

Estevez v Larson
2024 NY Slip Op 35727(U)
March 3, 2024
Supreme Court, Nassau County
Docket Number: Index No. 612145/2020
Judge: Christopher T. McGrath
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU
PRESENT: HON. CHRISTOPHER T. McGRATH

-----X
JOSE ALBERTO ESTEVEZ

TRIAL PART 25

Plaintiff,

INDEX NO. 612145/2020

MOTION SEQ NO. 001

DECISION & ORDER

against

JAMES LARSON and JAMES D. LARSON,

Defendants
-----X

The following electronically filed documents for Motion Sequence 001 listed by
NYSCEF document numbers "41," through "55," have been read and considered on this motion.

Plaintiff, Jose Alberto Estevez moves for an Order pursuant to CPLR §4404[a] to set
aside the verdict as against the weight of the credible evidence and directing a new trial on the
issue of damages, unless the Defendants James Larson and James D. Larson stipulate to
appropriate additur as to the award for past and future pain and suffering that does not materially
deviate from what would be reasonable compensation.

Plaintiff commenced this action to recover damages for personal injuries sustained by
Plaintiff when he was struck by Defendants' car on December 07, 2019, in the crosswalk of
Long Beach Road where it intersects West Winsor Parkway in Oceanside, New York. On
September 24, 2024, the jury returned a liability verdict in favor of the Plaintiff and found the
Defendants 55% responsible for the accident. On October 2, 2024, the jury returned a damages
verdict and found that the Plaintiff suffered a significant limitation of use of a body function or
system. The jury awarded the Plaintiff \$40,000.00 in past pain and suffering and \$5,000.00 for
future pain and suffering.

Plaintiff's Moving Contentions

Now turning to the alleged injuries. Plaintiff alleged that he suffered a torn lateral and
medial meniscus of his left knee which required arthroscopic surgery. He also alleged that he
suffered from a Patellar and Trochlear Chondral injury as well as Chondromalacia. Plaintiff also

alleged the injury to his right knee necessitated an injection to his right knee. He also alleged that he suffered a herniation of the L3-4 disc with impingement, bulges of the L4-5 and L5-S1 discs also with impingement. Further, Plaintiff alleged that he suffered radiculopathy in in lower back and lower extremities. Additionally, Plaintiff alleged that he suffered herniations of his C2-3, C3-4, C5-6 and C6-7 discs all with impingement. It is also alleged that these herniations caused radiculopathy to his neck and upper extremities.

In support of Plaintiff's claims, and at the time of trial, Mr. Estevez testified as to his alleged injuries and how they have impacted his life. Plaintiff also called Dr. Rovner to the stand. Dr. Rover is a Board-Certified Orthopedic Surgeon and was the Plaintiff's treating orthopedist. In support of the Plaintiff's claim of injury to his cervical and lumbar spine, the Plaintiff submitted into evidence medical records from Pulse Medical which showed the treatment and diagnosis of Plaintiff's injuries.

Plaintiff testified at the time of trial that after he was hit by the car, he felt pain in his back, the back of his neck and both knees. He also testified that he first saw Dr. Gambino at Pulse Medical in Freeport about a week after the accident and he complained of pain to his head, neck, legs and received an injection for pain in these parts of his body. He testified that he went to Pulse Medical for five days a week where he received physical therapy and was also treated by a chiropractor and an acupuncturist. Plaintiff testified that he had surgery on his left knee. He used crutches for six months post-surgery and then a cane for another two years. Mr. Estevez testified that he never had knee or back pain prior to his accident. Mr. Estevez testified that he still has pain in both knees. Mr. Estevez has tried to go back to work but he has pain and has trouble standing for long periods of time and traveling. He cannot take the bus or walk like he did before the accident. Since the accident and because of his injuries Mr. Estevez can no longer help with the kids, cook, exercise, lift weights, do burpees and walk.

At the time of trial Dr. Rovner testified that Plaintiff's torn meniscus, along with the inflammation and cartilage damage were caused by the December 07, 2019 accident. Dr. Rover testified that he performed an arthroscopic surgery on Plaintiff's left knee on June 01, 2020. Dr. Rover testified that when he performed the surgery, he also saw a medial meniscus tear along with the cartilage damage, inflammation and adhesions. Dr. Rovner further testified that that Plaintiff's current complaints are consistent with the treatment that he received. Dr. Rovner

testified that the injury is permanent and will get worse as Plaintiff gets older. Plaintiff also references the medical records from Pulse Medical which were offered into evidence.

Plaintiff contends that based upon the record and evidence presented to the jury, their award of \$40,000 for past and \$5,000 for future pain and suffering is clearly inadequate. Plaintiff cites to multiple cases to support his argument that the award is inadequate to support the record. For example, Plaintiff cites to *In Semple v. N.Y. Transit Authority* 301 AD2d 514 [2d Dept. 2003]. In that case the jury awarded Plaintiff \$134,000 for past and \$95,000 for future pain and suffering. The Court found that to be adequate for a 60-year-old Plaintiff. In *Semple*, Plaintiff suffered a tear of the medial meniscus and a suspected tear of the lateral meniscus. Plaintiff did not have surgery, but her doctor testified that she would suffer pain and limited use of her knee for the rest of her life.

Plaintiff also cites to *Ferrantello v. St. Charles Hospital and Rehabilitation Center*, 275 AD2d 387 [2d Dept 2000]. In *Ferrantello*, the Plaintiff was awarded by a jury the total sum of \$275,260.00 for a torn meniscus and arthroscopic surgery. In that case, Plaintiff's treating doctor testified that her injuries were permanent and as a result of her accident.

Defendants' Opposing Contentions

In opposition, Defendants contend that based upon this record there was a valid line of reasoning and a rational process by which the jury reached the verdict plaintiff now seeks to set aside. Defendants further maintain that the verdict was reached based upon a fair interpretation of the evidence and that there is no indication that substantial justice was not done at the trial of this action. Defendants maintain that by virtue of the plaintiff's own trial testimony as well as the testimony of defendants' Expert Witnesses, this jury was presented with sufficient evidence to conclude that plaintiff did not sustain some or all of the injuries alleged; that some or all of the injuries alleged were not caused by the accident at issue; and that plaintiff's pain and suffering, as caused by this accident, was minimal.

Defendants refer to the portion of the Plaintiff's trial testimony wherein the Plaintiff testified that as of October 22, 2020, just 10-11 months post-accident, the condition of his neck, low back, and knees had improved. He testified that he underwent no medical treatment for these claimed injuries in 2024, in 2023, in 2022, or in 2021. As of the date of this trial Plaintiff testified that he had no current medical appointments for the injuries claimed to have been

sustained in this accident. Plaintiff testified that he never looked for work after the accident and no physician ever told him he was unable to work.

Defendants refer to the trial testimony of Dr. Jonathan Lerner. At the time of trial Dr. Lerner was the Chairman of the Radiology Department at Mercy Medical Center. Dr. Lerner reviewed MRIs of the Plaintiff's neck, low back and left and right knees. Dr. Lerner testified as to Plaintiff's February 10, 2020 Cervical MRI. The MRI was taken just three months after the accident of December 07, 2019. He opined that same revealed degenerative disc disease and uncovertebral arthritis. He testified that these findings pre-dated the accident of December 07, 2019. He testified the accident had no effect on these pre-existing conditions. He states that there were no herniations in the cervical spine.

Dr. Lerner also reviewed plaintiff's lumbar spine MRI. He found dehydrated and degenerative discs at L1-S1 along with significant degenerative changes in the facet joints and facet osteoarthritis. These findings pre-existed the accident and are degenerative. The degenerative findings at L3-4, L4-5, and L5-S1 all pre-dated the accident of 12/7/19. These conditions were not worsened as a result of the accident.

Dr. Lerner also testified as to his review of plaintiff's right knee MRI taken on February 3, 2020, within three months of the accident. He opined that same revealed a chronic degenerative process. Dr. Lerner testified as to his review of plaintiff's left knee MRI taken on February 14, 2020. The lateral meniscus was not seen to be torn. Nor did he see a medial meniscus tear. He did observe pre-existing chondromalacia.

Defendants also refer to the trial testimony of Eric Freeman, M.D., a Board-Certified Orthopedic Surgeon. Dr. Freeman conducted a Defendant's Medical Examination on March 24, 2022 which he opined that Plaintiff did not sustain a significant limitation of use of a body function or system or a permanent consequential limitation of use of a body, organ or member as a result of this accident and that the subject accident in question did not cause the left knee meniscus tear. The Court notes that the jury *did* find that the Plaintiff suffered a significant limitation of the use of a body function or system.

Discussion

"A motion for judgment as a matter of law pursuant to CPLR 4401 [...] may be granted only when the trial court determines that, upon the evidence presented, there is no valid line of

reasoning and permissible inferences which could possibly lead rational persons to the conclusion reached by the jury upon the evidence presented at trial, and no rational process by which the jury could find in favor of the nonmoving party” (*Hiotidis v. Ramuni*, 161 A.D.3d 955, 956, 77 N.Y.S.3d 442 [internal quotation marks omitted]; see *Szczerbiak v. Pilat*, 90 N.Y.2d 553, 556, 664 N.Y.S.2d 252, 686 N.E.2d 1346). “In considering such a motion, the trial court must afford the party opposing the motion 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” (*Feldman v. Knack*, 170 A.D.3d 667, 669, 95 N.Y.S.3d 306 [internal quotation marks omitted]). *Williams v Ncho*, 212 AD3d 687, 688-89 [2d Dept 2023],

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 by any fair interpretation of the evidence (*Casanova v. Aaron B. Chevrolet Co., Inc.*, 211 A.D.3d 1008, 1009, 182 N.Y.S.3d 139). “If the verdict can be reconciled with a reasonable view of the evidence, the successful party is entitled to the presumption that the jury adopted that view” (*Shehata v. Koruthu*, 201 A.D.3d 761, 764, 156 N.Y.S.3d 897 [internal quotation marks omitted]). When “conflicting expert testimony is presented, the jury is entitled to accept one expert's opinion and reject that of another expert” (*id.* at 764, 156 N.Y.S.3d 897 [internal quotation marks omitted]). *Angeles v County of Suffolk*, 222 AD3d 923, 925 [2d Dept 2023] “A jury's determination with respect to awards for past and future pain and suffering will not be set aside unless the award deviates materially from what would be reasonable compensation” (*Garcia v. CPS I Realty, LP*, 164 A.D.3d 656, 658, 83 N.Y.S.3d 129, citing CPLR 5501[c]; see *Petit v. Archer*, 218 A.D.3d 695, 696, 192 N.Y.S.3d 671). “The ‘reasonableness’ of compensation must be measured against relevant precedent of comparable cases” (*Kayes v. Liberati*, 104 A.D.3d 739, 741, 960N.Y.S.2d499; see *Petit v. Archer*, 218 A.D.3d at 696, 192 N.Y.S.3d 671). *Angeles v County of Suffolk*, 222 AD3d 923, 925 [2d Dept 2023],

Applying the standard that a jury verdict should only be set aside when the award substantially deviates from what would be deemed reasonable compensation, the Court concludes that the jury's award, based on the evidence presented regarding the Plaintiffs injuries, does not constitute a material deviation from reasonable compensation. Specifically, the jury's award of \$40,000.00 for past pain and suffering and \$5,000.00 for future pain and suffering is within the range of reasonable compensation given the nature and extent of the Plaintiffs injuries.

Accordingly, Plaintiff's motion is hereby **denied**.

Date: March 03, 2024
Mineola, New York

ENTER



HON. CHRISTOPHER T. McGRATH
J.S.C.

ENTERED

Mar 05 2025

NASSAU COUNTY
COUNTY CLERK'S OFFICE