

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D30538
W/kmb

_____AD3d_____

Argued - February 18, 2011

REINALDO E. RIVERA, J.P.
THOMAS A. DICKERSON
RANDALL T. ENG
PLUMMER E. LOTT, JJ.

2009-10800

DECISION & ORDER

Norma Belt, etc., respondent, v Albert Girgis,
et al., appellants.

(Index No. 17956/05)

Morris Duffy Alonso & Faley, New York, N.Y. (Iryna S. Krauchanka of counsel), for
appellant Rasheen Ford.

Fine, Olin & Anderman, LLP, Newburgh, N.Y. (Finkelstein & Partners LLP [Kara L.
Campbell], of counsel), for respondent.

In an action to recover damages for personal injuries, the defendant Rasheen Ford appeals from so much of a judgment of the Supreme Court, Queens County (Schulman, J.), dated October 22, 2009, as, upon a decision of the same court dated June 23, 2009, made after a nonjury trial, finding that the plaintiff sustained damages in the sums of \$347,000 for past medical expenses, \$12,045,000 for future medical expenses, \$5,000,000 for past pain and suffering, and \$10,000,000 for future pain and suffering, and that the plaintiff was entitled to an award of \$10,000,000 for punitive damages as against him, is in favor of the plaintiff and against him in the principal sum of \$37,392,000, and the defendant Albert Girgis separately appeals from stated portions of the same judgment.

ORDERED that the appeal by the defendant Albert Girgis is dismissed as abandoned (*see* 22 NYCRR 670.8[e][1]); and it is further,

ORDERED that the judgment is reversed insofar as appealed from by the defendant Rasheen Ford, on the law, on the facts, and in the exercise of discretion, with costs, the judgment is vacated insofar as it is against the defendant Albert Girgis, and a new trial is granted on the issues of damages for past and future medical expenses and past and future pain and suffering only, unless, within 30 days after service upon the plaintiff of a copy of this decision and order, she shall serve and file in the office of the Clerk of the Supreme Court, Queens County, a written stipulation consenting

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to reduce the damages for past medical expenses from the principal sum of \$347,000 to the principal sum of \$212,952, future medical expenses from the principal sum of \$12,045,000 to the principal sum of \$2,000,000, past pain and suffering from the principal sum of \$5,000,000 to the principal sum of \$2,000,000, and future pain and suffering from the principal sum of \$10,000,000 to the principal sum of \$3,000,000, and to the entry of an amended judgment accordingly; in the event that the plaintiff so stipulates, then the judgment is modified by deleting the provision thereof awarding punitive damages in the sum of \$10,000,000, and as so modified, reduced, and amended, is affirmed insofar as appealed from, without costs or disbursements.

The evidence at this nonjury trial established that Rashawna Belt (hereinafter the plaintiff), on whose behalf the plaintiff Norma Belt commenced this action, was a pedestrian when she was struck by a vehicle owned by the defendant Albert Girgis and operated by the defendant Rasheen Ford.

As a result of the accident, the plaintiff was in a coma for approximately three weeks. She sustained, among other injuries, a left femoral fracture, a right clavicular fracture, laceration of the right anterior tibial area, a fracture of the right medial malleolus, a fracture of the pubic rami, and a severe head injury, including an intracranial hemorrhage on the left parietal hemisphere and a left frontal lobe intra-axial hematoma with right temporal bone fracture.

To the extent indicated herein, the damages awarded for past pain and suffering, future pain and suffering, and future medical expenses deviated materially from what would be reasonable compensation under the circumstances (*see* CPLR 5501[c]; *Coque v Wildflower Estates Devs., Inc.*, 58 AD3d 44, 56; *Cintron v New York City Tr. Auth.*, 50 AD3d 466, 467; *Chelli v Banle Assoc., LLC*, 22 AD3d 781, 782-783; *Diaz v Parsons Props.*, 309 AD2d 892, 893; *Reed v City of New York*, 304 AD2d 1; *Lind v City of New York*, 270 AD2d 315, 316-317). Additionally, the amount awarded in damages for past medical expenses was supported by the record only to the extent indicated herein (*see DeVito v Oi Ying Ho*, 25 AD3d 750, 751; *O'Connor v Rosenblatt*, 276 AD2d 610, 611; *Liebman v Otis El. Co.*, 145 AD2d 546, 547-548).

The plaintiff was not entitled to punitive damages, as she neither demanded punitive damages in her pleadings, nor made a timely application to conform the pleadings to the proof (*see Dental Health Assoc. v Zangeneh*, 34 AD3d 622, 625; *Crispino v Greenpoint Mtge. Corp.*, 2 AD3d 478, 479).

We also vacate the remainder of the judgment insofar as it is against the defendant Albert Girgis, since that relief is inextricably intertwined with the judgment against the defendant Rasheen Ford (*see Matter of Burk*, 298 NY 450, 455; *Johs v P.G.S. Carting Co., Inc.*, 40 AD3d 929, 935; *Wheeler v Buxton Indus. Equip. Co.*, 292 AD2d 521, 523).

The plaintiff's remaining contentions are without merit.

RIVERA, J.P., DICKERSON, ENG and LOTT, JJ., concur.

ENTER: 
Matthew G. Kiernan

Clerk of the Court