

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

PRESENT: HON. WILLIAM PERRY PART 23

Justice

X

SUAREZ, GABRIEL

Plaintiff,

- v -

ADES, YVES

Defendant.

INDEX NO. 150599/2017

MOTION DATE 09/17/2021

MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

X

The following e-filed documents, listed by NYSCEF document number (Motion 003) 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87

were read on this motion to/for

MISCELLANEOUS

The court held a jury trial in this trip and fall action on June 8, 9, 14, and 15, 2021. The jury returned a verdict finding that Plaintiff Gabriel Suarez was 60% at fault, while Defendant Yves Ades was 40% at fault, and awarded Plaintiff \$50,000.00 for past pain and suffering, plus \$200,000.00 for future pain and suffering (for an expected 24.1 years). The jury also found that Plaintiff would require a future surgery, which added another \$37,500.00 to the award, a figure which had been stipulated to by the parties. Because of the degree of comparative negligence, the \$287,500.00 award was reduced to \$115,000.00.

After the verdict was read and the jury was discharged, Plaintiff alleges that the jurors approached counsel and indicated that they had actually intended for Plaintiff to receive the full \$287,500.00 amount, rather than the \$115,000.00 after apportionment.


Now, Plaintiff moves for the court to either 1) direct a judgment for damages as the jury intended, pursuant to CPLR 4404[a] or; 2) set aside the verdict and direct a new trial on the issue of damages "as the jury was not charged to disregard their finding of fault when awarding damages," or 3) award a new trial on the issue of damages because the award was inadequate.

(NYSCEF Doc No. 75, Pl.'s Memo.) In support, Plaintiff submits affidavits of the 6 jurors. (NYSCEF Doc No. 79.) The motion is fully submitted and is granted to the extent that a new trial on the issue of damages is directed.

A new trial on damages is warranted because "[t]he verdict sheet was, on its face, unclear and confusing, and thus, created an issue as to the precise amount the jury intended to award the plaintiff." (McStocker v Kolment; 160 AD2d 980, 981 [2d Dept 1990].) The parties did not request, and as a result the court did not provide, an instruction to the jury that it was to disregard the apportionment of fault in calculating the amount of damages owed to Plaintiff. This "error was so fundamental as to preclude a proper consideration of the issue of damages ... [and thus] a new trial limited to the issue of damages is appropriate." (Best v Swan Group Ltd Partnership, 81 AD3d 1344 [4th Dept 2011].) However, consideration of the jury affidavits is improper, as "the jury's error in awarding damages was not clerical or ministerial in nature[.]" (Flanagan v Southside Hosp., 251 AD2d 447, 448 [2d Dept 1998]; Best, 81 AD3d at 1344.) Accordingly, it is hereby

ORDERED that Plaintiff's motion sequence 003 is granted to the extent that a new trial on the issue of damages is directed.

3/24/2022
DATE


WILLIAM PERRY, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE