

185 A.D.3d 882
Supreme Court, Appellate Division,
Second Department, New York.

Cinthya ARCOS, et al., respondents,
v.
Yehuda BAR-ZVI, etc., et al., appellants.

2015-09881
|
(Index No. 12911/12)
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Submitted—January 7, 2020
|
July 22, 2020

Synopsis

Background: Wife and husband, suing derivatively, brought action against doctor, and related defendants, to recover damages for personal injuries and for loss of services, arising out of defendants' alleged failure to properly diagnose and repair the laceration that occurred during the course of delivery of child. After a jury awarded damages in favor of plaintiffs, the Supreme Court, Queens County, Kevin J. Kerrigan, J., denied defendants' motions to set aside the jury verdict on damages to each plaintiff, and entered judgment in favor of plaintiffs in the total principal sum of \$1,020,000. Defendants appealed.

The Supreme Court, Appellate Division held that jury awards were not excessive since they did not deviate materially from what would be reasonable compensation in a medical malpractice action.

Affirmed.

Attorneys and Law Firms

*744 Aaronson Rappaport Feinstein & Deutsch, LLP (Mauro Lilling Naparty LLP, Woodbury, N.Y. [Caryn L. Lilling and Kathryn M. Beer], of counsel), for appellants.

Sanocki Newman & Turret, LLP, New York, N.Y. (David B. Turret and Joshua Fogel of counsel), for respondents.

CHERYL E. CHAMBERS, J.P., LEONARD B. AUSTIN,
ROBERT J. MILLER, COLLEEN D. DUFFY, JJ.

DECISION & ORDER

In an action to recover damages for personal injuries, etc., the defendants appeal from a judgment of the Supreme Court, Queens County (Kevin J. Kerrigan, J.), dated August 17, 2015. The judgment, upon a jury verdict awarding the plaintiff Cinthya Arcos the principal sums of \$800,000 for past pain and suffering and \$120,000 for future pain and suffering, and awarding the plaintiff Noel Baeza the principal sum of \$100,000 for past loss of services, and upon an order of the same court dated June 8, 2015, inter alia, denying those branches of the defendants' motion which were pursuant to CPLR 4404(a) to set aside the jury verdict on the issue of damages to the plaintiff Cinthya Arcos as contrary to the weight of the evidence and as excessive, and to set aside the jury verdict on the issue of damages to the plaintiff Noel Baeza as contrary to the weight of the evidence, is in favor of the plaintiffs and against the defendants in the total principal sum of \$1,020,000.

ORDERED that the judgment is affirmed, with costs.

On November 12, 2011, the plaintiff Cinthya Arcos, at that time 27 years old, gave birth to her first child. During delivery, the defendant Yehuda Bar-Zvi performed an episiotomy on Arcos, making an incision in Arcos's perineum, the area between the vagina and the rectum, and used a vacuum extractor to deliver the child. Arcos suffered a fourth degree perineal laceration during the course of delivery and, as a result of the defendants' failure to properly diagnose and repair the laceration, a rectovaginal fistula, or a hole between the rectum and the vagina, developed which caused Arcos pain and permitted fecal material and gas to pass through her vagina. In June 2012, and again in October 2012, Arcos underwent surgical procedures to repair the fistula. In June 2012, Arcos, and her husband, Noel Baeza, suing derivatively, commenced this action to recover damages for personal injuries and for loss of services. After a jury trial, insofar as relevant here, the jury awarded Arcos damages in the principal sums of \$800,000 for past pain and suffering and \$120,000 for future pain and suffering, and awarded Baeza damages in the principal sum of \$100,000 for past loss of services. The defendants moved, inter alia, pursuant to CPLR 4404(a) to set aside the jury verdict on the issue of damages to Arcos as contrary to the weight of the evidence and as

excessive, and to set aside the jury verdict on the issue of damages to Baeza as contrary to the weight of the evidence. In an order dated June 8, 2015, the Supreme Court, among other things, denied those branches of the defendants' motion. A judgment was subsequently entered in *745 favor of the plaintiffs and against the defendants in the total principal sum of \$1,020,000. The defendants appeal.

“The amount of damages to be awarded to a plaintiff for personal injuries is a question for the jury, and the jury's determination will not be disturbed unless the award deviates materially from what would be reasonable compensation” (*Scaccia v. Bieniewicz*, 151 A.D.3d 900, 900, 56 N.Y.S.3d 551; *see* CPLR 5501[c]; *Tarpley v. New York City Tr. Auth.*, 177 A.D.3d 929, 932, 113 N.Y.S.3d 148). “Prior damage awards in cases involving similar injuries ... serve to ‘guide and enlighten’ [the courts] in determining whether a verdict constitutes reasonable compensation” (*Kusulas v. Saco*, 134 A.D.3d 772, 774, 21 N.Y.S.3d 325, quoting *Taveras v. Vega*, 119 A.D.3d 853, 854, 989 N.Y.S.2d 362; *see* *Diaz v. Dadabo*, 174 A.D.3d 787, 789, 102 N.Y.S.3d 887).

Consideration also is given to other factors, such as the nature and extent of the injuries (*see* *Diaz v. Dadabo*, 174 A.D.3d at 789, 102 N.Y.S.3d 887; *Taveras v. Vega*, 119 A.D.3d at 854, 989 N.Y.S.2d 362).

Here, considering the nature and the extent of Arcos's injuries, the jury's awards for past pain and suffering and future pain and suffering did not materially deviate from what would be reasonable compensation (*see* CPLR 5501[c]; *Beverly H. v. Jewish Hosp. & Med. Ctr. of Brooklyn*, 135 A.D.2d 497, 498, 521 N.Y.S.2d 738). Moreover, the jury's award for past loss of services was supported by legally sufficient evidence, and was not excessive (*see* CPLR 5501[c]; *Nicastro v. Park*, 113 A.D.2d 129, 132, 495 N.Y.S.2d 184).

CHAMBERS, J.P., AUSTIN, MILLER and DUFFY, JJ.,
concur.

All Citations

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