

<b>Elsawi v Saratoga Springs City Sch. Dist.</b>
2018 NY Slip Op 31060(U)
April 23, 2018
Supreme Court, Saratoga County
Docket Number: 2012-2633
Judge: Ann C. Crowell
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

 COPY

STATE OF NEW YORK  
SUPREME COURT COUNTY OF SARATOGA

---

**ANISA MONTASSER ELSAWI,**

Plaintiff,

-against-

**SARATOGA SPRINGS CITY SCHOOL  
DISTRICT,**

Defendant

---

**DECISION and ORDER**

RJI #45-1-2012-1803

Index # 2012-2633

APPEARANCES

Catherine A. Burkly, Esq.  
Attorney for Plaintiffs  
74 Broad Street  
Schuylerville, New York 12871

The Mills Law Firm  
Attorneys for Defendant  
1520 Crescent Road, Suite 100  
Clifton Park, New York 12065

SARATOGA COUNTY  
CLERK'S OFFICE  
BALLSTON SPA, NY

2018 APR 24 PM 12: 22

FILED

ANN C. CROWELL, J.

The plaintiff has requested an order of this Court pursuant to CPLR § 4404 to set aside the March 13, 2018 jury verdict award for future damages. The defendant has opposed the motion.

The plaintiff contends the Court should increase the \$75,000.00 jury award for future pain and suffering and loss of enjoyment of life to \$500,000.00. The plaintiff reasons that based upon her life expectancy of 59.2 years and the nature of her damages the increase is justified. The jury awarded the plaintiff \$205,000.00 for her past pain and suffering and loss of enjoyment of life. During closing arguments, plaintiff's counsel

requested an award of \$250,000.00 for past pain and suffering and loss of enjoyment of life. Plaintiff's counsel invited the jury to make their own determination in awarding future damages referencing plaintiff's damages and contrasting her life expectancy of 59.2 years to her seven years of pain and suffering and loss of enjoyment of life from the date of her injury to the date of the verdict.

“An award of damages is a factual determination to be made by the jury and is accorded deference unless ‘it deviates materially from what would be reasonable compensation.’” *Garrison v Lapine*, 72 AD3d 1441 [3d Dept. 2010], citing *Doviak v Lowe's Home Ctrs., Inc*, 63 AD3d 1348, 1353 [3d Dept. 2009]. “The jury's interpretation of the evidence is entitled to considerable deference, and [courts] will not disturb it unless the evidence so preponderates in favor of the moving party that the verdict could not be reached on any fair interpretation of the evidence” *Albanese v Przybylowicz*, 116AD3d 1216 [3d Dept. 2014], citing *Olmstead v Pizza Hut of Am., Inc.* [3d Dept. 2013]. The jury's resolution of credibility issues should be accorded the same degree of deference. *Vogel v Cichy*, 53 AD3d 877 [3d Dept. 2008]. A Court's capacity to disturb a jury's verdict is to be used sparingly. *Santalucia v County of Broome*, 228 AD2d 895 [3d Dept. 1996].

Future damages for pain and suffering and loss of enjoyment of life can not be quantified by a precise formula. *Nolan v Union Coll. Trust of Schenectady*, 51 AD3d 1253 [3d Dept. 2008]. When scrutinizing a jury's future damages award the Court must examine “the nature, extent and permanency of the injuries, the extent of past, present and future pain and the long - term effects of the injury”. *Vincent v Landi*, 123 AD3d 183 [3d Dept. 2014]. There was no medical evidence from which the jury could have found that plaintiff's condition would improve such that her pain, loss of range of motion or scars would be

completely alleviated, but her loss of range of motion and pain were not quantified, and her scars were not presented to the jury for their examination. Trial testimony indicated plaintiff's stated limitations do not prevent her from working in her desired field of employment - hotel management. She is able to get assistance at work for lifting heavy items or reaching for items that may trigger shoulder pain. She is able to perform all of her activities of daily living. Both medical experts agreed plaintiff's right shoulder may develop future arthritic changes as a result of her injuries. Neither medical expert indicated if she will experience symptoms or estimated an age they would expect plaintiff to have evidence of such changes with associated pain and limitations. Plaintiff's expert did opine that if arthritis developed and became severe a future surgical debridement may be necessary to alleviate associated pain and limitations. Both experts found the need for a future shoulder replacement a possibility but deemed such an event unlikely.

Plaintiff has not presented any jury verdicts in similar cases or specific case law to support her request for an increased future damages award. Defendant has presented a case where a plaintiff has a similar life expectancy and a shoulder injury albeit with only one surgery to her non-dominant arm where a Court modified an award from zero to \$25,000.00 in future damage, the present damages award of \$15,000.00 was unchallenged. *Richards v Fairfield*, 127 AD3d 1290 [3d Dept. 2015]. Defendant also provided a 2015 Richmond County jury verdict from a damages only trial regarding a similar shoulder injury in which an unchallenged verdict of \$25,000.00 was awarded for 38 years of future pain and suffering. *Linder v Chan*, 2015 WL 2450951 [Sup. Ct., Richmond Cty]. Neither case is on all fours with this case but each provides some guidance. Whether a larger damages award could be sustained is not the test, it is whether or not the current award

deviates materially from what would be reasonable compensation based upon the evidence presented to the jury at trial. The plaintiff's motion fails to provide the Court a sufficient basis to modify the jury verdict for future damages. The plaintiff's motion is denied.

Any relief not specifically granted is denied. No costs are awarded to any party. This Decision shall constitute the Order of the Court. The original Decision and Order shall be forwarded to the attorney for the plaintiffs for filing and entry. The underlying papers will be filed by the Court.

Dated: April 23, 2018  
Ballston Spa, New York

  
\_\_\_\_\_  
ANN C. CROWELL, J.S.C.

Papers Received and Considered:

Notice of Motion, dated March 23, 2018

Affirmation of Catherine A. Burkly, Esq., dated March 23, 2018, with attached Exhibits A-B

Affidavit of Christopher K. Mills, Esq., sworn to April 11, 2018, with attached Exhibit A

Reply Affirmation of Catherine A. Burkly, Esq., dated April 17, 2018