

Deas v New York City Tr. Auth.

2007 NY Slip Op 31929(U)

June 26, 2007

Supreme Court, New York County

Docket Number: 0100643/2003

Judge: Eileen Bransten

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT **HON. EILEEN BRANSTEN**
Index Number : 100643/2003

PART 6

DEAS, MAURICE
vs
TRANSIT AUTHORITY
Sequence Number : 004
TRIAL DE NOVO

NO. 100643/03
DATE 4/24/07
SEQ. NO. 04
CAL. NO. _____

The following papers, numbered 1 to 4 were read on this motion to/for set aside verdict

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	PAPERS NUMBERED <u>1, 2</u> ^{and} <u>cross-</u>
Answering Affidavits — Exhibits _____	<u>3, 4</u> ^{motion}
Replying Affidavits _____	_____

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion

FILED
JUL 02 2007
NEW YORK
COUNTY CLERK'S OFFICE

**MOTION IS DECIDED IN ACCORDANCE WITH
THE ACCOMPANYING MEMORANDUM DECISION.**

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

Dated: 6-26-07

Eileen Branst
HON. EILEEN BRANSTEN J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE

SUPREME COURT OF STATE OF NEW YORK
COUNTY OF NEW YORK: PART SIX

-----X
MAURICE DEAS and GENEVA HUTCHERSON,

Plaintiffs,

-against-

Index No.: 100643/03
Motion Date: 4/24/07
Motion Sequence No.: 04

NEW YORK CITY TRANSIT AUTHORITY,
MANHATTAN AND BRONX SURFACE
TRANSIT OPERATING AUTHORITY, RICHARD
H. LAMBERT, and VELROY A. NUGENT,

Defendants.

-----X
PRESENT: EILEEN BRANSTEN, J.

FILED
JUL 02 2007
NEW YORK
COUNTY CLERK'S OFFICE

Pursuant to CPLR 4404(a), plaintiff Maurice Deas ("Mr. Deas") moves to set aside the verdict in this case as contrary to the evidence adduced at trial. Affirmation in Support ("Supp."), at ¶ 2. Plaintiff Geneva Hutcherson ("Ms. Hutcherson") cross moves for the same relief. Affirmation in Support on behalf of Ms. Hutcherson ("Cross"), at ¶ 3. Defendants New York City Transit Authority, Manhattan and Bronx Surface Transit Operating Authority, Richard H. Lambert ("Mr. Lambert") and Velroy A. Nugent ("Mr. Nugent") (collectively "Defendants") oppose the motions.

Background

On August 2, 2002, Mr. Nugent, while driving his car, hit a bus that was pulling out of a bus stop. Mr. Deas and Ms. Hutcherson were passengers on the bus, which was driven by Mr. Lambert.

Mr. Deas and Ms. Hutcherson commenced this personal-injury action. Mr. Deas alleged that as a result of the collision he suffered knee pain and underwent surgery in December 2002 “on his left knee to repair a partial tear of the Anterior Cruciate Ligament (“ACL”), address a torn meniscus, and remove a bone fragment from a fracture of the tibial tubercle with the reattachment of the patellar tendon.” Supp., at ¶ 3. Ms. Hutcherson alleged that she “sustained several herniated discs as a result of the impact between both vehicles.” Cross, at ¶ 6.

The case was tried between August 21 and August 28, 2006. *See*, Supplement to Plaintiff’s Motion to Set the Verdict Aside (“Supp. 2”), at ¶ 3.

At trial, Dr. Stanley Liebowitz, Mr. Deas’ treating physician and the doctor who performed the December 2002 surgery, testified on Mr. Deas’ behalf. Trial Transcript (“Tr.”), at 238. Dr. Liebowitz recounted that Mr. Deas “gave me a history that he hurt his knee while he was on a bus that stopped suddenly, and he sustained a direct blow to the knee. * * * His complaints were consistent with a history of a direct blow to the knee.” Tr., at 246.

Dr. Barry Sloan testified on behalf of Ms. Hutcherson “that the bus accident was a direct consequential and significant cause of [her] injuries.” Tr., at 418; Cross, at ¶ 7. Dr. Sloan stated that Ms. Hutcherson informed him that “the car ran into the bus, and she felt a heavy jolt, and her left arm was holding onto the bar at that time, in spite of the fact she was thrown about the bus during the accident.” Tr., at 434.

Mr. Lambert testified at the trial as well. According to his account of the accident, the car “did scratch the bus.” Tr., at 300. Mr. Lambert described the impact between the two vehicles as “very light.” *Id.*, at 301. He testified that he did not feel the contact and that he announced to the riders that there had been an accident. *Id.*, at 301-302. The driver recounted that no one fell as a result of the impact and no one was thrown around. Tr., at 305. In fact, the driver maintained that none of the passengers complained about the accident, everyone that was seated remained seated and those passengers who were standing were still standing in the same position. *Id.*, at 306.

After deliberating, the jury found that Mr. Lambert was negligent in operating his bus on August 2, 2002. Supp., Ex. A, at 2; Cross, Ex. A, at 2. The jury found, however, that his negligence was not “a substantial factor in causing injury” to either plaintiff. Supp., Ex. A, at 3; Cross, Ex. A, at 3. Similarly, the jury found that Mr. Nugent was negligent in operating his vehicle but that his negligence was not a substantial factor in causing injury to either plaintiff. Supp., Ex. A, at 4, 5; Cross, Ex. A, at 4,5.

Mr. Deas now moves to set aside the verdict, urging:

“At trial, the nature and extent of [his] injuries were in issue and defense counsel argued variously that there was no tear to the ACL and that the meniscal injury was trivial. However, there was no evidence before the trial jury to the effect that plaintiff did not have a fracture and no showing of any alternate causation for the fracture other than the impact of the accident, a cause testified to by Dr. Liebowitz. Thus, the jury was presented with

undisputed evidence of an injury and evidence of only one possible cause of that injury: the instant accident.”

Supp., at ¶ 4.

As a remedy, Mr. Deas suggests that the negligence findings remain undisturbed and that this Court essentially direct a verdict in his favor as to causation. Mr. Deas requests a new trial to deal solely with the issues of “apportionment of fault, threshold, and damages.”

Supp., at ¶ 7.

Ms. Hutcherson cross-moves for the same relief. She contends that Dr. Sloan testified as to causation, that a radiologist called on behalf of Mr. Nugent “conceded that this type of accident could have caused an aggravation or exacerbation of the plaintiff, Geneva Hutcherson’s spinal condition,” and that the “only witness” to contradict such testimony was the New York City Transit Authority’s expert orthopedist who allegedly did not review Ms. Hutcherson’s MRI films. Cross, at ¶¶ 7-9. She argues that, under these circumstances, the weight of Dr. Sloan’s testimony far outweighs that of defendants’ evidence and requests that “the issue of the causation of the injury should be decided as a matter of law in [her] favor * * * since there was no evidence of an alternative causation.” Cross, at ¶ 15.

Defendants counter that the jury verdict was not against the weight of the evidence. They contend that it is within the jury’s province to decide whether plaintiffs’ witnesses were credible. Affirmation in Opposition on behalf of Mr. Nugent (“Nugent Opp.”), at 8. They

e.g., Martinez v. New York City Transit Auth., ___ A.D.3d ___ (1st Dept. June 12, 2007); *see also, Weber v. City of New York*, 24 A.D.3d 130, 131 (1st Dept. 2005).

Based on Mr. Lambert's testimony the jury could have reasonably concluded that the accident was not the proximate cause of plaintiffs' ailments. Defendants submitted evidence that the impact of the accident was "very light" and could not have caused the injuries alleged. The jury, responsible for weighing the evidence, was entitled to credit that testimony and reject plaintiffs' accounts and the testimony of their experts, which was based on plaintiffs' version of the accident. In the end, disputes as to proof are for the jury to resolve after assessing the evidence and the credibility of the witnesses. Because the jury verdict is based on a fair interpretation of the evidence, plaintiffs' motions to set aside the verdict are denied.

Accordingly, it is

ORDERED that Mr. Deas' motion and Ms. Hutcherson's cross-motion to set aside the verdict are denied.

This constitutes the Decision and Order of the Court.

Dated: New York, New York
June 26, 2007

ENTER



Hon. Eileen Bransten

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