

NEW YORK SUPREME COURT-----COUNTY OF BRONX

PART IA - 5

MELISSA SHILLINGFORD,

Plaintiff,

-against-

NEW YORK CITY TRANSIT AUTHORITY and
TONY BEETAN,

Defendants.

INDEX NUMBER: 303660/2012

Present:
HON. ALISON Y. TUITT
Justice

The following papers numbered 1 to 2,

Read on this Defendants' Motion to Set Aside the Jury Verdict

On Calendar of 7/13/15

Notice of Motion - Exhibits, Affirmation

1

Affirmation in Opposition

2

Upon the foregoing papers, defendants' motion to set aside the jury verdict in this matter is denied for the reason set forth herein.

The within personal injury matter came to trial before this Court and on April 21, 2015, the jury returned a verdict in favor of the plaintiff finding defendants negligent and finding that such negligence was a proximate cause of plaintiff's injuries. The subject accident occurred on November 23, 2011 when plaintiff's vehicle was struck in the rear by defendant's bus. Plaintiff was 23 years old at the time of the accident and had never had any prior spinal injuries, treatment or trauma. Plaintiff claimed that as a result of the accident she sustained serious injuries. The evidence adduced at trial revealed that plaintiff underwent physical therapy, chiropractic and acupuncture treatments in the years following the accident. She also received trigger point injections as well as epidural steroid injections, but to no avail. Thereafter, plaintiff underwent spinal surgery

and was still experiencing pain and discomfort after the surgery. The evidence also revealed that plaintiff is expected to have two more spinal fusion surgeries in the future.

The jury awarded plaintiff a total of \$2,400,000. The breakdown of the award is as follows: \$100,000 for past pain and suffering; \$30,000 for past medical expenses; \$1,500,000 for future pain and suffering (based on a 54 year life expectancy); and \$800,000 for future medical expenses (based on a 54 year life expectancy). Defendants now move to set aside the verdict on the grounds that it is excessive and against the weight of the evidence.

The motion is denied on two grounds. First, defendants failed to annex a copy of the trial transcript. Pursuant to C.P.L.R. 5225(a), it is the obligation of the appellant to assemble a proper record on appeal, which must include any relevant transcripts of proceedings before the Supreme Court. See, Makyeoung Seoung v. Viscuna, 830 N.Y.S.2d 911 (2d Dept. 2004); Gerhardt v. New York City Transit Authority, 778 N.Y.S.2d 536 (2d Dept. 2004). Here, defendants failed to annex any of the trial transcript and, on those grounds, the motion must be denied.

In any event, even if the Court were to consider the merits of the motion, it would be denied. Pursuant to C.P.L.R. §4404(a), the Court may set aside a jury verdict and direct judgment entered in favor of a party entitled to judgment as a matter of law. However, a court may grant judgment notwithstanding the verdict only where there is simply no valid line of reasoning and permissible inferences which could possibly lead rational men to the conclusion reached by the jury." Cohen v. Hallmark Cards, 45 N.Y.2d 493 (1978). A verdict may be set aside as against the weight of the evidence only where "the jury could not have reached its verdict on any fair interpretation of the evidence." McDermott v. Coffee Beanery, Ltd., 777 N.Y.S.2d 103 (1st Dept. 2004).

Defendants' motion must be denied. Contrary to defendants' contention, the evidence was sufficient to support the jury's verdict in favor of plaintiff and the jury's award was not excessive. Pursuant to CPLR §4404(a), the Court in its discretion may set aside a verdict and order a new trial in the interests of justice. The applicable standard of review here is whether the monetary award deviates materially from what would be reasonable compensation for the injuries sustained by plaintiff. See, Donlon v. City of New York, 727 N.Y.S.2d 94 (1st Dept. 2001). To determine whether an award deviates materially from what would be reasonable compensation, Courts look to awards previously approved in similar cases. Id.

However, the exercise of the discretion of a trial Court over damage awards should be exercised sparingly. Shurgan v. Tedesco, 578 N.Y.S.2d 658 (2d Dept. 1992) citing James v. Shanley, 423 N.Y.S.2d 312 (3rd Dept. 1979).

In the instant matter, the record clearly supports a finding that plaintiff sustained a severe and permanent injury to her back at the age of 23 years old. Based on this record, and in comparison to cases with similar injuries, the jury's award of damages for past and future pain and suffering is supportable. See, Tiffany Halsey v. New York City Transit Authority, 2014 NY Slip Op 00964)(Upheld a \$3,000,000 future pain and suffering award ,based on a 54 year life expectancy, for injuries sustained to the back of a then 27 year old plaintiff, including surgery).

Accordingly, the motion is denied.

This constitutes the decision and Order of this Court.

Dated:

9/22/15



Hon. Alison Y. Tuitt