

<b>Gonzalez v Hinson</b>
2021 NY Slip Op 30143(U)
January 13, 2021
Supreme Court, Kings County
Docket Number: 1108/2015
Judge: Wayne P. Saitta
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At an IAS Term, Part 29 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 13<sup>th</sup> day of January 2021.

P R E S E N T:

HON. WAYNE SAITTA, Justice.

-----X

JERRY GONZALEZ,

Plaintiff

-against-

Index No. 1108/2015

DECISION AND ORDER

JAQUAN L. HINSON, DOLLAR RENT A CAR INC.,  
THE HERTZ CORPORATION,

Defendants

-----X

The following papers numbered 1 to 6 read on this motion:

NYSCEF DOC NOS.

Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed	_____	<u>1-16, 19-22</u>
Answering Affidavit (Affirmation)	_____	<u>23</u>
Reply Affidavit (Affirmation)	_____	<u>25</u>
Supplemental Affidavit (Affirmation)	_____	
Pleadings – Exhibits	_____	
Stipulations – Minutes	_____	
Filed Papers	_____	

In this action Plaintiff alleges that he sustained a neck injury when his car was struck by Defendant, and that he underwent an operation to remove a disc at the C4-C5 level as a result of his injuries.

After trial the jury found that Plaintiff did not suffer a serious injury as a result of the car accident. Plaintiff seeks to set aside the jury's verdict and direct judgment against Defendant

A jury verdict should not be set aside as contrary to the weight of the evidence unless the jury could not have reached the verdict on any fair interpretation of the evidence. (*Ramirez v Mezzacappa*, 121 AD3d 770 [2<sup>nd</sup> Dept 2014]; *Costa v. Lopez*, 120 A.D.3d 607 [2<sup>nd</sup> Dept 2014].)

Plaintiff's motion is denied as a reasonable jury could have concluded from the evidence presented that Plaintiff's injuries did not result from the accident.

The jury could have rationally reached their verdict by relying on the testimony of Dr. Evan Mair a radiologist called by the Defense. Dr. Mair testified that Plaintiff's neck injuries were not caused by a trauma but were the result of degenerative disc desiccation. Dr. Mair based his finding of degenerative disc disease on a review of two MRI films taken shortly after the accident and before Plaintiff's surgery.

Dr Mair testified that the two films, taken 9 days and 47 days after the accident, were taken soon enough after the accident that indicators of a traumatic injury from the accident would have shown up on the studies, had they existed.

Dr Mair went over the MRI films in front of the jury and testified that the films showed no indicators of trauma, specifically no misalignment of the vertebrae, no fracture, no edema, no swelling, no tearing of the fibers of the disc.

Dr. Mair pointed to areas of the MRI's which he testified showed that there was no disc bulge at the C4-C5 level, which was the level where Plaintiff's disc was removed. He testified that the only level where there was a bulge was at the C5-C6 level.

Dr. Mair testified that the bulge he saw at C5-C6 was a small broad-based bulge with no tearing of the fibers of the disc. He testified that because the bulge was broad based and not focal it was not a traumatic finding.

Dr. Mair also testified that the signal on the MRIs was not bright at levels C2 through C7 and that this indicated multi-level degenerative disc desiccation.

Plaintiff's attorney took Dr. Mair through the two MRI films again on cross examination and pointed to the C4-C5 level and specifically challenged Dr. Mair whether the films showed a bulge at that level, and Dr. Mair testified they did not.

In light of Dr. Mair's testimony the jury had a rational basis to reject Plaintiff's position that because Plaintiff was asymptomatic before the accident, the accident was the cause of his injuries.

Dr. Mair did agree when asked hypothetically on cross examination that "if a patient has no symptoms -- things like pain, numbness, tingling -- and then has a traumatic event, and then presents with symptoms like pain, numbness, tingling, can we agree, to a reasonable degree of medical certainty, that it's more likely than not in that circumstances the trauma would be the cause of the symptoms." (Trial Transcript at 536:3-9). However, as the transcript indicates, the question assumes that the hypothetical patient suffered a trauma.

The jury was able to view the MRI films and listen to an extensive examination over what they showed, as well as weigh Dr. Mair's credibility on both direct and cross. It was well within the jury's province to reject Plaintiff's doctors' opinions and accept Dr. Mair's opinion that Plaintiff's injuries were degenerative even though Plaintiff's doctors disagreed.

WHEREFORE, it is hereby ORDERED that Plaintiff's motion to set aside the verdict is denied.

This constitutes the Decision and Order of the Court.

ENTER:

  
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Wayne P Saitta, JSC