and to entry of an amended judgment in accordance therewith, and otherwise affirmed, without costs.

The jury's award is supported by testimony from plaintiff, his son, and a cleaner employed by defendant, that debris on the stairs of the subway station was a recurring condition, of which defendant was aware, that was left unaddressed (*see Kelsey v Port Auth. of N.Y. & N.J.*, 52 AD2d 801 [1st Dept 1976]). Defendant did not demonstrate that a reasonable cleaning schedule was established and followed prior to plaintiff's accident, as its employee testified only that she cleaned the steps where plaintiff fell two days before the accident, there was no evidence of additional cleaning thereafter, and no cleaning log was admitted into evidence establishing that the routine cleaning schedule was adhered to (*see Williams v New York City Hous. Auth.*, 99 AD3d 613 [1st Dept 2012]; *accord Harrison v New York City Tr. Auth.*, 94 AD3d 512, 514 [1st Dept 2012]).

[\*2]

We find that, to the extent indicated, the award for future pain and suffering deviates materially from what is reasonable compensation under the circumstances.

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

ENTERED: MARCH 4, 2014

CLERK

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