

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

Index No. 0302047/14
Motion Calendar No. 7/8
Motion Date: 08/12/19

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NELSIDA DE LA ROSA,

Plaintiff,

DECISION/ ORDER

Present:
Hon. Wilma Guzman
Justice Supreme Court

against-

NELSON AVENUE HOLDINGS LLC,

Defendants.

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Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion:

Papers

Numbered

Notice of Motion, Affirmation in Support,	
Exhibits Thereto	1
Affirmation in Opposition.....	2
Affirmation in Reply.....	3
Notice of Cross-Motion, Affirmation in Support,	
Exhibits Thereto.....	4
Affirmation in Opposition.....	5
Reply Affirmation.....	6

Order takes into consideration two applications and they are decided as follows: Upon deliberation of the application duly made by defendant, NELSON AVENUE HOLDINGS LLC, (hereinafter "NELSON" or "defendant"), by NOTICE OF MOTION, and all the papers in connection therewith, for an Order, pursuant to CPLR §4404, setting aside and vacating the jury's damages verdict and ordering a new trial, is heretofore denied. Upon deliberation of the application duly made by plaintiff herein, by NOTICE OF MOTION, and all the papers in connection therewith, for an Order, pursuant to CPLR §4404(a) and 5501(c), increasing the past pain and suffering award from \$137,000.00 to \$1,000,000.00, or in the alternative, modifying the verdict by increasing the damages awarded to an amount that the Court deems reasonable compensation under the circumstances, or in the alternative, ordering a new trial limited to the amounts awarded for past pain and suffering, is heretofore denied.

Plaintiff brought this action, to recover for personal injuries sustained on February 17, 2014, as a result of being struck by a ceiling that collapsed as a result of defendant's negligence. The trial of this matter commenced on April 23, 2019 and the jury returned a verdict on May 7, 2019. Defendant conceded liability on April 22, 2019 before the commencement of jury selection. After conclusion of the trial, the jury returned a verdict in the amount of \$4,174,000.00, which was broken down as follows: (1) \$137,000.00 for past pain and suffering; (2) \$137,000.00 past medical expenses.

It should be noted at the outset that defendant's application must be denied outright for failing to make any showing that the verdict could not have been reached by the jury on any fair interpretation of the evidence or that there was no valid line of reasoning and permissible inferences which could possibly lead rational persons to conclusions reached by the jury on the basis of the evidence presented. Defendant has failed to attach any trial testimony to their initial application to the Court. Bare assertions by counsel in an affirmation is insufficient for this Court to vacate the jury's award after a two (2) week trial. This Court will not consider any proposed testimony offered in reply.

Plaintiff's application to increase the past pain and suffering award, or in the alternative, order a new

trial limited to the amounts awarded for past pain and suffering is also denied. The jury heard all the evidence submitted during the trial, including the testimony of plaintiff, plaintiff's orthopedic surgeon, Dr. Michael Gerling, and plaintiff's physical medicine, rehabilitation and pain management specialist, Dr. Ali Guy. It appears from the testimony presented that plaintiff stopped treating with a medical doctor for a period of approximately two (2) years in or about 2016 to approximately 2018. Upon listening to the relevant testimony, the jury concluded that plaintiff was entitled to \$137,000 for past pain and suffering. This award appears to be rationally based from the evidence presented. This Court is not persuaded that the province of the jury need be disturbed.

Accordingly, it is:

ORDERED that the application by defendant for an Order setting aside and vacating the jury's damages verdict and ordering a new trial, is heretofore denied. It is further

ORDERED that the application by plaintiff for an Order, increasing the past pain and suffering award from \$137,000.00 to \$1,000,000.00, or in the alternative, modifying the verdict by increasing the damages awarded to an amount that the Court deems reasonable compensation under the circumstances, or in the alternative, ordering a new trial limited to the amounts awarded for past pain and suffering, is heretofore denied. It is further

ORDERED that plaintiff shall serve a copy of this Order with Notice of Entry within thirty (30) days of entry of this Order.

The forgoing constitutes the Decision and Order of the Court.

Dated: 1/6/2020



HON. WILMA GUZMAN
J.S.C.