

Andino v Mills
2016 NY Slip Op 00004
Decided on January 5, 2016
Appellate Division, First Department
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Decided on January 5, 2016

Tom, J.P., Renwick, Saxe, Kapnick, JJ.

16464 26798/04

[*1] Niurka Andino, Plaintiff-Respondent,

v

**Ronald Mills, et al., Defendants-Appellants. City of New York, and New York State
Trail Lawyers Association, Amici Curiae. [And A Third-Party Action]**

Lawrence Heisler, New York City Transit Authority, Brooklyn (Timothy O'Shaughnessy of counsel), for appellants.

Sullivan Papain Block McGrath & Cannavo, P.C., New York (Brian J. Shoot of counsel), for respondent.

Zachary W. Carter, Corporation Counsel, New York (Julie Steiner of counsel), for City of New York, amicus curiae.

Evan M. Goldberg, New York, for New York State Trail Lawyers Association, amicus curiae.

Judgment, Supreme Court, Bronx County (Lizbeth Gonzalez, J.), entered June 20, 2014, upon a jury verdict, awarding plaintiff the principal sums of \$600,000 for past pain and suffering, \$23,000,000 for future pain and suffering over 37 years, \$283,422 for past lost earnings, \$2,392,512 for future lost earnings over 19.24 years, \$2,100,000 for future medical expenses over 37 years, and \$2,490,829 for future loss of pension over 17.7 years, and bringing up for review an order, same court and Justice, entered April 8, 2014, which, after a hearing, denied defendants' motion for a collateral source offset pursuant to CPLR 4545, unanimously modified, on the law, to grant that portion of defendants' motion seeking to offset the jury's award of future pension benefits by the amount of plaintiff's accidental disability benefits, and, on the facts, to vacate the award for future pain and suffering and order a new trial as to such damages, unless plaintiff, within 30 days of service of a copy of this order with notice of entry, stipulates to accept a reduced award for future pain and suffering in the amount of \$2.7 million and to entry of an amended judgment in accordance therewith, and otherwise affirmed, without costs.

As a result of a motor vehicle accident, plaintiff sustained a brain injury resulting in, inter alia, permanent cognitive impairment, and headaches accompanied by nausea and dizziness, and injuries to her knees resulting in three surgeries and the need for a future left knee replacement. [*2]The severity of the injuries notwithstanding, the award of \$23,000,000 for future pain and suffering deviates materially from what is reasonable compensation to the extent indicated (*see e.g. Godfrey v G.E. Capital Auto Lease, Inc.*, 89 AD3d 471 [1st Dept 2011], *lv dismissed* 18 NY3d 951 [2012], *lv denied* 19 NY3d 816 [2012]; *Coore v Franklin Hosp. Med. Ctr.*, 35 AD3d 195 [1st Dept 2006]; *see also Smith v Manhattan & Bronx Surface Tr. Operating Auth.*, 58 AD3d 552 [1st Dept 2009]; CPLR 5501[c]). The award for future medical costs, however, was not speculative, and was supported by the testimony of plaintiff's physicians and an economist (*see Coleman v City of New York*, 87 AD3d 401 [1st Dept 2011]).

The trial court correctly denied defendants' motion to reduce the jury's award for future lost earnings by her accidental disability pension and future medical expenses by the health insurance plan afforded to her as part of her disability retirement (*see Oden v Chemung County Indus. Dev. Agency*, 87 NY2d 81 [1995]; *Johnson v New York City Tr. Auth.*, 88

AD3d 321, 328-330 [1st Dept 2011]; *Gonzalez v Iocovello*, 249 AD2d 143 [1st Dept 1998], *affd* 93 NY2d 539 [1999]). The jury's award for future loss of pension benefits, however, should have been offset by the total amount that plaintiff was projected to receive under that

disability pension, effectively reducing that category of damages to zero (*see Oden*, 87 NY2d at 89).

THIS CONSTITUTES THE DECISION AND ORDER

OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: JANUARY 5, 2016

CLERK

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