

Pina v Chuang
2017 NY Slip Op 00242
Decided on January 12, 2017
Appellate Division, First Department
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Decided on January 12, 2017

Sweeny, J.P., Renwick, Mazzarelli, Manzanet-Daniels, Feinman, JJ.

2728 350430/11

**[*1]Stanley Pina, an Infant by his Mother and Natural Guardian Erica Abreu, et al.,
Plaintiffs-Respondents,**

v

Meleen Chuang, M.D., et al., Defendants-Appellants.

Shaub, Ahmuty, Citrin & Spratt LLP, Lake Success (Christopher C. Simone of counsel), for appellants.

Krentsel & Guzman, LLP, New York (Anthony T. Hirschberger of counsel), for respondents.

Order, Supreme Court, Bronx County (Alison Y. Tuitt, J.), entered January 11, 2016, which, after a jury trial, denied defendants' motion to set aside the verdict on the issue of

liability or, alternatively, to set aside the verdict awarding infant plaintiff \$150,000 for past pain and suffering and \$250,000 for future pain and suffering for 21 years, unanimously affirmed, without costs.

The record shows that while performing a caesarean section delivery, defendant physicians lacerated the baby's face during the incision of the uterus, resulting in an approximately three centimeter scar on infant plaintiff's face. Although the happening of the injury itself does not mean that there was a departure from the standard of care (*see Johnson v St. Barnabas Hosp.*, 52 AD3d 286, 288 [1st Dept 2008], *lv denied* 11 NY3d 705 [2008]), the verdict was supported by legally sufficient evidence that the standard of care required defendants to have discovered the location of the infant plaintiff's cheek during this non-emergent, elective, procedure (*see Cohen v Hallmark Cards*, 45 NY2d 493, 499 [1978]; *Ross v Mandeville*, 45 AD3d 755 [2d Dept 2007]).

The aggregate award of \$400,000 for past and future pain and suffering does not deviate materially from what is reasonable compensation under the circumstances (CPLR 5501[c]).

THIS CONSTITUTES THE DECISION AND ORDER

OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: JANUARY 12, 2017

CLERK

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