

Cooper v Glatt Mart Inc.
2022 NY Slip Op 34400(U)
December 22, 2022
Supreme Court, Kings County
Docket Number: Index No. 505491/2018
Judge: Bernard J. Graham
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: Part 36

Index No. 505491/2018

LINDA COOPER,

Plaintiff(s),

-against-

DECISION

Present:

Hon. Judge Bernard J. Graham
Supreme Court Justice

GLATT MART INC. And REHMAN AMJAD,

Defendant(s).

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this Motion: Defendant's Motion to Set Aside a Verdict

Papers	Numbered
Defendant's Affirmation, To Set Aside Verdict.....	<u>1</u>
Plaintiff's Affirmation in Opposition.....	<u>2</u>
Defendant's Memorandum in Support of Motion.....	<u>3</u>
Other: _____	_____

Upon the foregoing cited papers, the Decision/Order on this application is as follows:

Decision:

Defendant Glatt Mart, Inc. and Rehman Amjad, (hereinafter "Glatt Mart") by their attorneys, moves to set aside a jury verdict rendered on October 4, 2022 in Part 36 of this Court in the captioned matter.

Defendant's counsel argues, inter alia, that the verdict rendered by the jury in favor of plaintiff Linda Cooper ("Ms. Cooper") in an amount of \$600,000, for past pain and suffering and \$800,000, for future pain and suffering should be set aside and a new trial held on the issue of damages. Counsel for defendant argues, alternatively, that this Court should order a "substantial remittur on the grounds that the verdict is unsupported by the evidence, is against the weight of the evidence and deviates materially from what would be reasonable compensation for plaintiff's injuries". (Affidavit of Margot L. Ludlam, Esq., in Support of Motion, pg. 1).

The motion is opposed by plaintiff's counsel who argues, inter alia, that substantial evidence was presented including the testimony of the treating physician, Andrew Merola, M.D., whose testimony supports the jury verdict. Argument was heard before the undersigned on the Microsoft Teams platform on December 22, 2022.

Discussion:

Defendant's counsel relies on three (3) arguments in support of the instant motion. In essence, defendant Glatt Mart argues that (1) Ms. Cooper's injuries and restrictions were pre-existing, therefore, the total amount of the verdict (\$1,400,000) was against the weight of the evidence; (2) that plaintiff failed to present competent evidence that plaintiff's injuries were caused by the June 16, 2017 accident; and (3) that plaintiff's medical expert failed to lay a proper foundation for his opinion that Ms. Cooper suffered a "serious injury" as required by the Insurance Law of the State of New York.

Beginning with the question of whether Ms. Cooper's injuries were pre-existing, it was not disputed that Ms. Cooper had been injured in a prior automobile accident in 2011. Defendant's counsel recites the testimony at trial related to Ms. Cooper's physical condition after the 2011 accident (and prior to the 2017 accident) and argues that Ms. Cooper was suffering from significant injuries related to that earlier accident. These facts were clearly stated by Dr. Andrew Merola who had performed surgery on Ms. Cooper after the 2011 accident. Dr. Merola, who also performed surgery on Ms. Cooper after the 2017 accident, was forthright and credible that Ms. Cooper suffered residual pain and disability connected with the earlier surgery he had performed. Dr. Merola also allowed for the fact that Ms. Cooper would require additional surgery even before she suffered the 2017 accident. However, Dr. Merola also testified that Ms. Cooper's injuries were significantly worsened by the 2017 accident and have had a detrimental effect on Ms. Cooper's physical condition.

Dr. Merola's medical opinion that Ms. Cooper's injuries were exacerbated by the 2017 accident was consistent with Ms. Cooper's own testimony regarding the extent her physical condition has worsened and that she is not able to engage in her usual activities any longer.

The jury was given the charge for exacerbation of an injury (PJI 2:282- Aggravation of Pre-Existing Injury) and the jury's verdict is consistent with the evidence presented showing the exacerbation of Ms. Cooper's prior injuries.

As to the amount of the verdict, the jury rendered a sum of money which they believed to be appropriate compensation for plaintiff's past and future pain and suffering. The

Court notes that Dr. Merola was very familiar with Ms. Cooper's medical history, having performed two surgeries for her and he would have a unique perspective in evaluating the extent of the injuries that Ms. Cooper has suffered.

In this case it is also relevant that defendant had not produced a medical expert to challenge the medical opinions rendered by Dr. Merola and the jury was not offered a countervailing opinion to weigh against the credible testimony that was given by plaintiff's medical expert.

After reviewing the defendant's motion and plaintiff's opposition to the motion, this Court finds that the verdict should not be set aside as contrary to the weight of the evidence. The decision to set aside a verdict requires a discretionary balancing of many factors (see *Nicastro v Park*, 113 AD2d 129, 132 [1985], citing *Cohen v Hallmark Cards*, 45 NY 2d 493), and the decision to set aside the 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." *Nicastro v Park*, 113 AD2d at 133.

The Court finds that the jury was presented with clear, concise and credible evidence in the testimony of both Dr. Merola and Ms. Cooper which caused the jury to render its verdict in favor of Ms. Cooper. The jury verdict was, in the Court's opinion, reached upon a fair interpretation of the evidence and should not be set aside. (See *Sullivan v Pampillonio*, 288 AD2d 299 [2d Dept. 2001]; *Moskowitz v Israel*, 209 AD2d 676 [2d Dept. 1994]).

The two remaining arguments posited by defendant's counsel involve questions of whether plaintiff's injuries were proximately caused by the 2017 accident and whether Dr. Merola properly laid a foundation for the no-fault threshold requirements to establish a "serious injury".

An examination of the testimony given by Dr. Merola clearly establishes that he was specifically questioned as to his examinations of Ms. Cooper subsequent to her 2017 accident and noted significant deterioration in her condition, including reduced range of motion and severe neck pain, and opined that her condition and the need for surgery in 2018 was a result of the motor vehicle accident in 2017. Accordingly, the trial testimony established that Ms. Cooper's 2017 accident was a proximate cause of her current injuries

The argument that defendant's counsel raises (Point III) as to there being no foundation for Dr. Merola's opinions that Ms. Cooper's injuries satisfy the no-fault threshold requirement must also be rejected based on the trial testimony.

The evidence offered by Dr. Merola established that Ms. Cooper sustained a permanent consequential limitation of the use of a body organ or member, function or system, as well as a significant limitation of use of a body function or system. As to the injuries preventing Ms. Cooper from performing customary and daily activities for 90 out of 180 days following the accident, Dr. Merola's testimony was on point as to her suffering from a medically determined injury and that she was incapacitated for the required period.

Conclusion:

The instant case presented a question of fact as to whether Ms. Cooper's subsequent car accident in 2017 had exacerbated her injuries that she previously suffered. The jury was presented with medical opinions, given by the surgeon who performed two surgeries on Ms. Cooper and his opinions were based on facts in the record as well as his own medical records.

On the question of fact presented in this case, the jury rendered a verdict which was consistent with the testimony offered at trial and the decision of the jury should not be set aside.

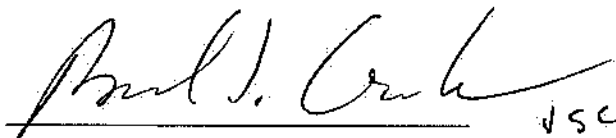
Furthermore, the amount of the jury's award is not unreasonable or excessive. The jury heard from Ms. Cooper as to the quality of her life since the 2017 accident and her disability is considerable. On these facts the amount of compensation should not be disturbed.

The defendant's motion to set aside the verdict or to substantially reduce the amount of the awards for past pain and suffering and future pain and suffering is denied.

This shall constitute the decision and order of this Court.

Dated: December 22, 2022

ENTER:

A handwritten signature in black ink, appearing to read "Bernard J. Graham", is written over a horizontal line. To the right of the signature, the initials "JSC" are written.

HON. BERNARD J. GRAHAM