

Rahman v City of New York
2012 NY Slip Op 32380(U)
September 5, 2012
Supreme Court, Queens County
Docket Number: 4036/06
Judge: Howard G. Lane
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE HOWARD G. LANE
Justice

IAS PART 6

AHADUR RAHMAN,

Index No. 4036/06

Plaintiff,

-against-

THE CITY OF NEW YORK, CONSOLIDATED
EDISON COMPANY, MEC GENERAL
CONSTRUCTION CORP. and TRI-MESSINE
CONSTRUCTION COMPANY, INC.,
Defendants.

After inquest held on November 1, 2011 and based upon the credible testimony and admissible evidence adduced therein, the court finds as follows:

I. INTRODUCTION

This is a personal injury action in which plaintiff, Ahadur Rahman (hereinafter "plaintiff") seeks money damages from MEC General Construction Corp. (hereinafter "defendant") for injuries he sustained on July 6, 2005 when he was lawfully operating his motor vehicle on July 6, 2005 on Woodhaven Boulevard in the County of Queens, New York when he was caused to lose control of his motor vehicle due to an upraised and mis-leveled manhole cover, causing his vehicle to strike a wooden barrier, due to defendant's negligence. On November 1, 2011, a hearing on the assessment of damages was conducted.

At the inquest, plaintiff was the sole witness. He testified and submitted into evidence various medical records describing his alleged injuries and medical treatment. After the inquest, the court directed plaintiff to submit a post-trial memorandum by December 6, 2011.

II. FINDINGS OF FACT

Plaintiff, who was 34 years old at the time of the accident, testified that: on July 6, 2005, he was involved in a car

accident while driving a New York City taxicab on Woodhaven Boulevard, New York; right after the accident, he was taken to Jamaica Hospital where he remained for one month and 13 days; he was in a coma for approximately three weeks; he was in Jamaica Hospital until August 19, 2005 for rehabilitation, he had to learn to walk and balance himself again while in the hospital; he only has one eye that works; he previously has had problems with his memory; and he has had seizures since the accident.

Plaintiff has a 2½ inch hole in his skull. The medical records submitted of Queens Ophthalmology as part of the post-trial memorandum indicate that plaintiff suffers from restricted eye movement, limitation of ocular motricity and optic atrophy of his right eye. Plaintiff also suffers from post traumatic seizures, which have been correlated by Dr. Mehrdad Golzad, a neurologist, to the incident of July 6, 2005. Finally, records from the Center for Cognition and Communication indicate that plaintiff has suffered a traumatic brain injury as a result of the accident.

III. DISCUSSION

Under CPLR 4518(c), medical records are admissible as evidence as long as they are duly certified, sworn or affirmed (*Grasso v Angerami*, 79 NY2d 813, 184 [1991]; *Laguerre v Chavarria*, 41 AD3d 437 [2d Dept 2007]). Here, plaintiff submitted certified, affirmed or sworn medical and hospital records.

Accordingly, based upon plaintiff's testimony, and the admitted medical records and reports the court finds that plaintiff has suffered a permanent injury as a result of the accident on July 6, 2005.

A. DAMAGES

Having determined plaintiff suffered a permanent injury, the court must next determine an appropriate measure of damages. "An unwarranted and excessive award after inquest will not be sustained, as to do otherwise 'would be tantamount of granting the plaintiff an 'open season' at the expense of a defaulting defendant' (citations omitted)" (*Newman v Greenblatt*, 260 AD2d 616 [2d Dept 1999]).

1. Damages for past and future pain and suffering

The measure of damages for pain and suffering is the fair

and reasonable compensation in light of all evidence in the case (*Tate v Colabello*, 58 NY2d 84 [1983]). To calculate future pain and suffering, reference may be made in part to an actuarial life table¹, in order to determine the estimated life span of the plaintiff (*Bermeo v Atakent*, 241 AD2d 235, 239 [1st Dept 1998]). A fair interpretation of the evidence presented in this case and a review of the range of damages awarded in cases in which similar or analogous injuries were sustained support a damages award of \$1,500,000.00 for past pain and suffering and \$1,500,000.00 for future pain and suffering (see *Popolizio v County of Schenectady*, 62 AD3d 1181 [3d Dept 2009][where plaintiff suffered a traumatic brain injury which severely limited his cognitive functions, award of \$350,000 for past pain and suffering and \$1.75 million for future pain and suffering]; *Hernandez v Vavra*, 62 AD3d 616 [1st Dept 2009][where plaintiff suffered traumatic brain injuries including, a subarachnoid hemorrhage, award of \$1 million for past pain and suffering and \$1.75 for future pain and suffering]; *Sadhwani v New York City Transit Authority*, 66 AD3d 405 [1st Dept 2009][where plaintiff suffered extensive brain injury, award of \$1.9 million for past and future pain and suffering]; *Nunez v City of New York*, 85 AD3d 885 [2d Dept 2011][where plaintiff suffered a traumatic brain injury including a fractured skull and a two-month coma, award would be set aside unless plaintiff stipulated to reduce the award for past pain and suffering to \$1.75 million and future pain and suffering to \$3.75 million; *Belt v Girgis*, 82 AD3d 1028 [2d Dept 2011][where plaintiff suffered traumatic brain injuries, including a cerebral concussion and temporal bone fracture, intracranial hemorrhage, and permanent memory loss, award of \$2 million for past pain and suffering and \$3 million for future pain and suffering; *Cintron v New York City Transit Authority*, 50 AD3d 466 [1st Dept 2008][where plaintiff suffered traumatic brain injuries including multiple skull fractures requiring surgery and was left with cognitive impairments, award of \$4.75 million]; *Chelli v Banle Associates, LLC* [where plaintiff suffered traumatic brain injuries including compound depressed skull fractures requiring a craniotomy, award of \$3.5 million for past and future pain and suffering]; *Reed v City of New York*, 304 AD2d 1 [1st Dept 2003][where plaintiff suffered multiple skull fractures, a subdural hematoma and occipital contusions an award of \$2.5 million for past pain and suffering and 2.5 million for future pain and suffering]).

¹ See, *Life Expectancy Tables*, N.Y. PJI, app. A (2009) [Average life expectancy of a white male in the United States in the age range of 34-35 is 41.7 years]

2. Damages for Past Medical Expenses

The plaintiff submitted evidence in the form of certified medical bills from Jamaica Hospital Medical Center indicating past medical expenses in the amounts of \$104,243.00 and \$50,800.00 for a total of \$155,043.00.

Accordingly, plaintiff requests \$177,807.32 and the court awards \$155,043.00 for past medical expenses.

3. Damages for Future Medical Expenses

The plaintiff submitted evidence in the form of a narrative report of Harold Bialsky, DC, MA, CRC, CLCP demonstrating that plaintiff's future medical expenses will amount to \$1,365,499.00. Mr. Bilasky opines that medical expenses will be in the nature of brain injury rehabilitation, routine medical costs, psychotherapy, neuropsychological evaluations and projected case management. Clearly, an award for future medical expenses is not based upon mere speculation (*Faas v State of New York*, 249 AD2d 731 [3rd Dept 1998][internal citations omitted]).

Accordingly, plaintiff requests and the court awards \$1,365,499.00 for future medical expenses.

4. Damages for Past Lost Earnings

The plaintiff submitted evidence in the form of a report of economist, Kristin, Kucsma, MA, that had the plaintiff not been injured, based upon his past earnings as a cab driver and taking into consideration numerous adjustments, plaintiff would have earned approximately \$83,518.00 in the years of 2005-2011. Plaintiff's lost earnings have been proven with reasonable certainty (*Kyme v Pantuosco*, 2012 NY Slip Op 50984U [Sup Ct, Albany County 2012]).

Accordingly, plaintiff requests and the court awards \$83,518.00 for past lost earnings.

5. Damages for Future Lost Earnings

The plaintiff submitted evidence in the form of a report of economist, Kristin, Kucsma, MA, that plaintiff's future lost earnings are calculated beginning October 1, 2011 and continuing through his statistical date of retirement, December 27, 2035. Plaintiff's continued employment as a cab driver, based upon utilization of the annual compound yearly increase of 3.8% is estimated to be \$568,261.00.

Accordingly, plaintiff requests and the court awards \$568,261.00 for future lost earnings.

IV. CONCLUSION

Accordingly, after inquest, this court awards damages in the total amount of \$5,172,271.00: \$1,500,000.00 for past pain and suffering; \$1,500,000.00 for future pain and suffering; \$155,043.00 for past medical expenses; \$1,365,499.00 for future medical expenses, \$83,518.00 for past lost earnings, and \$568,261.00 for future lost earnings.

The County Clerk is directed to enter judgment accordingly.

Counsel is directed to contact the clerk of IAS Part 6 at (718) 298-1113 for retrieval of plaintiff's exhibits and records submitted to the court for the inquest. Any exhibits not retrieved by September 28, 2012 will be deemed abandoned and will be destroyed without further notice to the parties.

A courtesy copy of this order is being mailed to counsel for plaintiff.

This constitutes the decision and order of the court.

Dated: September 5, 2012

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Howard G. Lane, J.S.C.