

To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

FILED AND ENTERED
ON 7/20 2012
WESTCHESTER COUNTY CLERK

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER
PRESENT: HON. SAM D. WALKER, J.S.C.

-----X
ALFONSO ROBLES,

Plaintiff,

-against-

POLYTEMP, INC. and ROBERT PRUNA,

Defendants.
-----X

Index No.12078/2009
DECISION & ORDER
Motion Sequence 2

FILED

JUL 20 2012

THE
COUNTY OF
WESTCHESTER

Plaintiff moves this Court pursuant to CPLR § 4404 (a) to set aside the jury's verdict on damages, to vacate the reduction of the verdict due to the Plaintiff's alleged non-use of an available seatbelt and/or granting a new trial on the issue of damages, increasing the jury verdict. Plaintiff asserts that he is entitled to set aside the jury's verdict because it deviates materially from what would be reasonable compensation. The following papers numbered 1 through 6 were read and considered in deciding the present motion.

PAPERS

Notice of Motion/ Affirmation in Support/ Exhibits A-D
Affirmation in Opposition/ Exhibits A-G
Reply to Affirmation in Opposition

NUMBERS

1-3
4-5
6

FACTUAL AND PROCEDURAL BACKGROUND

The action underlying the present motion is for injuries sustained during an automobile collision. The parties proceeded to a jury trial on the issues of liability and damages which was held between January 17, 2012 and February 10, 2012. On the issue of liability, the jury found Defendants at 65% fault for the accident, and Plaintiff comparatively negligent at 35% fault.

On the issue liability, the jury determined that Plaintiff sustained a permanent and consequential limitation of the use of a body part, that Plaintiff suffered a significant limitation of use of a body part, that Plaintiff suffered a medically determined injury or impairment of a non-permanent nature which prevents the injured person from performing substantially all of the material acts which constitute the person's usual and customary daily activities for no less than 90 days during the 180 days immediately following the injury/impairment. The jury further determined that Plaintiff did not sustain an injury which resulted in a significant disfigurement.

As such, Plaintiff was awarded damages for pain and suffering and loss of enjoyment of life in the amount of \$400,000.00. Plaintiff was further awarded \$89,825.00 in lost wages, \$68,166.28 for medical expenses, \$400,000.00 for future pain and suffering and loss of enjoyment of life, \$50,000.00 in future lost wages. The jury further determined that Defendant proved that Plaintiff failed to use an available seatbelt, and that some of Plaintiff's damages were caused by his failure to use a seatbelt. As such, the jury determined that Plaintiff's recovery would be reduced by \$200,000.00.

Plaintiff now moves to have the jury's award for past and future damages set aside as deviating materially from the reasonable compensation. Plaintiff further moves that the jury's finding that the verdict should be reduced by \$200,000.00 should be vacated. Defendants oppose Plaintiff's motion asserting that Plaintiff's award is in fact more than what is appropriate for Plaintiff's injuries, and that the premise of Plaintiff's argument is unsupported by New York law.

DISCUSSION

CPLR §4404(a) states, in relevant part, that "[a]fter a trial of a cause of action or issue triable of right by a jury, upon the motion of any party or on its own initiative, the court may set aside a verdict or any judgment... where the verdict is contrary to the weight of the evidence, in the interest of justice or where the jury cannot agree after being kept together for as long as is deemed reasonable by the court." In order to establish entitlement to relief, "[t]he proponent of a motion pursuant to CPLR §4404 to set aside a jury verdict as not supported by legally sufficient evidence must demonstrate that there is no valid line of reasoning and permissible inferences which would lead rational persons to the conclusions reached by the jury." *Rosenfeld v. Baker*, 78 A.D.3d 810, 811 (2010). Indeed, the prevailing party is "entitled to the benefit of every favorable inference which can reasonably be drawn from the facts." *Taype v. City of New York*, 82 A.D.2d 648, 651 (2nd Dept. 1981).

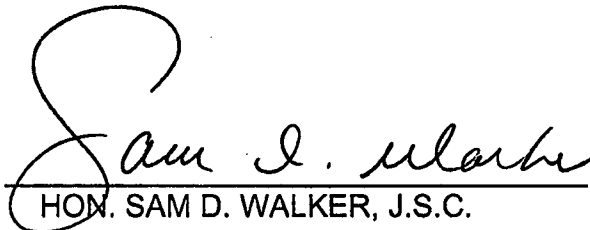
Upon reviewing the facts and applicable case law it is clear that Plaintiff has not met his burden to show the jury verdict should be set aside. Plaintiff relies heavily on the theory that because Plaintiff sustained an injury that required two surgeries, his award

must fall within a specific price range. This Court is not persuaded by this argument because, as Defendant points out, "the jury [is], entitled to discredit the testimony of the plaintiff and his expert, in whole or in part..." *Lucks v. Lakeside Mfg., Inc.*, 37 A.D.3d 666, 668 (2nd Dept. 2007). Furthermore, upon review of the disparate judgments awarded in the cases Plaintiff cites, this Court finds further support for the proposition that jury's are imbued with the power to review the facts as presented in the case. Upon review of the relevant and credible evidence, a jury may then render a verdict for the amount that should be awarded. Based on this inference the rationale behind the jury's verdict is reasonable. See, *Liounis v. New York City Transit Authority*, 938 N.Y.S.2d 176 (2nd Dept. 2012); *Handwerker v. Dominick L. Cervi, Inc.*, 869 N.Y.S.2d 201 (2nd Dept. 2008).

Plaintiff has failed to convince this Court that the jury's award deviated from what should be considered a reasonable compensation. As such, Plaintiff's motion to set aside the jury's verdict on damages, vacate the reduction of the verdict due to the Plaintiff's alleged non-use of an available seatbelt and/or grant a new trial on the issue of damages is hereby DENIED.

To the extent any relief requested in Motion Sequence 2 was not addressed by the Court, it is hereby deemed denied. The foregoing constitutes the Opinion, Decision and Order of the Court.

Dated: White Plains, New York
July 20, 2012


HON. SAM D. WALKER, J.S.C.