

Chandanais v Ryan

2010 NY Slip Op 32202(U)

August 18, 2010

Supreme Court, Broome County

Docket Number: 2009-2998

Judge: Ferris D. Lebus

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At a Term of the Supreme Court of the State of New York, held in and for the Sixth Judicial District at the Broome County Courthouse, Binghamton, NY on the 30th day of June, 2010.

PRESENT: HON. FERRIS D. LEBOUS
JUSTICE PRESIDING

STATE OF NEW YORK
SUPREME COURT :: COUNTY OF BROOME

JUDITH A. CHANDANAIS, as Legal Guardian
of DONALD JAMES CHANDANAIS,

Plaintiff,

vs.

DECISION & ORDER

EMERSON L. RYAN, CAPICO, INC. d/b/a
COSMO'S RESTAURANT and COSMO
PARISI,

Index No. 2009-2998
RJI No. 2010-0348

Defendants.

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JOHNSON CITY, NY 13790

COSMO'S RESTAURANT
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445 GRAND AVENUE
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FERRIS D. LEBOUS, J.S.C.

Pursuant to an Order of this court dated April 20, 2010, defendants Emerson L. Ryan, Capico, Inc. d/b/a Cosmo's Restaurant and Cosmo Parisi, were found in default and an inquest for the assessment of damages was scheduled for June 30th, 2010. Said inquest was scheduled on written notice to the defendants by letter from the court dated April 22, 2010. Additionally, plaintiff filed proof of service of said Order, with Notice of Entry, on said defendants.

BACKGROUND

The inquest was held on June 30, 2010. Plaintiff appeared by way of Judith A. Chandanais, mother and guardian of the person and property of plaintiff Donald James Chandanais, with counsel. There were no appearances by defendants Capico, Inc. d/b/a Cosmo's Restaurant and/or Cosmo Parisi. Defendant Emerson L. Ryan, currently in the custody of the New York State Department of Correctional Services, appeared on his own behalf. Defendant Ryan indicated that he would be representing himself, but did not plan on offering any proof and did not intend on questioning any of the witnesses. Rather, defendant Ryan stated he was simply present to observe the ultimate outcome of the damages inquest. As such, although given adequate opportunity to participate, defendant Ryan declined to engage in his own defense or to challenge or attempt to controvert any of the evidence offered by plaintiff.

The evidence submitted at the inquest consisted of the testimony of Judith A. Chandanais, plaintiff's mother and guardian of the person and property of plaintiff Donald James Chandanais; the testimony of Holly Hennigy, service coordinator for Care America, as well as medical records

of the various providers of medical services for plaintiff.

The uncontroverted testimony of Judith A. Chandanis established that plaintiff was savagely and brutally attacked by defendant Ryan outside of Cosmo's Restaurant on December 27, 2008, at approximately 3:00 a.m. Plaintiff was stabbed four to five times in the chest and heart and was in cardiac arrest when paramedics arrived. Plaintiff was given CPR and resuscitated and transported to Wilson Medical Center where he was diagnosed with a punctured left lung and a stab to the heart with a punctured artery. While at Wilson Hospital, plaintiff coded three times and required resuscitation and ultimately emergency surgery was performed and plaintiff was able to be stabilized.

After surgery, plaintiff was non-responsive for two entire weeks and was on ventilation and feeding tubes. Plaintiff slowly recovered consciousness but only to a limited degree. As a result of this attack and the injuries sustained therefrom, plaintiff lost almost all eye sight and is only sensitive to light and dark. Plaintiff has been declared legally blind (Plaintiff's Exhibit 3). Plaintiff also suffered anoxic brain damage which resulted in a loss of almost all function. Plaintiff was discharged from Wilson Hospital in a vegetative state. Plaintiff was unable to speak, unable to move, stand or sit. He was taken to a rehabilitation facility in Albany, New York. He had little or no cognitive function. His long and short term memory were also impaired.

After extensive physical therapy, occupational therapy and speech pathology, plaintiff's

condition has improved slightly to the extent that he can now sit, stand up, and walk with assistance for very limited distances. Plaintiff can speak in short sentences. When discharged from the rehabilitation facility, plaintiff had limited eating skills as well as limited self care skills. In sum, plaintiff needs constant supervision in every facet of living including, but not limited to, eating, dressing, bathroom and hygiene needs and continues to require care 24 hours a day, 7 days a week, either with an aide or by his mother.

DAMAGES

This court finds that plaintiff has sustained severe permanent injuries for which he continues and will continue to require medical treatment; that he has and will continue to suffer extreme pain and suffering and loss of enjoyment of life for the duration of his life expectancy; and that he has since the date of this attack been, and for the balance of his work life expectancy will be, unable to work.

Before proceeding to the discussions of the awards to which plaintiff is entitled, the court is compelled to take note of the plaintiff's life and working life expectancies. At the time of the inquest, plaintiff, born in October 1968, was 41 years old. According to the Life Expectancy Tables, the life-expectancy of a 41 year old male is 35.3 additional years. That having been said, however, the proof established that taking into consideration plaintiff's current medical condition, plaintiff's actual life-expectancy is no more than 10 years. The court finds a 10 year life expectancy to be proper based upon the evidence presented. With respect to plaintiff's working life expectancy, the court recognizes that the average person of plaintiff's age would have a

working life expectancy of 19.6 years. Again, however, given plaintiff's reduced life expectancy, the court finds that a similar reduction to plaintiff's working life expectancy to 10 years is proper as well.

With respect to medical expenses, the proof established that the current Medicaid lien was \$299,776.16 as of May 7, 2010 (Plaintiff's Exhibit 4). Consequently, the court finds past medical expenses to be \$299,776.16.

Future medical expenses were submitted via the testimony of Holly Hennigy, the service coordinator for Care America. Ms. Hennigy testified that plaintiff's future medical costs under the Medicaid Traumatic Brain Injury Plan were \$125,197.69 per year. Based upon plaintiff's reduced life-expectancy of 10 years, the court finds plaintiff is entitled to an award for future medical of \$1,251,976.90 ($\$125,197.69 \times 10$).

Turning to the issue of lost wages, with respect to past lost wages, the court received plaintiff's 2008 income tax statement (the last full year the plaintiff was able to work) showing an income of \$15,195 per year ($\$1,266.25$ per month). As such, from the date of injury to the date of inquest (18 months) the court finds plaintiff is entitled to an award for past lost wages of \$22,792.50 ($\$1,266.25$ per month times 18 months).

With regard to future wages, again using the last annual wage of \$15,195, the court finds that plaintiff is entitled to future lost wages for 10 years for a total award of \$151,950.

On the issue of past pain and suffering, the court finds that considering the savage nature of the attack, the trauma induced therefrom, as well as the pain and suffering associated with having to be resuscitated three times, multiple surgeries as well as physical therapy, etc., plaintiff is entitled to an award for past pain and suffering of \$500,000.

With regard to future pain and suffering, the testimony established that plaintiff's prognosis is in line with his current condition. Plaintiff has little or no personality and is, quite simply, not the same person that he once was. Plaintiff's mother testified that her son can not engage in any of the activities which he previously enjoyed such as hunting and fishing nor can he engage in his work as a cook. He has no hobbies or activities other than to sit at home 24 hours a day. He goes out on limited jaunts with his mother but tires easily. Plaintiff's mother further testified that if she were not present in his life that her son would wind up in a nursing home or skilled nursing facility. Based upon the foregoing, the court finds that an award of \$100,000 per year over a 10 year life-expectancy considering the unfortunate state of the plaintiff's life and condition post accident is appropriate. Therefore, the court awards for future pain and suffering, the sum of \$1,000,000.

CONCLUSION

Based on the foregoing, the court awards damages as follows:

Past medical expenses:	\$ 299,776.16
Future medical expenses:	1,251,976.90
Past lost wages:	22,792.50
Future lost wages:	151,950.00
Past pain and suffering (date of incident to date of inquest):	500,000.00
Future pain and suffering (date of inquest and forward):	1,000,000.00
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TOTAL	\$ 3,226,495.56

This shall constitute the Decision and Order of this Court.

Submit Judgment.

ENTER.

DATED: August 18, 2010

s/ Ferris D. Lebous
HON. FERRIS D. LEBOUS
Justice, Supreme Court