

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

D31467  
C/prt

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - April 29, 2011

WILLIAM F. MASTRO, J.P.  
L. PRISCILLA HALL  
PLUMMER E. LOTT  
JEFFREY A. COHEN, JJ.

2010-00455

DECISION & ORDER

Eddie Querin, respondent, v Gavin Scotti, etc.,  
et al., appellants.

(Index No. 11397/06)

Alan B. Brill, P.C., Suffern, N.Y. (Sheila S. Rosenrauch of counsel), for appellants.

Eric Turkewitz, New York, N.Y., for respondent.

In an action to recover damages for personal injuries, the defendants appeal, as limited by their brief, from so much of an order of the Supreme Court, Westchester County (Liebowitz, J.), entered December 4, 2009, as granted those branches of the plaintiff's motion which were pursuant to CPLR 4404(a) to set aside a jury verdict on the issue of damages and for a new trial on that issue on the ground that the award of only \$25,000 for past pain and suffering, the equivalent of 60,000 Canadian dollars for past lost wages, and \$0 for future pain and suffering and future lost wages was inadequate and contrary to the weight of the evidence.

ORDERED that the order is modified, on the law, by deleting the provision thereof granting those branches of the plaintiff's motion which were to set aside the verdict on the issue of damages as to past lost wages, future pain and suffering, and future lost wages, and for a new trial with respect to those damages, and substituting therefor a provision denying those branches of the motion; as so modified, the order is affirmed insofar as appealed from, without costs or disbursements.

The plaintiff, a Canadian citizen, was a passenger in the back seat of an automobile which was involved in a rear-end collision, and he commenced this action seeking to recover

November 1, 2011

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damages for injuries to his back, shoulder, and neck.

Under the circumstances of this case, the plaintiff correctly contends that the jury's award of only \$25,000 for past pain and suffering deviated materially from what would be reasonable compensation (*see Shifrel v Singh*, 61 AD3d 401, 402; *McAdams v Esposito*, 35 AD3d 552; *Miller v Tacopina*, 34 AD3d 254, 255). Accordingly, the Supreme Court properly granted that branch of the plaintiff's motion which was pursuant to CPLR 4404(a) to set aside the jury verdict on the issue of damages as to past pain and suffering and for a new trial with respect to those damages.

Contrary to the plaintiff's contention, however, the award of the equivalent of 60,000 Canadian dollars for past lost wages and \$0 for future pain and suffering and future lost wages was not contrary to the weight of the evidence (*see Nicaastro v Park*, 113 AD2d 129, 134). Accordingly, the Supreme Court should have denied those branches of the plaintiff's motion which were to set aside the verdict on the issue of damages as to past lost wages, future pain and suffering, and future lost wages, and for a new trial with respect to those damages.

The plaintiff's remaining contentions are without merit.

MASTRO, J.P., HALL, LOTT and COHEN, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan  
Clerk of the Court