

Thompson v Toscano
2018 NY Slip Op 07676
Decided on November 13, 2018
Appellate Division, First Department
Published by <u>New York State Law Reporting Bureau</u> pursuant to Judiciary Law § 431.
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Decided on November 13, 2018

Renwick, J.P., Tom, Mazzaelli, Webber, Kern, JJ.

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[*1]Charlette Thompson, Plaintiff-Appellant,

v

**Andrew Toscano, et al., Defendants-Respondents, Charles A. Ross, et al.,
Defendants.**

Pollack, Pollack, Isaac & DeCicco, LLP, New York (Brian J. Isaac of counsel), for appellant.

Pillinger Miller Tarallo, LLP, Elmsford (Donna Brautigam of counsel), for respondents.

Order, Supreme Court, Bronx County (Julia I. Rodriguez, J.), entered November 18, 2016, which granted the motion of defendants Andrew Toscano and Maria Toscano to set aside the jury verdict awarding plaintiff, inter alia, \$400,000 for past pain and suffering

and \$750,000 for future pain and suffering over 25 years to the extent of setting the matter down for a new trial on damages unless plaintiff stipulates, within 30 days of service of a copy of the order with notice of entry, to a reduced award of \$300,000 for past pain and suffering and \$250,000 for future pain and suffering, unanimously affirmed, without costs.

The 29-year-old plaintiff was a passenger in a minivan involved in an accident with a vehicle owned and operated by the Toscanos. Plaintiff suffered a partial labral tear to the left shoulder, for which she underwent surgery, and had two courses of physical therapy. Plaintiff testified that she continued to suffer from intermittent pain and had a loss of range of motion to her left arm. Her surgeon opined that she might require further physical therapy and surgery in the future. After reviewing comparable injuries and awards, the trial court appropriately concluded that the amounts awarded by the jury were excessive and that the amounts of \$300,000 for past pain and suffering and 250,000 for future pain and suffering constituted reasonable compensation for the injuries sustained (*see e.g. Morales v Manhattan & Bronx Surface Tr. Operating Auth.*, 106 AD3d 459 [1st Dept 2013]; *Konfidan v FF Taxi, Inc.*, 95 AD3d 471 [1st Dept 2012]).

THIS CONSTITUTES THE DECISION AND ORDER

OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: NOVEMBER 13, 2018

CLERK

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