Dojce v 1302 Realty Co., LLC
2024 NY Slip Op 34006(U)
November 8, 2024
Supreme Court, Kings County
Docket Number: Index No. 508449/16
Judge: Peter P. Sweeney
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS, PART 73
--X
PETRIKA DOJCE,

Plaintiff,

-against-

1302 REALTY COMPANY, LLC, and MESIVTA
YESHIVA RABBI CHAIM BERLIN,

Defendants.
--X

Index No.: 508449/16
Motion Date: April 15, 2024
Mot. Seq. No.: 17

DECISION/ORDER

The following papers, which are e-filed with NYCEF as items 479-491, 511-514, 524, were read on this motion:

In this action to recover damages for personal injuries, the defendants, 1302 Realty Company, LLC and Mesivta Yeshiva Rabbi Chaim Berlin, move pursuant to CPLR 4404(a) to set aside a jury verdict on the issue of damages and for a new trial or, in the alternative, to set aside as excessive the jury verdict on the issue of damages for past and future pain and suffering, past and future lost earnings, and future medical expenses.

The plaintiff Petrika Dojce was injured on April 21, 2016, when an unguarded electric saw recoiled and propelled him against a desk and onto the floor. At the time of the accident, he was installing a floor at defendants' premises and was working for non-party F&D Improvements, Inc. Following a jury trial on the issue of liability, the defendants were found to be solely responsible for causing the accident pursuant to Labor Law § 241(6). The defendants' moved to set aside the liability verdict and their motion was denied.

The damages trial began on November 1, 2023, and ended on November 17, 2023. The medical evidence introduced during the trial demonstrated that as a result of the accident, the plaintiff suffered injuries to his back, neck, including multiple disc herniations, head injuries, a deep laceration to his right thigh and psychoglogical injuries. Plaintiff underwent multiple epidural interventions which were surgical in nature, a lumbar laminectomy, a lumbar fusion and a cervical fusion. Plaintiff has not returned to work since the accident and the medical evidence

fully supports that he is permanently disabled. Plaintiff is currently under the care of a pain management physician for chronic pain.

The jury returned a verdict awarding plaintiff $5,000,000 for past pain and suffering, $300,000 for past loss of earnings, $10,000,000 for future pain and suffering for 32.5 years, $900,000 for future loss of earnings for 17.1 years, and $3,574,079 for future medical expenses for 32.7 years. The awards for future medical expenses were $204,764 for future Pain Management, $860,307 for future Physical Therapy, $988,620 for future pharmacological expenses, $1,096,953 for future interventional treatment, $314,557 for future neuro modulation, and $108,878 for future Orthopedic/Neurologic Visits.

That branch of defendants' motion for a new trial, or in the alternative, to reduce the awards for future pain and suffering is granted solely to the extent that there will be a new trial on the issue of damages for past and future pain and suffering unless, within 30 days after service of a copy of this decision and order, the plaintiff serves and files in the office of the Clerk of the Supreme Court, Kings County, a written stipulation consenting to reduce the verdict as to damages for past pain and suffering from $5,000,000 to $3,000,000; and consenting to reduce the verdict as to damages for future pain and suffering from $10,000,000 to $2,500,000. The amount of damages to be awarded for personal injuries is a question for the jury, and "the jury's determination is entitled to great deference" (*Coker v. Bakkal Foods, Inc.,* 52 A.D.3d 765, 766, 861 N.Y.S.2d 384; *see Schray v. Amerada Hess Corp.,* 297 A.D.2d 339, 746 N.Y.S.2d 405). However, an award of damages is properly set aside if it deviates materially from what would be reasonable compensation (*see* CPLR 5501[c]; *Harvey v. Mazal Am. Partners,* 79 N.Y.2d 218, 225, 581 N.Y.S.2d 639, 590 N.E.2d 224; *Davison v. New York City Tr. Auth.,* 87 A.D.3d 608, 928 N.Y.S.2d 468; *Keaney v. City of New York,* 63 A.D.3d 794, 795, 881 N.Y.S.2d 143). "Since the inherently subjective nature of noneconomic awards cannot produce mathematically precise results, the 'reasonableness' of compensation must be measured against the relevant precedent of comparable cases" (*Turuseta v. Wyassup–Laurel Glen Corp.,* 91 A.D.3d 632, 634, 937 N.Y.S.2d 240). "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" (*Blair v. Coleman,* 211 A.D.3d 671, 674, 180 N.Y.S.3d 233 [internal quotation marks omitted]). "However, consideration should also be given

to other factors, including the nature and extent of the injuries" (*Taveras v. Vega,* 119 A.D.3d 853, 854, 989 N.Y.S.2d 362; *see Ciuffo v. Mowery Constr., Inc.,* 107 A.D.3d 1195, 1197, 967 N.Y.S.2d 223).

Considering the nature and the extent of the injuries sustained by the plaintiff, the awards for past and future pain and suffering deviate materially from what would be reasonable compensation to the extent indicated above (*Masmalaj v. New York City Economic Dev. Corp*., 197 A.D.3d 1294, 151 N.Y.S.3d 901; *Tarpley v. NYCTA*, 177 A.D.3d 929, 13 N.Y.S.3d 148; *Lopez v. New York City Dept. of Envtl. Protection*, 123 A.D.3d 982, 123 A.D 3d 982).

That branch of the motion in which the defendants seek to set aside the awards for past and future loss of earnings is denied. There is no merit to defendants' contention that plaintiff's failure to introduce any documentation, such as tax returns or W'2s, to support his loss of earnings claim, requires that the awards for loss of earnings be set aside. While it is generally true that a party claiming lost earnings has the burden of proving the amount of actual past earnings with reasonable certainty by means of tax returns or other documentation (*see Tarpley v. New York City Tr. Auth.,* 177 A.D.3d 929, 932, 113 N.Y.S.3d 148, quoting *Deans v. Jamaica Hosp. Med. Ctr.,* 64 A.D.3d 742, 744, 883 N.Y.S.2d 580; *see Gore v. Cardany,* 167 A.D.3d 851, 852, 90 N.Y.S.3d 144), where, as here, it is undisputed that plaintiff was working at the time of the accident, that plaintiff was being paid, and that plaintiff was paid a definite amount for the work he was performing, oral testimony is sufficient to support a lost earnings award (see, *Nayberg v. Nassau County*, 149 AD3d 761, 762; *Whalen v. City of New York*, 270 AD2d 340; *Waring v. Sunrise Yonkers SL, LLC*, 134 AD3d 488; *Deguilme v. NYCTA*, 209 AD3d 485). While plaintiff did not submit any evidence documenting the amount he was earning while working for F&D Improvements for the relatively short period of time prior to the accident, at the trial of the action, his boss, Frank Pedulla, the principle of the company, testified that he was earning $15.00 per hour. Mr. Pedulla's testimony alone was sufficient to support the awards for past and future loss of earnings.

That branch of the motion in which the defendants seek to set aside the awards for future loss medical expenses is denied. "'Awards of 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 Tr. Ins. Co.,* 155 A.D.3d 981, 983, 65 N.Y.S.3d 221, quoting

Starkman v. City of Long Beach, 148 A.D.3d 1070, 1072, 50 N.Y.S.3d 148; *see Tarpley v. New York City Tr. Auth.,* 177 A.D.3d at 933, 113 N.Y.S.3d 148). Here, the awards of damages for the various categories of future medical expenses were supported by the evidence (*see Tarpley v. New York City Transit Auth.*, 177 A.D.3d 929, 933, 113 N.Y.S.3d 148; *Nayberg v. Nassau County,* 149 A.D.3d at 762, 51 N.Y.S.3d 160).

The Court has considered defendants' remaining contention and find them to be without merit.

Accordingly, it is hereby

ORDERED that defendants' motion is GRANTED, solely to the extent that there shall be a new trial on the issue of damages for past and future pain and suffering unless, within 30 days after service of a copy of this decision and order, the plaintiff serves and files in the office of the Clerk of the Supreme Court, Kings County, a written stipulation consenting to reduce the verdict as to damages for past and pain suffering from $5,000,000 to $3,000,000; and consenting to reduce the verdict as to damages for future and pain suffering from $10,000,000 to $2,500,000. The motion is in all other respects denied.

This constitutes the decision and order of the Court.

Dated: November 8, 2024

PETER P. SWEENEY, J.S.C.

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020