

Cepeda v City of New York

2008 NY Slip Op 31028(U)

April 4, 2008

Supreme Court, New York County

Docket Number: 0104937/2003

Judge: Carol E. Huff

Republished from New York State Unified Court System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

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

PRESENT: **CAROL E. HUFF**
Justice

PART 32

Index Number : 104937/2003
CEPEDA, MIOSOTIS
vs.
CITY OF NEW YORK
SEQUENCE NUMBER : 002
OTHER

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

his motion to/for _____

PAPERS NUMBERED _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this _____

FILED
APR 09 2008
COUNTY CLERK'S OFFICE
NEW YORK

motion is decided in accordance
with accompanying memorandum decision

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

Dated: APR 04 2008

CAROL E. HUFF
Justice

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate DO NOT POST REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 32

-----X

MIOSOTIS CEPEDA, : Index No. 104937/03

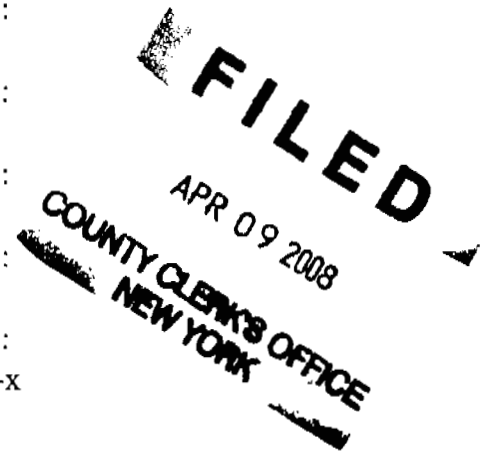
Plaintiff, :

- against - :

THE CITY OF NEW YORK, NEW YORK CITY :
DEPARTMENT OF SANITATION and :
RICHARD GONZALEZ, :

Defendants. :

-----X



CAROL E. HUFF, J.:

Plaintiff moves, pursuant to CPLR 4404 and 5501©, for an order setting aside the jury's awards for future pain and suffering and for future medical expenses.

Plaintiff was twenty-eight years old and in good health when she was struck by defendant's vehicle while walking. A trial was held as to damages only. Plaintiff presented evidence that she sustained left shoulder instability with impingement syndrome, a tear of the anterior cruciate ligament of the right knee with ACL rupture, a torn medial meniscus, a disc bulge at L3/4 with impingement on the thecal sac and lumbar radiculopathy, herniation at the C5/6 vertebrae with radiculopathy, and right knee traumatic chondromalacia and myofascial pain syndrome. Evidence was also presented that range of motion limitations and chronic pain syndrome resulted from the injuries.

The jury awarded plaintiff \$25,000 for past medical expenses; \$200,000 for past pain and suffering; \$920,000 for future medical expenses over thirty-five years; and \$5,000 for future pain

and suffering over five years. Plaintiff contends that the jury's award of a nominal amount for future pain and suffering is plainly inconsistent with the other awards, especially that for future medical expenses. She also argues that the award for future medical expenses is a material deviation from reasonable compensation.

On its face, the award for future pain and suffering is inconsistent with the other awards and should be overturned. In Schaefer v RCP Associates, 232 AD2d 286 (1st Dept 1996), where the jury awarded a substantial amount for future medical expenses and nothing for future pain and suffering, the First Department affirmed the trial court's decision to set aside the verdict as inconsistent and inadequate. Although the jury here made some award for future pain and suffering, the nominal amount brings this case within the Schaefer fact pattern. Further, the jury was inconsistent in limiting the award to five years while awarding future medical expenses for procedures and treatments over thirty-five years.

In determining whether any award constitutes "reasonable compensation" (CPLR 5501[c]), a court must look to similar appealed cases. Donlon v City of New York, 284 AD2d 13 (1st Dept 2001). "Such a method cannot, due to the inherently subjective nature of non-economic awards, be expected to produce mathematically precise results, much less a per diem pain and suffering rate. [The] task necessarily involves identification of relevant factual similarities and the application of reasoned judgment." Id. at 15.

Plaintiff suffered injuries to her back, shoulder and knee, all of which injuries will require future treatments and will incur future pain. In the following recent cases involving roughly similar degrees of injury, the courts either affirmed or recommended stipulation to the following amounts for future pain and suffering: Sanabia v 718 West 178th Street LLC, 2008 WL 732682

(1st Dept 2008) (back and neck pain, \$300,000); Harris v City of New York Health & Hospitals Corp., 2008 WL 638356 (1st Dept 2008) (knee pain, \$250,000); DeSimone v Royal GM, Inc., 2008 WL 607484 (2d Dept 2008) (shoulder and back pain, \$250,000); Adames v Awad, 47 AD3d 737 (2d Dept 2008) (knee pain, \$150,000); Sanz v MTA - Long Island Bus, 46 AD3d 867 (2d Dept 2007) (back pain \$200,000); Caban v City of New York, 46 AD3d 319 (1st Dept 2007) (shoulder pain, \$125,000).

Considering the combination of plaintiff's injuries and the likelihood that her pain and suffering will persist over the thirty-five years of treatment, the award for future pain and suffering should have been \$400,000.

The award for future medical expenses, on the other hand, does not deviate materially from what would be reasonable compensation under the circumstances.

Accordingly, it is

ORDERED that the motion is granted to the extent that a new trial is granted on the issue of damages for future pain and suffering unless, within 30 days after service upon the defendants of a copy of this decision and order, the defendants serve and file in the Office of the Clerk of the Supreme Court, New York County, a written stipulation consenting to increase the verdict as to damages for future pain and suffering from the principal sum of \$200,000 to the principal sum of \$400,000. The motion is otherwise denied.

Dated: APR 04 2008

FILED
 APR 09 2008
 COUNTY CLERK'S OFFICE
 NEW YORK
CAROLE E. HUFF
 J.S.C.