

Sanon v MTA Long Is. R.R.
2025 NY Slip Op 35636(U)
January 9, 2025
Supreme Court, Suffolk County
Docket Number: Index No. 606250/2017
Judge: George Nolan
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Short Form Order

Index No. 606250/2017

SUPREME COURT – STATE OF NEW YORK
PART 55 – SUFFOLK COUNTY**P R E S E N T:****Hon. George Nolan**
Justice Supreme Court-----x
MARIE SANON,

Plaintiff,

-against-

MTA LONG ISLAND RAILROAD,
METROPOLITAN TRANSPORTATION
AUTHORITY, TOWN OF BABYLON, and
WINTER BROS. WASTE SYSTEM, INC. d/b/a
WINTER BROS. WASTE SYSTEM,Defendants.
-----xMot. Seq. No. 007 – MD
Orig. Return Date: 12/05/2024
Mot. Submit Date: 12/05/2024Mot. Seq. No. 008 – MD
Orig. Return Date: 12/05/2024
Mot. Submit Date: 12/05/2024**PLAINTIFF'S ATTORNEY**
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Melville, New York 11747LAW OFFICES OF MARK A.
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434 New York Avenue
Huntington, NY 11743WESTERMANN, SHEEHY,
SAMAAN & GILLESPIE, LLP
*Attorneys for Winter Bros. Waste
System, Inc., d/b/a Winter Bros.
Waste System*
90 Merrick Avenue, Suite 802
East Meadow, New York 11554

Upon the e-filed documents numbered 302 through 331, and upon due deliberation and consideration by the Court of the foregoing papers, it is hereby

ORDERED that the following motions are consolidated for the purpose of this decision and order and are determined as set forth herein; and it is further

ORDERED that the motion of plaintiff Marie Sanon for an order pursuant to CPLR 4404(a) setting aside the jury's damages verdict of October 23, 2024, and granting a new trial on the issue of damages unless the defendant Town of Babylon stipulates to increase the award of damages to \$3,448,529 (motion sequence no. 007), is denied; and it is further

ORDERED that the motion of defendant Town of Babylon for an order directing a new trial on the issue of plaintiff's past lost earnings unless the plaintiff stipulates to the reduction of the jury verdict award rendered on October 23, 2024 against the Town of Babylon for this item of damages from \$125,000 to \$14,880 (motion sequence no. 008), is denied.

In this personal injury action, the plaintiff Marie Sanon alleges she was injured on April 5, 2017, when she tripped and fell on an exposed metal bolt located on a sidewalk adjacent to Straight Path and near the Long Island Rail Road station in Wyandanch, Town of Babylon. Prior to trial, defendant Winter Brothers Waste Systems, Inc., was granted summary judgment on the issue of liability and the plaintiff's complaint and all cross-claims against it were dismissed. Also prior to trial, the plaintiff discontinued her action against the Metropolitan Transit Authority.

The undersigned conducted a liability trial in this action on August 8, 9 and 10, 2022. At the conclusion of the plaintiff's case, the court granted the motion of defendant MTA Long Island Rail Road for a directed verdict, as the plaintiff failed to make a *prima facie* showing of negligence against this defendant. After the remaining defendant, Town of Babylon ("Town") presented its case, the jury rendered a verdict finding that the Town created an unsafe condition by an affirmative act of negligence and that this negligence was a substantial factor in causing the plaintiff's accident. The jury also determined that the plaintiff was negligent and that her negligence was a substantial factor in causing the accident. The jury apportioned 75% fault to the Town and 25% fault to the plaintiff. The Court denied the Town's subsequent motion to set aside the jury's liability verdict (NOLAN, J., August 29, 2023).

The undersigned conducted a damages trial on October 21, 22 and 23, 2024. The evidence submitted at trial established that the plaintiff, 55 years old at the time of the accident, dislocated her left knee as a result of the subject accident. The plaintiff underwent a closed reduction with external fixation at Good Samaritan Hospital immediately following the accident. She was transferred to a rehabilitation facility for one month and then had a second surgery to remove the external fixators. The plaintiff underwent physical therapy and received some injections to her left knee. The plaintiff stopped treatment in 2019 but in 2023 she saw a new orthopedic surgeon, Dr. Joseph Munn. Dr. Munn performed a total left knee replacement in December 2023.

The plaintiff testified that just prior to her accident she worked in a factory for Linzer Products earning \$10 an hour. Sanon testified that she earned approximately \$21,000 annually at

this job. Sanon further testified that she also worked part-time as a home health aide on weekends earning approximately \$11 per hour and \$10,000 annually. The plaintiff testified that she returned to work at Linzer after her accident but had to stop because she was unable to stand for long periods of time. The plaintiff testified that she was unable to work as a home health aide following the accident. Plaintiff claimed that her past lost wages at the time of trial amounted to \$280,300. Sanon testified that she intended to work until she was 70 years old, and she sought damages of \$254,600 for future lost wages. The only records submitted by plaintiff in support of her lost wages claim were time/attendance records from Linzer Products from 2014 to 2016 which established that she was working full-time at the time of her accident. No records of any kind were submitted in connection with the plaintiff's work as a home health aide.

At the conclusion of the trial, the jury awarded the plaintiff \$500,000 for past pain and suffering, \$200,000 for future pain and suffering (this amount awarded to compensate plaintiff for 20 years), \$125,000 for past lost wages, \$21,000 for future lost wages and \$1,800 for past medical expenses for a total award of \$847,800.

The plaintiff moves now under CPLR 4404(a) for an order vacating the jury's damages verdict and granting a new trial on damages unless the defendant stipulates to increase the award for past and future pain and suffering, past and future lost wages, and past and future medical expenses. The Court notes that the verdict sheet submitted to the jury did not include a question regarding future medical expenses as the Court deemed this claimed item of damage too speculative and no objection was taken by plaintiff to that omission. The defendant also moves under CPLR 4404(a) for an order directing a new trial solely on the issue of plaintiff's past lost earnings unless the plaintiff stipulates to reduce the award for this item of damage from \$125,000 to \$14,880.

"A jury verdict on the issue of damages may be set aside as contrary to the weight of the evidence only if the evidence on that issue so preponderated in favor of the movant that the jury could not have reached its determination on any fair interpretation of the evidence" (*Carter v. City of New Rochelle*, 208 AD3d 843, 173 NYS3d 662 [2d Dept 2022]). "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" (*Coleman v. Karimov*, 173 AD3d 669, 103 NYS3d 146 [2d Dept 2019]; *see* CPLR 5501). "The reasonableness of compensation must be measured against relevant precedent of comparable cases" (*Peterson v. MTA*, 155 AD3d 795, 798 64 NYS3d 266 [2d Dept 2017]). "Although prior damage awards in cases involving similar injuries are not binding upon the courts, they guide and enlighten them with respect to determining whether a verdict in a given case constitutes reasonable compensation" (*Vainer v. DiSalvo*, 107 AD3d 697, 967 NYS2d 107 [2d Dept 2013]).

"Claims for lost earnings must be ascertainable with a reasonable degree of certainty and may not be based on conjecture" (*Fortune v. New York City Housing Authority*, 201 AD3d 705, 161 NYS3d 283 [2d Dept 2022]; *Glaser v. County of Orange*, 54 AD3d 997, 864 NYS2d 557 [2d Dept 2008]). "Unsubstantiated testimony, without documentation, is insufficient to establish lost

earnings” (*Tarpley v. New York City Transit Authority*, 177 AD3d 929, 932, 113 NYS3d 148 [2d Dept 2019]).

“Awards damages for past and future medical expenses must be supported by competent evidence which establishes the need for, and the cost of medical care” (*Quijano v. American Transit Ins. Co.*, 155 AD3d 981, 65 NYS3d 221 [2d Dept 2017]).

Here, the plaintiff failed to demonstrate that the jury’s \$700,000 award for past and future pain and suffering deviated materially from what would be considered reasonable compensation for her injuries. Plaintiff’s counsel states in his memorandum of law that he could not locate a comparable verdict involving a dislocated knee. Conversely, defendant’s counsel has cited case law suggesting that the award for pain and suffering herein did not deviate materially from what would be considered reasonable compensation.

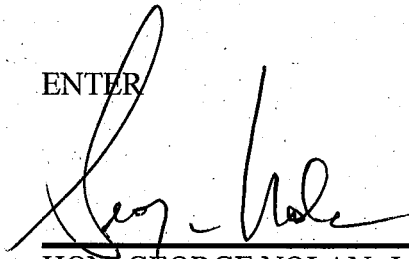
As to the award for lost wages, the Court finds that the Linzer attendance records combined with the plaintiff’s testimony that she earned ten dollars an hour at this job adequately supported the jury’s award of \$125,000 for past lost wages and \$21,000 for future lost wages. As plaintiff submitted no records at all to substantiate her employment as a home health aide, the jury could fairly conclude that plaintiff was not entitled to any damages relating to this claimed employment.

Finally, the Court cannot conclude that the jury acted unreasonably in awarding \$1,800 for past medical expenses as the records and bills submitted by plaintiff did not clearly establish the costs incurred by the plaintiff for medical care.

The foregoing constitutes the decision and Order of the Court.

DATE: January 9, 2025
Riverhead, NY

ENTER


HON. GEORGE NOLAN, J.S.C.

___ FINAL DISPOSITION

X NON-FINAL DISPOSITION