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1 SUPREME COURT OF THE STATE OF NEW YORK  
2 COUNTY OF BRONX: CIVIL TERM: PART IA-13 X

3 ARNULFO AHUMADA,  
4 Plaintiff

5 -against-

Index No.  
302342/2007

6 ARTHUR DROGAN,  
7 Defendant. X

8 851 Grand Concourse  
9 Bronx, New York 10451  
10 August 23rd, 2015

11 B E F O R E:

12 HON. FERNANDO TAPIA,  
13 Justice of the Supreme Court and a jury of six plus two  
alternates.

14 A P P E A R A N C E S:

15 LAW OFFICE OF ERIC GREEN  
16 295 Madison Avenue  
17 16th Floor  
18 New York, NY 10017  
BY: HIRAM RALDIRIS  
for the plaintiff

19 SICCIARE, SCHILL  
20 300E Merchants Concourse  
Westbury NY 11590  
BY: MR. TIMOTHY JONES  
21 FOR THE DEFENDANT

22 *See Order*

23 Gladys Joshua  
24 Senior Court Reporter

25 *9/8/15*  
*Dove*

*[Signature]*  
FERNANDO TAPIA

P R O C E E D I N G S

(Whereupon, previous record not transcribed)

1  
2 THE COURT: Ladies and gentlemen, I want to thank  
3 you for having sat as jurors in this case. I know you  
4 listened very carefully and you arrived at a decision that  
5 you felt was fair and just under the circumstances, you've  
6 heard the testimony at this point. Once again, thanks for  
7 taking the time away from the routine. I always come off  
8 the bench and I come taking the time -- I'll come to you,  
9 okay. Thank you very much sir. Maybe the lawyers might  
10 want to say a few things.

11 MR. RALDIRIS: On behalf of Mr. Ahumada and the  
12 family thank you for your patience, and thank you for the  
13 award we're very pleased thank you so much.

14 MR. JONES: Thanks for your time, ladies and  
15 gentlemen.

16 THE COURT: Thank you, you're excused. You have  
17 to follow Dave.

18 COURT OFFICER: Yes, Judge. All rise please  
19 jurors.

20 (Whereupon, sworn jurors exiting the courtroom)

21 THE COURT: All right I'll hear you.

22 MR. JONES: Motion, Judge. Defense is making a  
23 motion to set aside the verdict as against the weight of the  
24 evidence. The evidence is clear in this case that from 2007  
25 on the plaintiff never treated once with a physician for any

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1 injuries related to the subject accident.

2 In addition, there was an absence of proof,  
3 particularly on herniated disc, in the absence of the film.  
4 therefore, the jurors were allowed to base their verdict  
5 upon hearsay evidence.

6 And, number three, the monetary award is clearly  
7 in excess. And shocks the conscious of anything fair and  
8 reasonable based upon the evidence adduced at trial.

9 THE COURT: All right.

10 MR. RALDIRIS: Your Honor, there's been ample  
11 evidence as to the low back claim. This was a radiologist  
12 who testified that he reviewed the films. Secondary  
13 evidence was deemed to be admissible pursuant to Wagman.  
14 The treating doctor Dr. Durden indicated that herniation at  
15 L4-5 as being caused by the accident and being the source of  
16 the complaints of the low back.

17 There's testimony, which was undisputed, that the  
18 plaintiff suffered a knee fracture and a meniscal tear  
19 requiring surgery caused by this accident. That was  
20 admitted by all of doctors.

21 In terms of the size of the award, Martinez v.  
22 MABSTOA 2003 First Department case, I would like your Honor  
23 to give us an opportunity to brief the issue. It stands for  
24 the proposition that a herniated disc alone is sustainable  
25 of \$600,000. So if that is the case, and that is the law --

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1 and if your Honor has any question about it, your Honor can  
 2 take the opportunity to get that case and review that case.  
 3 Martinez authorizes \$600,000 for a herniated disc in the  
 4 First Department. When you add the meniscal tear, the  
 5 surgery, the very gory facts of this accident, that clearly  
 6 justifies an additional \$150,000. So the award of \$750,000  
 7 is sustainable on appeal.

8 THE COURT: All right.

9 MR. JONES: Can I have an opportunity to brief the  
 10 Court on papers? To submit it in writing to the Court  
 11 beyond the time ascribed in the CPLR?

12 MR. RALDIRIS: I'll join.

13 THE COURT: You may very well join at this point.  
 14 This is my decision: Clearly that award — and I respect  
 15 the jurors on what they decided here today, as like what all  
 16 jurors do I respect them. But there is no way in the world  
 17 that I'm going to allow a \$750,000 award on the facts of the  
 18 case that I've heard, given the testimony that's been before  
 19 me today. I've always held that this case, at the very  
 20 most, was a \$250,000 case. And that was pushing it for an  
 21 unspecified herniation, supposedly localized with a bulge,  
 22 all doctors agree to that. A meniscal tear \$750,000 that  
 23 shocks the conscious.

24 As far as I'm concerned I believe that this case  
 25 should settle at \$250,000. But, of course, that's your

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1 choice to make. If you chose not to, I'm setting aside that  
2 verdict as being completely in excess of what I believe the  
3 Appellate Division will sustain at this point. That being  
4 the case, I'm going to set that verdict aside.


5 MR. RALDIRIS: I take exception. I wish you would  
6 allow the jury who has spoken on this case to be the final  
7 determiner of the award.

8 I know your Honor throughout the trial has been  
9 trying to get me to accept \$250,000 to settle this case.  
10 The jury did not agree with you and you should not  
11 substitute your opinion for what the jury unanimously held  
12 and I take exception.

13 THE COURT: Let the Appellate decide. If I'm  
14 wrong let them say so. On a meniscal \$750,000? Unspecified  
15 herniated disc? I don't see it. Thank you gentleman, okay.

16  
17 \* \* \* \*

18 Certified to be a true and accurate transcript of  
19 the stenographic minutes taken within.

20  
21   
22 Gladys Joshua  
23 Senior Court Reporter  
24  
25