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| <b>Guadalupe v Stevenson</b>   |
| 2019 NY Slip Op 30953(U)   |
| April 12, 2019   |
| Civil Court of the City of New York, Bronx County  |
| Docket Number: TS-300139-18/BX   |
| Judge: Sabrina B. Kraus  |
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CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF BRONX: PART 242

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NEFTALI GUADALUPE, X

Plaintiff,

**HON. SABRINA B. KRAUS**

-against-

**DECISION & ORDER**  
**Index No.: TS-300139-18/BX**

JENNIFER STEVENSON

Defendant,

\_\_\_\_\_  
X

**BACKGROUND**

Plaintiff, a 56 year old man, commenced this action for injuries alleged as a result of a motor vehicle accident. As a result of his injury, Plaintiff had surgery on his left knee and a cervical fusion on his neck. This court presided over the jury trial in Bronx County Civil Court from November 16, 2018 through November 27, 2018.

On November 27, 2018, the jury returned a verdict finding Defendant was 40% liable and Plaintiff 60% liable for causing the accident. The jury found that Plaintiff sustained a serious injury pursuant to Insurance Law § 5102(d), and awarded a total of \$650,000.00 for past pain and suffering, and \$1,000,000.00 for future pain and suffering for a period of 20 years.

**THE PENDING MOTION**

Defendant now moves to set side the award for future pain and suffering, pursuant to CPLR § 4404(a), on the grounds that the award was excessive in light of the evidence presented at trial.

On March 13, 2019, all papers on the motion were submitted. On April 4, 2019, the court heard oral argument and reserved decision.

CPLR § 4404(a) provides in pertinent part:

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 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 .....

Whether a verdict is contrary to the weight of the evidence is not a question of law, but, a discretion-laden inquiry under which the court must ascertain whether the verdict rests on a fair interpretation of the trial evidence ( *See, e.g., Nicastro v. Park*, 113 A.D.2d 129). “(T)he discretionary power to set aside a jury verdict and order a new trial must be exercised with considerable caution, for in the absence of indications that substantial justice has not been done, a successful litigant is entitled to the benefits of a favorable jury verdict ( *Id.*, 113 A.D.2d at 133).”

The parties in seeking to reduce or maintain the award should cite appellate authority on sustainable verdicts for similar injuries and to show that the jury’s award materially deviates from reasonable compensation or comports with same (CPLR § 5501(c)) . However, “(m)odification of damages, which is a speculative endeavor, cannot be based upon case precedent alone, because comparison of injuries in different cases is virtually impossible (*Po Yee So v Wing Tat Realty, Inc.* 259 AD2d 373, 374).”

Defendant argues that the court should consider the following facts, Plaintiff had a left knee and neck surgery that were successful, that Plaintiff was no longer treating for his injuries

at the time of trial and had not treated for his injuries since 2014, that the need for future treatment was speculative and that an unrelated diagnosis of Hodgkins Lymphoma is primary cause of present limitations.

Defendant argues that the award for future pain and suffering should have been less than the award for past pain and suffering, which covered the period of Plaintiff's surgeries and recovery. Defendant points out that Plaintiff's counsel suggested that the jury should only award \$750,000.00 in for future pain and suffering in his summation.

Finally, Defendant argues that the final question submitted by the jury (Ct Ex 20) which asked whether the percentage of the Plaintiff's fault gets deducted from the past pain and suffering and future pain and suffering awards, indicates that the jury's award was based on sympathy rather than the evidence. Plaintiff counters that Defendant's claim that the jury based its decision on sympathy rather than evidence is nothing more than speculation. The court can not speculate as to what the jury considered', and the court notes that no issue was raised by either party in regards to the note or the court's response to the note at trial.

However, the court does agree that the amount awarded for damages for future pain and suffering materially deviates from reasonable compensation based on the evidence in the case. Taking into account the cases cited by the parties and the related factual analysis, the court finds that the appropriate award for the 20 year life expectancy found by the jury should be not exceed \$850,000.00.

Plaintiff argues that the award is in line with awards for comparable injuries in the First Department. However, the court finds that none of the cases cited by either party lines up with

the injuries sustained by Plaintiff herein. Plaintiff cites a 2.7 million dollar award in *Stewart v New York City Tr. Auth* (82 AD3d 438), but, the injuries in that case were much more extensive than in the case at bar. Plaintiff cites *Williams v City of New York* (105 AD3d 667 ) where the court reduced future damages from \$2 million dollars to 1,200,000.00, but it was acknowledged in that case that Plaintiff “would need future care for the remainder of his life due to the compromised nature of his spine (*Id* at 668)” a factor absent with Plaintiff in this case.

In reducing the award, the court notes in particular that Plaintiff had not treated for his injuries for at least three years prior to the date of the trial, and Plaintiff indicated no definite plan to receive future treatment, and other than his complaints of ongoing pain, the limitations on Plaintiff’s activities were not severe and focused on no longer being able to go dancing with his wife, ride bikes or play sports.

Therefore, the instant motion is granted to the sole extent of ordering a new trial as to damages for future pain and suffering, unless within 30 days of service upon Plaintiff’s counsel of a copy of this Decision and Order, with notice of entry, Plaintiff serves and files a written stipulation consenting to reduce the verdict as to future pain and suffering from \$1,000,000.00 to \$850,000.00.

This constitutes the decision and order of the Court.

Dated: New York, New York  
April 12, 2019

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Sabrina B. Kraus, JCC

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