

Reyes v Bolare

2012 NY Slip Op 30382(U)

February 16, 2012

Supreme Court, New York County

Docket Number: 104110/2009

Judge: Barbara Jaffe

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

PRESENT: JAFFE BARBARA JAFFE
Justice C.

PART 5

Index Number : 104110/2009
REYES, MARC
vs
BOLARE, GARUBA KOLA
Sequence Number : 008
TRIAL DE NOVO

CAL # 32

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

The following papers, numbered 1 to _____ were read on this motion to/for _____

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

1
2
3

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

*Received
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DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER

FILED

FEB 21 2012

Dated: 2/17/12
FEB 17 2012

BARBARA JAFFE
NEW YORK COUNTY CLERK'S OFFICE
JSC

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUBMIT ORDER/JUDG.

SETTLE ORDER /JUDG.

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

*2/21/12
oc*

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : PART 5

-----X
MARC REYES,

Plaintiff,

-against-

GARUBA KOLA BOLARE,

Defendant.
-----X

BARBARA JAFFE, JSC:

For plaintiff:
Alina Bushneva, Esq.
Smith Mazure *et al.*
111 John St.
New York, NY 10038
212-964-7400

Index No. 104110/09

Motion Subm.: 1/3/12
Motion Seq. No.: 008

DECISION & ORDER

FILED

FEB 21 2012

NEW YORK
COUNTY CLERK'S OFFICE

For defendant:
Richard M. Sands, Esq.
Gladstein Keane & Partners LLC
110 Wall St.
New York, NY 10005
212-952-1111

By notice of motion dated November 9, 2011, plaintiff moves pursuant to CPLR 4404 for an order setting aside the verdict rendered against him and granting him a new trial related to the issue of damages for pain and suffering. Defendant opposes the motion.

Following a trial held on October 20, 21, 24, and 26, 2011, the jury determined that plaintiff had not suffered a significant or permanent limitation of the use of a body function or system as a result of the accident at issue, and therefore, based on the instructions given, did not determine any other issues, including whether plaintiff was entitled to damages for his past or future pain and suffering.

Plaintiff now argues that given the evidence of the injuries he suffered, the jury's decision awarding him no damages for his pain and suffering deviates materially from what would be reasonable compensation for such injuries. (Affirmation of Alina Bushneva, Esq., dated Nov. 9,

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2011).

Defendant contends that as the jury found that plaintiff suffered no serious injury as a result of the accident, there was no finding or award of damages required or rendered and that therefore, there was no deviation from reasonable compensation. Rather, he argues, there was evidence from which the jury could have reasonably concluded that plaintiff did not sustain an injury from the accident. Defendant also observes that plaintiff failed to submit transcripts of the trial testimony, thereby rendering his motion defective. (Affirmation of Richard M. Sands, Esq., dated Nov. 23, 2011).

In reply, plaintiff asks that I take judicial notice of the trial transcripts, and maintains that the evidence at trial established that plaintiff's injuries were causally related to the accident. (Reply Affirmation, dated Dec. 8, 2011).

Pursuant to CPLR 4404(a), the court may set aside a verdict or judgment entered after trial, and direct judgment in favor of the moving party or grant a new trial, where the verdict is contrary to the weight of the evidence or in the interest of justice. In order to find that a verdict is against the weight of the evidence, the court must determine that "there is simply 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, Inc.*, 45 NY2d 493 [1978]). Thus, if "it can be said that the evidence is such that it would not be utterly irrational for a jury to reach the result it has determined upon, and thus a valid question of fact does exist, the court may not conclude that the verdict is as a matter of law not supported by the evidence." (*Id.* at 499).

"[G]reat deference is accorded to the fact-finding function of the jury, and determinations

regarding the credibility of witnesses are for the factfinders, who had the opportunity to see and hear the witnesses.” (*Desposito v City of New York*, 55 AD3d 659 [2d Dept 2008]). The jury’s resolution of disputed factual issues and inconsistencies in witnesses’ testimony is also entitled to deference. (*Bykowsky v Eskenazi*, 72 AD3d 590 [1st Dept 2010], *lv denied* 16 NY3d 701 [2011]). And it is the jury’s function to determine whether a witness is credible and what weight ought to be given to the testimony of experts. (*Devito v Feliciano*, 84 AD3d 645 [1st Dept 2011], *citing Harding v Noble Taxi Corp.*, 182 AD2d 365 [1st Dept 1992]). Moreover, a verdict rendered in favor of a defendant may not be set aside unless the evidence so preponderated in the plaintiff’s favor that the verdict for the defendant could not have been reached on any fair interpretation of the evidence. (*Lolik v Big V Supermarkets, Inc.*, 86 NY2d 744 [1995]; *Jordan v Port Auth. of New York and New Jersey*, 82 AD3d 936 [2d Dept 2011]; *Myers v S. Schaffer Grocery Corp.*, 281 AD2d 156 [1st Dept 2001]).

Here, the jury rendered its verdict in favor of defendant and determined that plaintiff did not suffer an injury as a result of the accident. Consequently, as it never reached the issue of damages, plaintiff’s argument that the damages awarded deviated materially from reasonable compensation has no merit.

Moreover, as there was conflicting expert testimony as to whether plaintiff’s injuries were causally related to the accident, plaintiff has not established as a matter of law that the jury could not have reached its verdict on any fair interpretation of the evidence. (*See Lolly v Brookdale Univ. Hosp. and Med. Ctr.*, 90 AD3d 862 [2d Dept 2011] [where conflicting expert testimony is presented, jury is entitled to accept one expert’s opinion and reject that of other expert]; *Hall v New York City Bd. of Educ.*, 82 AD3d 512 [1st Dept 2011] [jury’s resolution of issues related to

conflicting expert testimony and plaintiff's credibility entitled to deference]; *Sullivan v DRA Imaging, P.C.*, 34 AD3d 371 [1st Dept 2006] [jury's finding that injuries were not causally related to accident required resolution of conflicting expert testimony and credibility determinations and was supported by fair interpretation of evidence]).

Given this result, I need not address defendant's other contention.

Accordingly, it is hereby

ORDERED, that plaintiff's motion to set aside the verdict is denied.

FILED

ENTER:

FEB 21 2012

NEW YORK
COUNTY CLERK'S OFFICE


Barbara Jaffe, JSC

BARBARA JAFFE
J.S.C.

DATED: February 16, 2012
New York, New York
FEB 16 2012