Castillo v 1248 Assoc. LLC

2024 NY Slip Op 34495(U)

December 6, 2024

Supreme Court, Kings County

Docket Number: Index No. 522504/2018

Judge: Devin P. Cohen

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This opinion is uncorrected and not selected for official publication.

Supreme Court of the State of New York
County of Kings

Part LL1

YESTER CASTILLO,

Plaintiff,

against

1248 ASSOCIATES LLC,

Defendant.

Index Number 522504/2018
Seq. 005

DECISION/ORDER

Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this Motion

Papers Numbered	
Notice of Motion and Affidavits Annexed	1
Order to Show Cause and Affidavits Annexed	
Answering Affidavits	2
Replying Affidavits	3
Exhibits	Var.
Other	

Upon the foregoing papers, plaintiff's motion for additur (Seq. 005) is decided as follows:

Procedural History and Factual Background

Plaintiff commenced this action to recover for injuries he sustained when he was struck by a piece of plywood while constructing an elevator shaft on September 27, 2018. The plaintiff was awarded summary judgment on his Labor Law § 240 (1) claims on February 2, 2023. The matter proceeded to trial on damages. The damages trial was conducted on May 2, 3, 6, 7, 9, 10, 15, 16, 17, 20, and 21, 2024. On the last day of the trial, the jury was charged, deliberated, and returned a verdict awarding the plaintiff the following itemized damages: $150,000 in past lost earnings; $150,000 in past pain and suffering; $0 in future loss of earnings; $190,000 in future pain and suffering; and $80,000 in future medical expenses. The jury decided that the period of years for plaintiff's future pain and suffering and future medical expenses is 19 years.

Analysis

Plaintiff seeks to set aside the jury verdict, pursuant to CPLR 4404 (a) or for additur pursuant to CPLR 5501 (c).[1] A jury verdict should not be set aside as contrary to the weight of the evidence unless the moving party proves that the jury could not have reached its verdict on any fair interpretation of the evidence (*Aquino v Merha*, 168 AD3d 797, 798 [2d Dept 2019]; *Christ v Law Offices of William F. Levine & Michael B. Grossman*, 72 AD3d 721, 723 [2d Dept 2010]). This burden is a heavy one and the decision to set aside a jury verdict "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 129, 133 [2d Dept 1985]). The party opposing such a motion is afforded "every inference which may properly be drawn from the facts presented, and the facts must be considered in a light most favorable to the nonmovant" (*Leonard v New York City Tr. Auth.*, 90 AD3d 858, 859 [2d Dept 2011] [internal quotations omitted]).

Plaintiff contends that past lost earnings should be increased to $456,943 and future lost earnings should be increased to $299,394. These numbers are based on the report and testimony of plaintiff's economist, Dr. Fred Goldman. Plaintiff also argues that the jury verdict is inadequate in light of the plaintiff's bi-level cervical fusion, shoulder surgery, and nose surgery. The crux of plaintiff's argument is that causation was not at issue in this trial because the plaintiff has already been awarded summary judgment and causation was not included on the verdict sheet (aff. in supp. at ¶ 12).

[1] Although CPLR 4404 motions ordinarily must be made within 15 days of the verdict, plaintiff was permitted to file this motion within 30 days and, accordingly, defendant was given additional time for responsive briefing. All briefing was accomplished within the deadlines set by the court.

Defendant, in opposition, contends that the jury's award should stand. First, defendant contends that the jury could have reasonably concluded on the evidence that the injuries and treatment to plaintiff's cervical spine and shoulder were not related to the accident, but caused by degeneration, based on the concessions of Dr. Merola (trial transcript at 21, 212–213, 216) and Dr. Grimm (trial transcript at 331–333). It argues that the jury could also have reasonably concluded that the shoulder injury was caused by degeneration based on the testimony of Dr. Kaplan (trial transcript at 409). The jury was also informed that the plaintiff had a prior accident in 2009, which resulted in complaints of neck and shoulder pain (trial transcript at 141–143, 157). Therefore, the jury could have concluded on the evidence that the only causally related injury was the plaintiff's nose, and reached its damages award based on that conclusion. Second, defendant argues that the jury could have reasonably concluded that the life care planner, Jodi Gelfand, and the economist, Dr. Goldman, based their reports on projections and not on treatments the plaintiff was actually going to have (trial transcript at 260, 268, 464–465, 470). Therefore, the jury could have reasonably reduced the award for medical expenses based on both what injuries they believed were related to the accident and what treatment they believed the plaintiff was actually going to receive.

Contrary to plaintiff's contentions, the record shows that the only injury for which causation was established as a matter of law, due to defendant's admission, was the injury to plaintiff's nose (trial transcript at 670). The jury was instructed on causation (trial transcript at 735). A jury is entitled to decide, "for itself," whether to accept all or merely a portion of the testimony presented to it (*Mazella v Beals*, 27 NY3d 694, 707 [2016]). Therefore, it is neither contrary to the law of the case nor an irrational interpretation of the evidence for the jury to have found that some of plaintiff's injuries were caused by the accident and some of them were not.

Ultimately, the amount of a damages award "is primarily a question of fact for the jury" (*Murphy v Ford*, 173 AD3d 882, 882 [2d Dept 2019]). A jury award must "deviate materially from what would be reasonable compensation" in order to be overturned (CPLR 5501 [c]; *Gasperini v Center for Humanities, Inc.*, 518 US 415 [1996] [establishing that this standard of review also applies to trial courts]) to be disturbed. Although neither binding nor dispositive, prior jury verdicts involving similar injuries may be used by the court as a guide in assessing reasonable compensation (*Lara v Arevalo*, 205 AD3d 700, 702 [2d Dept 2022]). In its papers, the plaintiff only offers verdicts for comparison where the plaintiff suffered injuries to the neck or back. The plaintiff does not provide any verdicts where the plaintiff suffered either exclusively nasal injuries or suffered a combination of injuries to the nose and shoulder. The court's review of verdicts in cases involving adults with a deviated septum who underwent surgical repair provided a range of verdicts from approximately $180,000 to $415,000.[2] After observing the evidence and deliberation, the jury award in this action was unanimous, and the itemized verdict sheet shows that the jury awarded specific amounts for each category of damages, indicating thoughtful deliberation. A post-trial motion is not an opportunity for the court to substitute its opinion or rationale for that of the jury.

Therefore, plaintiff's post-trial motion (Seq. 005) is denied.

This constitutes the decision of the court.

December 6, 2024
DATE

DEVIN P. COHEN
Justice of the Supreme Court

[2] *See e.g. Zucker v. County of Westchester*, 1998 WL 2015321 (N.Y.Sup. Ct.), N.Y.J.V.Rep. XVI /19–18; *Martin v. Schneider*, 2002 WL 31023672 (N.Y. Co., Sup.Ct.), 19 N.Y .J.V R.A. 7:4; *Perna v. Linxalaona*, 1995 WL 1934277 (Suffolk Co., Sup.Ct.), 12 N.Y.J.V.R.A. 10:C1.