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

PRESENT: Lottie E. Wilkins PART 18

Justice

Index Number : 101470/2005

RIOS, MAUD

VS.

TRANSIT AUTHORITY

SEQUENCE NUMBER : 005

OTHER RELIEFS

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

this 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 motion

Motion to set aside jury verdict is denied in accordance with the attached decision and order

FILED

APR 19 2010

NEW YORK COUNTY CLERK'S OFFICE

Dated: 4/16/2010

J.S.C.

Lottie E. Wilkins

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

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

----------X

MAUD RIOS,

Plaintiff,

- against -

NEW YORK CITY TRANSIT AUTHORITY,

Defendant.

----------X

PART 18

Index No. 101470/05

DECISION and ORDER

Lottie E. Wilkins, J.:

Defendant New York City Transit Authority moves pursuant to CPLR 4404 to set aside a jury verdict which found in favor of plaintiff in this personal injury action. Plaintiff claimed that on August 8, 2004, while riding on an escalator owned and maintained by defendant, she was caused to fall when the escalator suddenly and unexpectedly stopped. Plaintiff was 70-years-old at the time of the accident and sustained injuries to her left knee and shoulder, lower back, hips and other parts of her body. She has had surgery to repair a torn meniscus in her left knee and may require a knee replacement. The jury awarded plaintiff a total of $1.607 million in damages including $782,000 for past losses consisting of $20,000 for medical expenses, $12,000 in loss of earnings and $750,000 for pain and suffering. As for future damages the jury awarded $25,000 in medical expenses and $800,000.00 in pain and suffering, each over a

twelve year period.

On this motion, NYCTA argues that the liability verdict must be set aside as a matter of law because plaintiff did not prove the existence of a defective condition that caused the escalator she was riding on to stop. Defendant posits that plaintiff offered nothing more than speculation as to the cause of her accident. NYCTA also relies on trial testimony from its own employee who offered several possible reasons why an escalator might suddenly stop in the absence of negligence including an intentional or unintentional pressing of the manufacturer-installed emergency stop button. Defendant further points to testimony from plaintiff herself to the effect that, after her accident occurred, she observed two police officers at the top of the escalator and suspected that they might have hit the emergency stop button.

In addition to arguing the absence of causation evidence for the accident, defendant further argues that the damages verdict must be set aside because it is similarly unsupported by proof of causation. The thrust of this argument is that plaintiff's medical experts testified about the presence of injuries to her left knee, and the causal connection of those injuries to the subject accident, even though some or all of those injuries were detected in medical examinations taken before the accident occurred. Thus, according to defendant, the opinions of plaintiff's medical experts on causation was entitled to no weight by the jury and the damages verdict must be set

aside. Finally, defendant argues that the jury's damages award was punitive and otherwise excessive and should be reduced to better comport with notions of reasonable compensation.

Plaintiff opposes the motion arguing first that the liability verdict should stand because defendant's argument is based on an incorrect understanding of the true nature of plaintiff's theory of liability. Plaintiff states that liability in this case was not premised on the claim that there was some mechanical defect in the escalator itself but rather that the escalator was negligently operated, repaired, and maintained by defendant. More particularly, plaintiff argues that evidence presented at trial showed that "in the thirteen months prior to the occurrence herein, there was [sic] in excess of twenty five shutdowns of the subject escalator due to negligent maintenance and repair." Among defendant's claimed failings are: the failure to prevent excessive garbage from accumulating in the combs of the stairs, failing to maintain an adequate oil supply for the handrail drive, failing to perform routine parts replacement on the escalator instead of waiting for a part to fail before replacing it, and in failing to adopt an appropriate maintenance schedule that included more frequent preventative maintenance.

In opposition to the motion on the damages verdict, plaintiff argues that given the fact that defendant's medical expert did not – and indeed could not – offer

any testimony to controvert plaintiff's treating physician as to the extent and cause of the injuries, the jury's resolution of this question in plaintiff's favor was proper. As to whether the jury's pain and suffering awards deviated materially from what might be considered reasonable compensation, plaintiff argues that most of the precedents cited by defendant are factually distinguishable from the case at bar and even the most factually similar ones do not cover the full extent of injuries sustained by plaintiff in this case.

Analysis

CPLR 4404(a) permits a court to set aside a jury verdict in favor of a party entitled to judgment as a matter of law. In order to do so, however, "there must be no valid line of reasoning and permissible inferences which could possibly lead rational men to the conclusion reached by the jury on the basis of the evidence presented at trial" (Cohen v Hallmark Cards, 45 NY2d 493, 499 [1978]). Jury verdicts are entitled to considerable deference, especially in personal injury cases, and may only be overturned where the moving party has demonstrated that the jury could not have reached its verdict upon any fair interpretation of the evidence (see, Pavlou v City of New York, 21

AD3d 74 [1st Dept. 2005] citing Lolil v Big V Supermarkets, 86 NY2d 744, 746 [1995]).

The critical issue with respect to liability in this case is notice. Defendant faults plaintiff for failing to adduce proof at trial that the escalator in question was affected by some particular mechanical problem or other dangerous/defective condition that was known to NYCTA at the time of plaintiff's accident. It is not enough, defendant argues, for plaintiff to claim that NYCTA negligently maintained its escalator without proving the existence of a defect that caused the elevator to stop on the day of plaintiff's accident. Assuming the existence of such a defect or hazardous condition, defendant further argues that plaintiff was obligated to establish either actual or constructive notice of the condition thereby triggering NYCTA's duty to repair.

Plaintiff argues that the evidence at trial was sufficient in all respects to establish NYCTA's liability for her accident implying that there is no legal requirement to prove the existence of a particular dangerous or defective condition under the circumstances. In support of this argument, plaintiff points to Chege v New York City Transit Auth. where defendant was found to be liable notwithstanding the absence of evidence that a particular condition caused the escalator's sudden stop (see, 302 AD2d 283 [1st Dept. 2003]). Plaintiff also cites to several cases for the proposition that a jury may permissibly infer negligence from evidence of prior malfunctions even when the cause of those malfunctions is not known (see e.g., Rogers v Dorchester Assoc., 32 NY2d

553 [1973]; Thomas v Rosen Group Properties, Inc., 130 AD3d 451 [1st Dept. 1987]). In none of these cases was notice of the specific cause of the malfunction found to be a prerequisite to liability for negligent maintenance.

Although the Court expressed reservations at trial about the nature of plaintiff's proof of notice, the weight of authority cited above and other cases cited in plaintiff's opposition papers seem to hold that liability for negligent maintenance or repair of a piece of equipment like an escalator can arise based on defendant's knowledge of prior malfunctions, without the need to prove notice of a particular defect or dangerous condition. The fact that plaintiff did not prove the precise cause of the escalator stoppage on the day of her accident is not fatal to her liability case where there is notice of prior malfunctions (see, Chege, supra).

Since notice of prior malfunctions is the lynchpin of plaintiff's liability case, some discussion of that proof is warranted. Proof of prior malfunctions in this case was confined to an "outage report," a NYCTA document, admitted into evidence during trial. The import of this document is the subject of serious disagreement between the parties. Defendant claims that the outage report shows that NYCTA performed maintenance and conducted inspections of the escalator frequently during the 13 months preceding plaintiff's accident. Plaintiff claims the same document shows that over 25 shutdowns of the escalator occurred due to negligent maintenance and

repair over the same time period. Thus the parties look at the same document and draw completely different conclusions from it.

It is this disagreement over the import and interpretation of the outage report that convinces this Court that the jury verdict as to liability should stand. The differing interpretations of the outage report made by the parties are but two permissible conclusions that could be reasonably drawn from this document. Put another way, for purposes of this motion the Court cannot say as a matter of law that the jury could not have found that defendant NYCTA had notice of a malfunction problem with its escalator based on any fair interpretation of this evidence. To be sure, the outage report is not at all conclusive on this question and it is rather difficult for this Court to understand how plaintiff looks at this documents and sees proof of 25 escalator outages due to defective maintenance. However it is not the function of the Court to interpret or weigh the evidence presented at trial. It is enough to note that plaintiff introduced some evidence from which the jury could permissibly conclude that the escalator had malfunctioned in the past giving defendant notice of a problem that triggered a duty to repair.

While notice of prior equipment malfunctions is sufficient to establish a prima facie case for negligence, this Court explicitly rejects plaintiff's argument that liability can be premised solely upon alleged inadequacies in defendant's maintenance

and repair policies for its escalators. To the extent plaintiff argues that the jury could permissibly have based its liability determination on the fact that NYCTA only replaces escalator parts when they break down instead of replacing parts in the course of regular maintenance, or that the schedule for periodic preventative maintenance on this escalator was inadequate when compared to other escalators owned by defendant, such arguments are rejected as inadequate for purposes of establishing liability. A case for negligence must be supported by proof that defendant had at least some of notice of a defect or problem with its equipment at the time of plaintiff's accident even if that notice consists of nothing more than a prior history of malfunctions (see, Chege v New York City Transit Auth., 302 AD2d 283 [1st Dept. 2003]). Plaintiff takes the argument too far by suggesting that the notice requirement can be circumvented by relying on more generalized evidence tending to show that defendant's maintenance policies were somehow inadequate and then asking the jury to speculate that these inadequacies were the cause of a malfunction. "Proof of negligence in the air, so to speak, will not do" (Martin v Herzog, 228 NY 164, 170 [Feb 24, 1920, Cardozo, J.]) quoting, Pollock Torts [10 Ed.] p. 472).

Turning to the arguments concerning damages, defendant's argument that the damages verdict must be set aside because plaintiff failed to prove a causal connection between this accident and her injuries is unavailing under the circumstances.

While it is true that evidence was admitted at trial which tended to show that some of the injuries claimed by plaintiff, most notably the torn left meniscus, pre-dated the subject accident, this evidence created a factual question for resolution by the jury. It did not, however, invalidate the causation opinions of plaintiff's experts as a matter of law. Defendant was given a full and fair opportunity to cross-examine plaintiff 's testifying physicians with this evidence but the jury nonetheless chose to credit plaintiff's theory of causation. The dispute over causation of plaintiff's injuries was one particularly appropriate for resolution by the jury and, for that reason, this Court will not disturb its determination.

Whether the jury's awards for pain and suffering in both the past and future exceeds notions of reasonable compensation in light of the injuries sustained presents a closer question than the issues above. The precedent relied upon by defendant which is most factually analogous to the present case is Moorer v City of New York (251 AD2d 119 [1st Dept. 1998]). The other cases cited by defendant do not quite so closely tract the full set of injuries claimed by plaintiff here. Two cases cited by plaintiff, Smith v Manhattan and Bronx Surface Transit Operating Auth. and Calzado v New York City Transit Authority also appear to involve similar injuries although they differ from the facts of this case in other important respects (see, Smith v Manhattan and Bronx Surface Transit Operating Auth, 58 AD3d 552 [1st Dept. 2009]; Calzado v New

York City Transit Authority, 304 AD2d 385 [1st Dept. 2003]).

The most notable injury in this case is plaintiff's torn left meniscus which required surgical intervention and may result in a future knee replacement. At trial there was also evidence that plaintiff suffers from lumbar radiculopathy and a left shoulder injury caused by her accident. Plaintiff was 70-years-old at the time of the accident now walks with a cane. Plaintiff urges that the full panoply of her injuries, including the fact that she must now walk with a cane, must be taken into account when analyzing reasonable compensation. This Court agrees. Still, a comparison with factually analogous precedents must be the starting point for a reasonable compensation determination

In Moorer, the jury's future pain and suffering award to a 58-year-old plaintiff with two torn meniscuses and a herniated lumbar disk was reduced from $840,000 to $350,000 while the $500,000 award for past pain and suffering was left intact (251 AD2d 119 [1st Dept. 1998]). Despite the similarities in terms of the knee and back injuries and the use of crutches, plaintiff is quick to point out her case involves a substantial injury to her left shoulder as well.

The two strongest precedents relied upon by plaintiff are not as factually similar but do involve higher verdict amounts for future pain and suffering. In Smith, where the Court sustained a $100,000 verdict for past pain and suffering and $800,000

for future pain and suffering the plaintiff had an arguably more severe knee injury but no accompanying injuries to other parts of her body (see, 58 AD3d 552 [1st Dept. 2009]). And in Calzado the Court did not disturb the jury's award of $100,000 and $700,00 for past and future pain and suffering, respectively, in a case involving a torn anterior cruciate ligament and torn medial meniscus (see, 304 AD2d 385 [1st Dept. 2003]).

Another potentially significant difference between the present case and the holdings in Smith and Calzado is plaintiff's future life expectancy. In Smith, the Court does not explicitly state the plaintiff's future life expectancy but in Calzado it is said to be 32 years. By comparison, plaintiff in the instant case has a 12 year life expectancy. The twenty year difference is a certainly a factor to be taken into account when determining reasonable compensation in this case.

Balancing the relative factual similarities and differences between the cases, and taking into account the totality of the evidence presented at trial of this action, and giving plaintiff the benefit of every favorable inference permitted by the evidence, this Court finds that the jury's $750,000 for past pain and suffering award exceeds what would constitute reasonable compensation and should be reduced to $ 300,000. Moreover, given plaintiff's 12-year life expectancy, the $800,000 future pain and suffering award exceeds reasonable compensation for the injuries sustained and should be reduced to $ 500,000. The court finds no reason to disturb the awards for

medical expenses or loss of earnings.

Accordingly, it is

ORDERED that the motion by defendant New York City Transit Authority to dismiss the claims against it as a matter of law is denied, it is further

ORDERED that the motion by defendant for remittitur is granted to the extent that there shall be a new trial on the issue of plaintiff's pain and suffering unless plaintiff stipulates to decreasing the award for past pain and suffering to $ 300,000.00 and decreasing the award for future pain and suffering to $ 400,000.00 within 30 days of service of this order with notice of entry.

This constitutes the decision and order of the Court.

Dated: April 5, 2010

Lottie E. Wilkins, J.S.C.