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276 A.D.2d 664  
 276 A.D.2d 664, 714 N.Y.S.2d 531, 2000 N.Y. Slip Op. 08916  
 (Cite as: 276 A.D.2d 664, 714 N.Y.S.2d 531)

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Supreme Court, Appellate Division, Second Department, New York.  
 Jhoda DOOKNAH, appellant, et al., plaintiffs,  
 v.  
 Barbara THOMPSON, et al., respondents.  
 Oct. 23, 2000.

Personal injury plaintiff and his wife appealed from judgment of the Supreme Court, Queens County, Dye, J., which awarded plaintiff \$45,000 in damages, but failed to make award to wife for loss of consortium. The Supreme Court, Appellate Division, conditionally affirmed. After new hearing, the Supreme Court, Queens County, Schmidt, J., denied plaintiff's motion to set aside the jury verdict as to damages for past and future pain and suffering, and for a new trial on those elements of damages, and entered judgment awarding \$30,000 for past pain and suffering, and damages for future pain and suffering of \$20,000. Plaintiff appealed. The Supreme Court, Appellate Division, held that jury awards of \$30,000 for past pain and suffering, and \$20,000 for future pain and suffering materially deviated from what would be reasonable compensation, and would be increased to \$75,000 and \$125,000, respectively.

Appeal from order dismissed; judgment conditionally affirmed.

West Headnotes

[1] Appeal and Error 30 ↪ 74

30 Appeal and Error

30III Decisions Reviewable

30III(D) Finality of Determination

30k67 Interlocutory and Intermediate Decisions

30k74 k. Effect of Right to Review on Appeal from Final Judgment. Most Cited Cases

Right of direct appeal from intermediate order denying personal injury plaintiff's motion to set aside the jury verdict as to damages for past and future pain and suffering, and for a new trial on those elements of damages terminated with the entry of judgment in the action.

[2] Damages 115 ↪ 127.28

115 Damages

115VII Amount Awarded

115VII(B) Injuries to the Person

115k127.25 Leg, Foot, Knee, and Hip Injuries

115k127.28 k. Fractures, Sprains, and Connective Tissue Injuries. Most Cited Cases

(Formerly 115k132(7))

Jury awards of \$30,000 for past pain and suffering, and \$20,000 for future pain and suffering, to 61-year-old plaintiff who suffered nondisplaced fracture of the right acetabulum, with swelling of the right obturator internus muscle, and two fractures to the pubic ramus, materially deviated from what would be reasonable compensation, and would be increased to \$75,000 and \$125,000, respectively; physician testified that a fractured acetabulum caused persistent hip pain, which could have been alleviated only by hip replacement surgery. McKinney's CPLR 5501(c).

**\*\*532** Frederick Feder, Brooklyn, N.Y. (Sandra D. Janin of counsel), for appellant.

Shapiro, Beilly, Rosenberg, Aronowitz, Levy & Fox, LLP, New York, N.Y. (Roy Karlin of counsel), for respondents.

CORNELIUS J. O'BRIEN, J.P., MYRIAM J. ALTMAN, GABRIEL M. KRAUSMAN and GLORIA GOLDSTEIN, JJ.

MEMORANDUM BY THE COURT.

**\*664** In an action to recover damages for personal injuries, etc., the plaintiff Jhoda Dooknah appeals (1) from an order of the Supreme Court, Queens County (Schmidt, J.), dated June 9, 1999, which denied his motion to set aside the jury verdict as to damages for past and future pain and suffering, and for a new trial on those elements of damages, and (2), as limited by his brief, on the ground of inadequacy, from so much of an amended judgment of the same court entered August 25, 1999, as, upon awarding him damages for past pain and suffering in the sum of \$30,000, and damages for future pain and suffering in the sum of \$20,000, is in his favor only in the principal sum of \$50,000.

ORDERED that the appeal from the order is dismissed; and it is further,

ORDERED that the amended judgment is reversed insofar as appealed from, on the facts and as an exercise of discretion, with costs, the order dated June 9, 1999, is vacated, the motion is granted, and a new trial is granted on the issue of damages for past and future pain and suffering only, unless within 20 **\*665** days after service upon the defendants of a copy of this decision and order, with notice of entry, the defendants shall serve and file in the Office of the Clerk of the Supreme Court, Queens County, a written stipulation consenting to increase the verdict as to damages from the sum of \$30,000 to the sum of \$75,000 for past pain and suffering, and from the sum of \$20,000 to the sum of \$125,000 for future pain and suffering, and to the entry of an amended

judgment in favor of Jhoda Dooknah in the principal sum of \$200,000. In the event the defendants so stipulate, the amended judgment, as so increased and amended, is affirmed insofar as appealed from, without costs or disbursements.

[1] The appeal from the intermediate order must be dismissed because the right of direct appeal therefrom terminated with the entry of judgment in the action (*see, Matter of Aho*, 39 N.Y.2d 241, 248, 383 N.Y.S.2d 285, 347 N.E.2d 647). The issues raised on appeal from the order are brought up for review and have been considered\*\*533 on the appeal from the amended judgment (*see, CPLR 5501[a][1]*).

[2] On a prior appeal in this case, we found that the damages awarded to the plaintiff Jhoda Dooknah (hereinafter the plaintiff) did not adequately compensate him for the injuries he suffered when struck by the defendants' automobile. We directed that a new trial on the issue of damages be held unless the defendants stipulated to increase damages for past pain and suffering to \$75,000, and future pain and suffering to \$125,000 (*see, Dooknah v. Thompson*, 249 A.D.2d 260, 670 N.Y.S.2d 919). When the defendants refused to so stipulate, a new damages trial was conducted, and the jury awarded the plaintiff \$30,000 for past pain and suffering, and \$20,000 for future pain and suffering.

At the second trial, the plaintiff again presented expert medical testimony establishing that he sustained a nondisplaced fracture of the right acetabulum with swelling of the right obturator internus muscle, and two fractures to the pubic ramus. The plaintiff's physician testified that a fractured acetabulum causes persistent hip pain, which can be alleviated only by hip replacement surgery. The defendants countered by calling a physician who had examined the plaintiff on one occasion in 1994, but who did not testify at the first trial. Although that physician conceded that he had not reviewed X-rays or a CAT scan of the plaintiff's injuries, he challenged the conclusion of the CAT scan report which diagnosed the plaintiff's fractured acetabulum, and maintained that the plaintiff had fully recovered from the pelvic fractures and required no further medical treatment. However, the jury clearly rejected the testimony of the defendants' physician by awarding the plaintiff damages for future pain and suffering.

\*666 Based upon the nature and extent of the plaintiff's injuries, we conclude, as we did upon the prior appeal, that the verdict for past and future pain and suffering materially deviates from what would be reasonable compensation (*see, CPLR 5501[c]*), and is inadequate to the extent indicated.

N.Y.A.D. 2 Dept.,2000.  
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