

Wyble v Lange
2016 NY Slip Op 07114
Decided on November 1, 2016
Appellate Division, First Department
Published by <u>New York State Law Reporting Bureau</u> pursuant to Judiciary Law § 431.
This opinion is uncorrected and subject to revision before publication in the Official Reports.

Decided on November 1, 2016
Friedman, J.P., Renwick, Saxe, Kapnick, JJ.

114045/10 16310 16309

[*1] Robert N. Wyble, et al., Plaintiffs-Respondents,

v

Dale J. Lange, Defendant-Appellant.

Shaub, Ahmuty, Citrin & Spratt, LLP, Lake Success (Steven J. Ahmuty, Jr. of counsel),
for appellant.

Alexander J. Wulwick, New York, for respondents.

Judgment, Supreme Court, New York County (Eileen A. Rakower, J.), entered December 15, 2014, after a jury verdict in plaintiffs' favor, awarding plaintiff Robert N. Wyble, inter alia, \$2,000,000 for past pain and suffering, and \$1,500,000 for future pain and suffering (28 years), and awarding plaintiff Zaida Wyble \$100,000 for loss of services, as

reduced by the court, unanimously modified, on the facts, to direct a new trial on the issue of damages for past and future pain and suffering, unless plaintiffs stipulate, within 30 days of service of a copy of this order with notice of entry, to an award of \$900,000 for past pain and suffering and \$200,000 for future pain and suffering, and to entry of a judgment in accordance therewith, and otherwise affirmed, without costs. Appeal from order, same court (Geoffrey D. Wright, J.), entered July 15, 2014, which, inter alia, denied defendant's posttrial motion for judgment as a matter of law, unanimously dismissed, without costs, as subsumed in the appeal from the judgment.

We reject defendant's contention that the jury verdict as to liability either was unsupported by legally sufficient evidence or was against the weight of the evidence (*see Cohen v Hallmark Cards*, 45 NY2d 493, 499 [1978]). However, we agree that the jury's pain and suffering awards deviate materially from reasonable compensation to the extent indicated (*see Williams v New York City Health & Hosps. Corp.*, 79 AD3d 440 [1st Dept 2010], *appeal withdrawn* 16 NY3d 827 [2011]).

Inasmuch as plaintiffs have not appealed from the judgment and Mrs. Wyble has reportedly accepted the remittur, her request for an additur is unpreserved. In any event, the amount of the reduction was proper (*see Sienicki v 760 W. End Ave. Owners, Inc.*, 23 AD3d 271 [1st Dept 2005]).

THIS CONSTITUTES THE DECISION AND ORDER

OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: NOVEMBER 1, 2016

CLERK

[Return to Decision List](#)