

Westlaw.

36 A.D.3d 421, 827 N.Y.S.2d 136, 2007 N.Y. Slip Op. 00051
(Cite as: 36 A.D.3d 421, 827 N.Y.S.2d 136)

Supreme Court, Appellate Division, First Department, New York.
Jacqueline JEFFRIES, Individually and as Parent and Natural Guardian of Jamila Parker, et al., Plaintiffs-Respondents-
Appellants,
v.
3520 BROADWAY MANAGEMENT CO., et al., Defendants-Appellants-Respondents.
Jan. 4, 2007.

Background: In personal injury case, the Supreme Court, New York County, Walter B. Tolub, J., entered judgment on jury verdict awarding damages for past and future pain and suffering and subsequently set aside additional awards for past and future lost wages on motion of tortfeasor. Personal injury victim and tortfeasor both appealed.

Holdings: The Supreme Court, Appellate Division, held that:

- (1) victim was entitled to \$250,000 for past pain and suffering and \$1,250,000 for future pain and suffering, and
- (2) evidence was insufficient to support jury awards for past and future lost earnings.

Affirmed.

West Headnotes

[1] Damages 115 ↪ 127.37

115 Damages

115VII Amount Awarded

115VII(B) Injuries to the Person

115k127.36 Injuries to the Nervous System and Paralysis

115k127.37 k. In General. Most Cited Cases

Personal injury victim was entitled to \$250,000 for past pain and suffering and \$1,250,000 for future pain and suffering, notwithstanding that she was never hospitalized and received only six months of physical therapy, for reflex sympathetic dystrophy (RSD) resulting in daily headaches and pain on left side of her body radiating into her left hand and sometimes her left foot; victim demonstrated vasomotor changes confirming diagnosis of RSD, described head pain as sometimes stabbing and sometimes like heavy pressure, and her left hand at various times tingled, swelled, and turned blue.

[2] Damages 115 ↪ 186

115 Damages

115IX Evidence

115k183 Weight and Sufficiency

115k186 k. Loss of Earnings, Services, or Consortium. Most Cited Cases

Damages 115 ↪ 187

115 Damages

115IX Evidence

115k183 Weight and Sufficiency

115k187 k. Impairment of Earning Capacity. Most Cited Cases

Evidence of personal injury victim's past earnings was insufficient to support damages awarded by jury for past lost earnings and future lost earnings where her salaried employment had ended 10 years prior to accident and she was unable to produce tax returns, W-2 forms, or other documentation for subsequent earnings for alleged work as stage and production manager; playbills evidencing her participation in various community theatre productions was inadequate, as was testimony of one of her alleged former employers about her occasional involvement in productions.

[3] Evidence 157 ↪ 555.9

157 Evidence

157XII Opinion Evidence

157XII(D) Examination of Experts

157k555 Basis of Opinion

157k555.9 k. Damages. Most Cited Cases

Expert economist was properly precluded from testifying in personal injury trial regarding lost past and future wages where his opinion was not based on victim's work experience and was purely speculative.

****137 Fiedelman & McGaw, Jericho (James K. O'Sullivan of counsel), for appellants-respondents.**

Robert Dembia, New York, for respondents-appellants.

TOM, J.P., SAXE, MARLOW, McGUIRE, MALONE, JJ.

***421** Judgment, Supreme Court, New York County (Walter B. Tolub, J.), entered September 1, 2005, awarding, inter alia, damages on the jury verdict in the principal sums of \$250,000 ***422** for past pain and suffering and \$1,250,000 for future pain and suffering, and vacating the jury's awards of \$250,000 for past lost earnings and \$750,000 for future lost earnings, unanimously affirmed, without costs. Order, same court and Justice, entered May 2, 2005, which, to the extent appealed from, granted defendants' motion to set aside the jury awards for lost earnings, unanimously dismissed, without costs, as subsumed in the appeal from the judgment.

[1] The awards for pain and suffering do not deviate materially from what would be considered reasonable compensation (*see* CPLR 5501[c]). Although plaintiff was never hospitalized, received only six months of physical therapy, and never underwent surgery with respect to her condition, the record demonstrates that she suffers daily from pain on the left side of her head and body, and that she demonstrates vasomotor changes (i.e., cyanosis and coolness in the affected hand), which confirm the diagnosis of reflex sympathetic dystrophy (RSD). Defendants mischaracterize plaintiff's testimony when they say her pain was not constant. Plaintiff testified that she suffered from constant headaches on the left side of her head, a pain she described as sometimes "stabbing" and sometimes like heavy pressure. Plaintiff testified that the pain radiated down the left side of her body

and into her left hand, and sometimes into her left foot. The left hand she described as sometimes tingling, sometimes swollen, sometimes blue. Numerous experts testified regarding plaintiff's condition and the provenance of her extreme pain. Plaintiff's award is within the range of other reported awards for RSD (see Brown v. City of New York, 309 A.D.2d 778, 765 N.Y.S.2d 803 [2003]; Jones v. Davis, 307 A.D.2d 494, 763 N.Y.S.2d 136 [2003], *lv. dismissed* 1 N.Y.3d 566, 775 N.Y.S.2d 782, 807 N.E.2d 895 [2003]; Valentine v. Lopez, 283 A.D.2d 739, 725 N.Y.S.2d 714 [2001]).

[2] Plaintiff's testimony regarding her employment history was not supported by any tax returns, W-2 forms or other documentation. Furthermore, her "salaried" employment as a secretary ceased 10 years prior to the accident in question. Thereafter, she worked in the theatre as a stage and production manager, but proffered no documentary evidence to support her claimed loss of earnings. The testimony of Karen Baxter, one of plaintiff's alleged employers, was inadequate to meet plaintiff's burden of proof. Baxter testified only to occasional involvement by plaintiff **138 in productions at Brown University, i.e., six to ten productions over a nine-year period. Baxter was unable to furnish any documentation substantiating plaintiff's earnings. Plaintiff produced "playbills" evidencing her work in various community theatre productions, but no documentation of any *423 earnings in connection with same. Plaintiff's past and future earnings were not established with reasonable certainty (see DelValle v. White Castle Sys., 277 A.D.2d 13, 715 N.Y.S.2d 57 [2000]). These jury awards were thus properly set aside and vacated.

[3] Finally, the trial court properly exercised its discretion in precluding plaintiff's expert economist from testifying. His opinion was not based on plaintiff's work experience and was purely speculative.

N.Y.A.D. 1 Dept.,2007.

Jeffries v. 3520 Broadway Management Co.

36 A.D.3d 421, 827 N.Y.S.2d 136, 2007 N.Y. Slip Op. 00051

END OF DOCUMENT

© 2010 Thomson Reuters. No Claim to Orig. US Gov. Works.