

George v Montefiore Med. Ctr.
2013 NY Slip Op 33991(U)
June 13, 2013
Supreme Court, Bronx County
Docket Number: 8785/2007
Judge: Sharon A.M. Aarons
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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JAHCIDY GEORGE, an Infant Under the Age of Seven
(7) Years, by his Mother and Natural Guardian,
CRYSTAL WILLIAMS PETERS, and CRYSTAL
WILLIAMS PETERS, Individually,

Plaintiffs,

-against-

Index No.: 8785/2007

MONTEFIORE MEDICAL CENTER,
Defendant.

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HON. SHARON A.M. AARONS:

The post-trial motion by Defendant, Montefiore Medical Center, pursuant to CPLR 4404(a), for a new trial as to damages or conditional *remitter* unless plaintiff accepts a reduction in the award, and for related relief, is denied.

In their moving and opposition papers, the parties refer to relevant portions of the trial transcript, especially the testimony of their expert doctors. In addition, Plaintiff attaches photographs of the infant's hand, showing the scar.

This is an action to recover for personal injuries sustained by the infant Plaintiff, Jahcidy George, then one-day old, on January 13, 2006, while awaiting spinal repair surgery for a birth defect. Plaintiff alleges that the nurses were negligent in monitoring a peripheral intravenous line (IV) containing calcium gluconate, placed in the infant's right hand.

The IV infiltrated, meaning that the catheter tip either went through the vein

or pulled out, and the calcium gluconate burned the tissue surrounding the veins in the infant's right hand. Third-degree burns were caused by the calcium gluconate, which is a caustic substance.

The trial of this matter occurred from August 7 to 17, 2012, when the infant was about 6 and one-half years old. The jury unanimously awarded the infant plaintiff \$250,000 for past pain and suffering (covering a period of about 6 years and 7 months); and \$550,000 for future pain and suffering calculated over a life expectancy of 65 years.

Defendant alleges that the jury's damage award, totaling \$800,000, was excessive, and not supported by the proof. CPLR 5501, "Post-trial motion for judgment and new trial", provides that, "in reviewing a money judgment in an action ... in which it is contended that the award is excessive or inadequate and that a new trial should have been granted unless a stipulation is entered to a different award" the Court "shall determine that an award is excessive or inadequate if it deviates materially from what would be reasonable compensation."

[emphasis added] ¹

¹ CPLR 4404(a), "Post-trial motion for judgment and new trial", provides as follows:

"After a trial of a cause of action or issue triable of right by a jury, upon the motion of any party or on its own initiative, the court may set aside a verdict or any judgment entered thereon and direct that judgment be entered in

“In order for us to determine whether the award in this matter "deviates materially from what would be reasonable compensation," we must look to awards approved in similar cases (*Gasperini v Center for Humanities, Inc.*, *supra* at 425; *Donlon v City of New York*, *supra* at 15; *Leon v J & M Peppe Realty Corp.*, 190 A.D.2d 400, 416), bearing in mind that personal injury awards, especially those for pain and suffering, are subjective opinions which are formulated without the availability, or guidance, of precise mathematical quantification (*see Valentine v Lopez*, 283 A.D.2d 739, 743; *Kahl v MHZ Operating Corp.*, 270 A.D.2d 623, 624). Moreover, upon appellate review, the trial court's decision must be accorded great weight, having had the advantage of observing the witnesses, or absence thereof, their demeanor on the witness stand and impact on the jury.”
[emphasis added]

Reed v. City of New York, 304 A.D.2d 1, 7 (1st Dept. 2003).

It is well-established that “the amount of damages to be awarded is primarily a question of fact for the jury whose determination is accorded considerable deference... Since jury awards for personal injury, especially those for pain and suffering, are subjective opinions, formulated without the guidance of precise and detailed guidelines, we look to comparable cases to determine whether the jury's verdict deviates materially from what has been found to be reasonable compensation.” *Valentine v. Lopez*, 283 A.D.2d 739, 743 (3d Dept. 2001).

favor of a party entitled to judgment as a matter of law or it may order a new trial of a cause of action or separable issue where the verdict is contrary to the weight of the evidence, [or] in the interest of justice.” [emphasis added]

Infant's Injuries

Plaintiff's expert orthopedist, Dr. Leonard Harrison, testified that the IV infiltration caused permanent extensive scarring to the back of Jahcidy's right hand; the longest part of the scar measures two and one-quarter inches. The infiltration of the chemicals caused muscular death; and scar replaced muscle. Dr. Harrison testified that Jahcidy has a "contracture" which means he has limitation in his joint motion, due to the scarring. As he gets older, his hand will grow, but the scar will not grow with the hand.

On examination, Dr. Harrison found that there was loss of motion in the third finger on the right hand; it lacked thirty (30%) percent of motion and flexion, and it will worsen as he gets older. The third finger will not bend; it sticks out if he makes a fist. Dr. Harrison found that the circumference of the infant's right forearm was a full inch less than the left forearm, which means that his right arm is weaker due to the atrophy. Dr. Harrison found atrophy of the muscles in the right hand; it was weaker, as confirmed by testing grasp and pinch. Also, for example, Jahcidy could not hold a pen properly in his right hand.

In Dr. Harrison's opinion, to a reasonable degree of medical certainty, Jahcidy "will lose about sixty to eighty degrees of motion of the third finger. He will never be able to get the third finger into the palm, into a fist.... it will affect

the ability to grasp, the ability to pinch, etc.” Jahcidy will have pain with activity.

Since Jahcidy suffers from spina bifida, he has limitations in his lower limbs; and he will need to rely on his upper limbs more than normal. In this regard, Dr. Harrison opined, with a reasonable degree of medical certainty, that, “with a damaged right hand, weakness, pain ..., contraction of the third finger, it is going to be more difficult for him to use the aids that are necessary in order to allow him to live” his life – during which it is expected that he will need to use crutches, a wheelchair, a cane and/or leg braces.

Plaintiff’s expert Dr. Carolyn Crawford, who is board-certified in pediatrics and neonatal-perinatal medicine, believes that the impairment of strength and function of Jahcidy’s right hand, the contracture, and cosmetic defect, are all permanent. In her opinion, the calcium gluconate infiltrated for at least two to three hours causing the blistering with skin peeling off. In this regard, the incident report shows that, as to the infant’s right hand and arm, there was inflammation; edema (swelling); necrosis (death of skin tissue); and phlebitis (inflamed veins).

Analysis

The jury’s \$800,000 award herein does not deviate materially from what would be reasonable compensation. In its motion, Defendant has not shown otherwise, and has not even cited cases involving similar facts pertaining to

medical malpractice due to intravenous infiltration.

There are reported verdicts and settlements in New York, and other states, concerning similar issues. In a case with similarities to the instant matter, for example, Downstate Medical Center in Brooklyn, NY, was sued for medical malpractice by a one-month-old prematurely born infant who underwent intravenous therapy at defendant's hospital. As in the case at bar, intravenous fluids infiltrated the tissue surrounding the infant's veins for about 2.5 hours. As a result, the infant suffered a contracted scar and muscle loss in her right calf; and impairment such as "toe walking". She would need future surgeries to release the Achilles tendon, and plastic surgery. Before the case proceeded to the damages phase of the trial before Judge Faviola Soto, the parties agreed to settle for \$650,000. *Sam v. The State of NY*, 2007 WL 2175371 (N.Y.Ct. Cl.), Verdict Search New York Reporter Vol. 25, Issue 7 (Settlement date: May 9, 2007).

In another comparable medical malpractice case, a jury awarded a plaintiff \$855,000 as a result of an "infiltration of the right hand, an IV burn, secondary to the infusion of vesicant solution into his right hand's subcutaneous tissue. The infiltration reportedly caused extensive soft tissue necrosis with loss of tissue on the dorsal and palmar surfaces of is right hand and tissue loss of his right middle finger." Plaintiff asserted that he lost a great degree of function of his hand due to

scarring and damage to the radial nerve. *Flemings v. LSU Health Sci. Ctr.*, 2007 WL 4699095 (La. Civil D. Ct.), West's Jury Verdicts– Louisiana Reports (Verdict Date: June 28, 2007).

Similarly, a jury awarded \$750,000 to a premature infant who suffered from an infiltration injury to her left thigh that caused a chemical burn, inflammation, swelling and scabbing, in a medical malpractice case against a hospital. Plaintiff claimed pain and discomfort, as well as permanent scarring on her left thigh. The injury required the removal of necrotic tissue and surgery. *Norris v. Hutzel Hospital*, 2009 MI Trial Rptr. LEXIS 796, Jury Verdicts and Settlements Combined (Verdict date: April 9, 2009).

Also, in a more recent medical malpractice case, a jury awarded \$1,056,000 to a plaintiff who suffered a permanent injury to her left hand due to an IV infiltration which resulted in burning, pain, swelling, and limitation of movement. *Russo v. Southwest General Health Center*, 2010 OH Trial Rptr. LEXIS 375, Jury Verdicts and Settlements Combined (Verdict date: Oct. 6, 2010).

Likewise, under the circumstances herein, this Court deems that the jury verdict, in the amount of \$800,000, is reasonable compensation for this infant herein. This jury's verdict is reasonable, given the pertinent facts, including that Jahcidy suffered the pain of the third-degree burn on his dominant hand; and the

resulting permanent scar, muscle atrophy in his right arm, 30% limitation of motion in the third finger (which is expected to get worse as he get older), and the limitations in strength and function in his right hand and arm. Furthermore, due to the underlying spinal bifida in this "eggshell"-type infant, the loss of strength in his right hand affects him more than it would affect someone with normal legs.

Accordingly, Defendant's Motion is denied.

This constitutes the Decision and Order of this Court.

Dated: June 13, 2013



SHARON A.M. AARONS, JSC