

SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY

PRESENT: HON. MANUEL J. MENDEZ PART 13
Justice

IN RE 91ST STREET CRANE COLLAPSE LITIGATION:

XHEVAHIRE SINANAJ and SELVI SINANOVIC as CO-ADMINISTRATORS OF THE ESTATE OF RAMADAN KURTAJ, DECEASED, and SELVI SINANOVIC Individually,

Plaintiffs,

INDEX NO. 117469/08 MOTION DATE 10-26-2015 MOTION SEQ. NO. 90 MOTION CAL. NO.

- v -

JAMES F. LOMMA, NEW YORK CRANE & EQUIPMENT CORP., JAMES F. LOMMA, INC.,

Defendants.

AND ALL RELATED ACTIONS

The following papers, numbered 1 to 9 were read on this motion pursuant to CPLR §4404 and §5501:

Table with 2 columns: Description of papers and PAPERS NUMBERED. Includes rows for Notice of Motion/ Order to Show Cause, Answering Affidavits, and Replying Affidavits.

Cross-Motion: [ ] Yes [X] No

Upon a reading of the foregoing cited papers, it is Ordered that defendants James F. Lomma, J.F. Lomma, Inc. and New York Crane & Equipment Corp.'s (hereinafter collectively referred to as defendants) motion pursuant to CPLR §4404 and §5501, to set aside the verdict on damages to the extent of remitting the amounts to those requested, is denied.

This case relates to the collapse of a Kodiak Tower Crane (#84-052) (the "Crane") on May 30, 2008, at East 91st Street, New York County. The two wrongful death actions were tried jointly for approximately 120 days, which took place over the course of ten months, and included testimony of approximately 68 witnesses. On July 30, 2015, a verdict was reached after three days of deliberation, finding the defendants solely liable for plaintiffs injuries in this action, awarding \$7,500,000.00 for pre-impact terror and \$24,000,000.00 for conscious pain and suffering. Liability was apportioned so that James F. Lomma, was found personally liable for 61% of the damages, J.F. Lomma Inc. was found 20% liable and New York Crane and Equipment Corp. was found 19% liable. A separate verdict as to punitive damages was reached on August 3, 2015, awarding \$24,000,000.00, to the plaintiffs.

Defendants pursuant to CPLR §4404 and §5501, seek to have this Court reduce the amount awarded for the amount for pre-impact terror to not more than \$250,000.00, and for conscious pain and suffering to no more than \$2,500,000.00. Defendants do not argue the propriety, but seek to modify the award for punitive damages to conform with the alleged juror's intent after the proposed reduction in the other damages, to not more than \$2,000,000.00.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

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Pursuant to CPLR §4404, after a jury trial, the Court may set aside a verdict as contrary to the weight of the evidence. To find that a jury verdict is against the weight of the evidence, it must be found irrational, such that, "...simply there is no valid line of reasoning and permissible inferences which could possibly lead rational men to the conclusion reached by the jury on the basis of the evidence presented at trial." (CPLR §4404; *Cohen v. Hallmark Cards*, 45 N.Y. 2d 493, 382 N.E. 2d 1145, 410 N.Y.S. 2d 282 [1978]). The jury is accorded great deference in making fact finding and credibility determinations and the verdict should only be set aside where it is palpably wrong and the conclusions reached could not be obtained by, "any fair interpretation of the evidence." A judge evaluating witness credibility, "...is not able to substitute such alternative evaluation unless these exacting standards are first met" (*Rivera v. 4064 Realty Co.*, 17 A.D. 3d 201, 794 N.Y.S. 2d 18 [1<sup>st</sup> Dept., 2005]).

The jury's verdict in this case is not against the weight of the evidence. The verdict is rational and took into consideration the extensive evidence presented by all parties to this action, it was not at variance with the proffered testimony or palpably improper. The jury heard the witnesses' graphic description of the manner in which decedent Kurtaj sustained his injuries; what occurred immediately before the crane collapse, during the crane collapse and after the crane collapse.

The witnesses described the terrible noise that was heard when the machine deck began to detach itself from the crane's tower, what Kurtaj said to his co-workers when he heard the noise and saw the crane's machine deck falling in his direction, and what Kurtaj tried to do to get away from the falling machine deck and boom.

They described how he was impacted by the falling crane. That he was alive, conscious and bleeding, with broken bones and torn flesh, doused in diesel fuel making it difficult for him to breathe and in sheer agony. They described what had to be done to pry Kurtaj from under the wreckage; his condition once he was released from the wreckage and the terror and level of pain he experienced from the moment he was delivered to the hospital and thereafter.

These facts were heard and weighed by the jury in assessing their damages award for the pre-impact/pre-death terror, and pain and suffering experienced by decedent Kurtaj.

CPLR §5501, applies to the reduction of an award if it is excessive, inadequate or, "...deviates materially from what would be reasonable compensation." The application of "deviates materially" requires looking to awards in similar cases that were approved (*Reed v. City of New York*, 304 A.D. 2d 1, 757 N.Y.S. 2d 244 [1<sup>st</sup> Dept., 2003]). Case law fails to apply and there is no obligation to determine whether an award applies when there is no "precedential analog," allowing the Court to be free to evaluate the award on the basis of, "subjective opinions which are formulated without the availability, or guidance, of precise mathematical quantification." (*Launders v. Steinberg*, 39 A.D. 3d 57, 828 N.Y.S. 2d 36 [1<sup>st</sup> Dept., 2007]).

The extent of the trial evidence and facts as they apply to this action are such that there is no precedential analog, actions involving crush injuries apply to only one component of this multi-faceted case. There is no basis to reduce the jury verdict amounts for pre-impact terror, conscious pain and suffering, or the amount of punitive damages.

Accordingly, it is ORDERED that defendants, James F. Lomma, J.F. Lomma, Inc. and New York Crane & Equipment Corp.'s motion pursuant to CPLR §4404 and §5501,

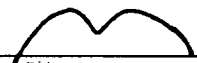
to set aside the verdict on damages to the extent of remitting the amounts to those requested, is denied, and it is further,

**ORDERED**, that plaintiffs may enter judgment on the jury verdict, and it is further,

**ORDERED**, that the Clerk of this Court is directed to enter judgment on the jury verdict accordingly.

ENTER :

Dated: October 27, 2015

  
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MANUEL J. MENDEZ  
J.S.C.

MANUEL J. MENDEZ  
J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION  
Check if appropriate:  DO NOT POST  REFERENCE