



243 A.D.3d 603, 242 N.Y.S.3d 771
(Mem), 2025 N.Y. Slip Op. 06091

****1** Mauro Rojas, Appellant,

v

1700 First Avenue, LLC, et al.,
Respondents. (And Third-Party Actions.)

Supreme Court, Appellate Division.
Second Department, New York
2021-04761, 712043/20
November 5, 2025

CITE TITLE AS: Rojas v 1700 First Ave., LLC

HEADNOTE

Damages

Inadequate and Excessive Damages

Future Pain and Suffering and Future Lost Earnings

Ginarte Gallardo Gonzalez Winograd, LLP, New York, NY
(Timothy Norton of counsel), for appellant.

Cascone & Kluepfel, LLP, Farmingdale, NY (Leonard
Cascone of counsel), for respondents.

In an action to recover damages for personal injuries, the
plaintiff appeals from a judgment of the Supreme Court,
Queens County (Cherée A. Buggs, J.), entered June 16, 2021.
The judgment, insofar as appealed from, upon a jury verdict
on the issue of damages, and upon the denial of the plaintiff's
oral application pursuant to CPLR 4404 (a) to set aside
the jury verdict on the issue of damages as inadequate and
contrary to the weight of the evidence and for a new trial on
the issue of damages, is in favor of the plaintiff and against
the defendants in the principal sums of only \$75,000 for past
pain and suffering, \$0 for future pain and suffering and \$0 for
future lost earnings.

Ordered that the judgment is affirmed insofar as appealed
from, with costs.

The plaintiff was performing work on a construction project
when he was exposed to an electrical shock and allegedly
suffered injuries, including to the cervical and lumbar regions

of his spine. After a trial, the jury returned a verdict in favor of
the plaintiff and against the defendants on the issue of liability.
On the issue of damages, the jury found that the plaintiff was
entitled to an award for past pain and suffering in the principal
sum of \$75,000, as well as awards for past medical expenses,
***604** past lost earnings, and future medical expenses over
a period of two years. However, the jury concluded that the
plaintiff was not entitled to damages for future pain and
suffering and future lost earnings.

After the jury issued its verdict, the plaintiff made an oral
application pursuant to CPLR 4404 (a) to set aside the jury
verdict on the issue of damages as inadequate and contrary to
the weight of the evidence and for a new trial on the issue of
damages. The Supreme Court denied the application. On June
16, 2021, the court entered a judgment, inter alia, in favor of
the plaintiff and against the defendants in the principal sums
of \$75,000 for past pain and suffering, \$0 for future pain and
suffering and \$0 for future lost earnings. The plaintiff appeals
from those portions of the judgment.

“It is for the jury to make determinations as to credibility
of witnesses, and great deference in this regard is accorded
to the jury, which had the opportunity to see and hear the
witnesses” (*Guaman v One Whitehall, L.P.*, 210 AD3d 1060,
1062 [2022] [internal quotation marks ****2** omitted]). “A
jury verdict on the issue of damages should not be set aside
as contrary to the weight of the evidence unless the evidence
so preponderated in favor of the movant that the jury could
not have reached the verdict by any fair interpretation of
the evidence” (*id.* at 1061; *see Peterson v MTA*, 155 AD3d
795, 798 [2017]). Furthermore, a jury's determination of
the amount of damages “will not be disturbed unless the
award deviates materially from what would be reasonable
compensation” (*Mehmeti v Miller*, 196 AD3d 475, 475
[2021] [internal quotation marks omitted]; *see Kapassakis v
Metropolitan Transp. Auth.*, 193 AD3d 835, 837-838 [2021]).

Here, the evidence concerning the extent and permanency
of the plaintiff's injuries, as well as his alleged inability
to perform any work, did not so preponderate in his favor
that the verdict awarding him no damages for future pain
and suffering and future lost earnings could not have been
reached by any fair interpretation of the evidence (*see
Kapassakis v Metropolitan Transp. Auth.*, 193 AD3d at
837-838; *Hadjidemetriou v Juarez*, 187 AD3d 1156, 1157
[2020]). Similarly, in light of the evidence regarding the
nature and extent of the plaintiff's injuries, which was
conflicting in some respects even as presented by the

plaintiff's own experts, the jury's award for past pain and suffering did not deviate materially from what would be reasonable compensation (*see Mehmeti v Miller*, 196 AD3d 475, 476 [2021]; *Diaz v Dadabo*, 174 AD3d 787, 789 [2019]).

***605** Accordingly, we affirm the judgment insofar as appealed from. Iannacci, J.P., Miller, Voutsinas and Golia, JJ., concur.

The plaintiff's remaining contention is without merit.

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