SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. LYLE E. FRANK** **PART** **IAS MOTION 52**

Justice

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INDEX NO. 150270/2014

LAURENCE DEGIULME,

MOTION DATE 01/08/2020

Plaintiff,

MOTION SEQ. NO. 003

- v -

THE NEW YORK CITY TRANSIT AUTHORITY, MILTON HAYWOOD,

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 84, 85, 94

were read on this motion to/for SET ASIDE VERDICT.

Defendant's motion to set aside the jury verdict, insofar as the jury awarded the plaintiff $260,000 for past lost earnings, pursuant to CPLR Section 4404(a) is denied, for the reasons indicated below.

Facts

The chronology of the plaintiff's accident and subsequent medical treatment appears to not be in dispute. On June 4, 2013, the plaintiff was working as a Taxi and Limousine Commission (TLC) inspector, when he suffered a fractured right ankle and left wrist as a result of being struck by a New York City Transit Authority bus driven by defendant Haywood. The plaintiff, as a result of the accident, sustained an injury to his ankle, that required 2 surgeries, the first occurring in 2013 and the second on December 13, 2017. During the first surgery, the plaintiff had hardware placed into his ankle. During the second surgery, the plaintiff had his ankle hardware removed and a tear caused by the ankle hardware was repaired. The plaintiff received medical treatment which led to the second surgery as a result of his experiencing

increasing pain, which apparently resulted from the hardware placed in his ankle at the time of the first surgery becoming misaligned. Since the accident, the plaintiff has never returned to work at TLC, though he has resumed a part time job that he had prior to the accident, and for which there was no lost earnings claim sought. However, the plaintiff at trial did testify that he was possibly going to try to work at the new Brooklyn's Wegman's store that was going to be opening. He has also apparently done some odd jobs since the accident, including fixing motorcycles.

On May 23, 2019, a jury verdict awarded the plaintiff $740,000 for past pain and suffering, and $260,000 for past lost earnings, as well as $315,000 for future pain and suffering over a 10-year period. The jury verdict was just under 6 years following the accident. The plaintiff's uncontroverted testimony was that he was making about $42,000 per year prior to the accident.

The defendants argue that the $260,000 award for past lost earnings should be set aside for two reasons: first, that while there was testimony that the plaintiff could not return to work at the TLC, there was no testimony that the plaintiff could not work at any full time job; and second, even assuming there was a time period in the past that the plaintiff was unable to work at all, the plaintiff had failed in their burden to establish that time frame.[1]

The plaintiff counters by arguing that the plaintiff was entitled to his lost earnings because he never returned to work since the time of the accident.

Discussion

It must first be noted that a jury award is entitled to the most favorable of inferences. *See Cohen v Hallmark Cards*, 45 NY2d 493, 499 [1978].

[1] It should be noted that there is no argument that the plaintiff did not provide sufficient documentary evidence to show the amount of money he was earning at the TLC as well as his earnings following the accident.

It is readily apparent that the plaintiff made out a prima facie case for past lost earnings by demonstrating that he was making $42,000 prior to his accident, and that he has not returned to work since the time of the accident, except for a part time job that he had prior to the accident, and that he went back to in a more limited capacity subsequent to the accident. Moreover, during this time period, the plaintiff required surgery to have ankle hardware placed into his ankle, and such hardware apparently then caused a tear to this ankle requiring a second surgery. There has also been testimony that the plaintiff is limited in the work that he can do due to his injury.

The next question therefore is whether a reasonable jury could have reached the conclusion that they did. This Court concludes that they could have. It is certainly possible that the jury could have found that the plaintiff was fired from his TLC job as a result of the accident, that at a point where he could have started to look for work again he began to have increasing pain in his ankle, which was the developing of a tear in his ankle, that he had a second surgery, and only at the time of the trial was he able to return to work. The plaintiff testified that he was going to be looking for work in the future. A jury that found that the plaintiff was entitled to $740,000 for past pain and suffering, a decision not challenged in this motion, could reasonably have found the plaintiff unable to work in the years since the accident.

Based on the foregoing it is

ADJUDGED that the motion is denied.

1/9/2020
DATE

LYLE E. FRANK, J.S.C.

HON. LYLE E. FRANK J.S.C.

CHECK ONE:	[X]	CASE DISPOSED		[ ]	NON-FINAL DISPOSITION		
	[ ]	GRANTED	[X] DENIED	[ ]	GRANTED IN PART	[ ]	OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER		
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ]	REFERENCE