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| **Konvalin v New York City Tr. Auth.** |
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| 2015 NY Slip Op 50765(U) |
| Decided on May 6, 2015 |
| Appellate Term, Second Department |
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Decided on May 6, 2015
SUPREME COURT, APPELLATE TERM, SECOND DEPARTMENT, 2d, 11th and 13th JUDICIAL DISTRICTS

PRESENT: : PESCE, P.J., SOLOMON and ELLIOT, JJ.
2013-2611 Q C

**John Konvalin, Respondent,**

**against**

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

Appeal from a judgment of the Civil Court of the City of New York, Queens County (William A. Viscovich, J.), entered February 7, 2013. The judgment, upon a jury verdict on the issue of damages and upon the denial of defendant's motion to set aside the jury verdict, awarded plaintiff the principal sum of $450,000 for past pain and suffering.

ORDERED that the judgment is affirmed, without costs.

In this personal injury action arising out of a subway accident that occurred on November 20, 1997, plaintiff alleges that he was among the passengers riding on a Queens-bound "R" train which was struck by a Queens-bound "G" train. The action was commenced in the Supreme Court, Queens County, and was subsequently transferred to the

Civil Court pursuant to CPLR 325 (d). Defendant New York City Transit Authority (NYCTA) conceded liability for the subway accident, and a trial was conducted solely on the issue of damages. The jury awarded plaintiff $450,000 for past pain and suffering, but determined that plaintiff was not entitled to an award for future pain and suffering. NYCTA thereafter moved pursuant to CPLR 4404 (a) for an order setting aside the verdict as excessive and against the weight of the evidence. The Civil Court denied defendant's motion, and a judgment was subsequently entered in plaintiff's favor in accordance with the verdict.

Upon a review of the record, we find that the verdict was based upon a fair interpretation of the evidence presented to the jury, and therefore was not against the weight of the evidence (*see Lolik v Big V Supermarkets*, 86 NY2d 744 [1995]; *Harris v Marlow*, 18 AD3d 608, 610 [2005]; *Nicastro v Park*, 113 AD2d 129 [1985]). Moreover, we find that the jury's award to plaintiff of $450,000 for past pain and suffering for a total of 12 years was not excessive and did not materially deviate from what would be reasonable compensation, given the several surgeries that plaintiff had undergone as a result of his injuries (*see* CPLR 5501 [c]; *Bennett v Henry*, 39 AD3d 575, 576 [2007]; *Williams v Pelican Pest Control, Inc.*, 11 AD3d 454 [2004]; *Weldon v Beal*, 272 AD2d 321 [2000]).

Accordingly, the judgment is affirmed.

Pesce, P.J., Solomon and Elliot, JJ., concur.

Decision Date: May 06, 2015

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