



on May 4, 2003, at approximately 7:00 p.m., that he was assaulted and stabbed in the back by the defendant, Igor Tkachenko; that he did not know the defendant prior to the assault and did not provoke the assault; that the defendant, Igor Tkachenko was convicted and sentenced to a term of 2 to 3 years in prison in connection with the assault; and that as a result of the assault, he sustained a knife wound which completely transected the spine at the T6 level, causing a permanent, partial paralysis of the right leg and diminished sensation of the left leg.

By order dated May 20, 2008, this court ordered that plaintiffs' motion to enter a default judgment against defendants was granted without opposition as to liability only, and directed a hearing on the assessment of damages.

At the inquest, plaintiff was the sole witness. He testified and submitted into evidence various medical records describing his alleged injuries and medical treatment. After the inquest the court granted plaintiff leave to submit a post hearing memorandum by October 2, 2009. Plaintiff demands damages in the total amount of \$1,400,000.00: \$300,000.00 for past pain and suffering; \$600,000.00 for future pain and suffering; and \$500,000.00 in punitive damages.

## **II. FINDINGS OF FACT**

Plaintiff, who was 15 years old at the time of the attack, testified that he was randomly stabbed in the back by defendant. He immediately felt pain in his chest, experienced difficulty breathing and fell to the floor. Plaintiff testified that he could not move his right leg at all and had difficulty moving his left leg. An ambulance came to the scene and transported plaintiff to Elmhurst Hospital. During the transport, plaintiff still had the knife lodged in his back and continued to bleed.

Plaintiff was admitted to Elmhurst Hospital Center from May 4, 2003 (the date of the assault) through May 9, 2003.<sup>1</sup> Upon admission to Elmhurst, plaintiff was initially diagnosed as having sustained a stab wound at the T9-T10 level. Objective testing demonstrated: no motor function of the right leg; no sensation in the right leg; and severely diminished sensation in the left leg.

On May 4, 2003, plaintiff underwent a surgical removal of the knife. The operative report set forth the following pre-operative diagnosis:

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<sup>1</sup>A certified copy of the Elmhurst Hospital Center chart was admitted into evidence as Plaintiff's Exhibit 1.

Stab wound in the T6 level with cutting part of the knife completely below the level of the skin. Cutting part of the knife measures approximately 4 inches long and part of the handle of knife is completely sticking out of the skin measuring approximately 5.5 inches long.

Upon neurologic examination, the following findings were made:

...stab wound in the posterior thoracic area in the T6 level with the handle of the knife sticking out, but the entire cutting part of the knife was inside the skin and the patient had decreased sensation below the T6-T7 level with completely anesthesia in the right leg, right side, and still has some sensation in the left lower extremity. The patient was not able to move his right leg. He was completely plegic. The left leg, the patient was able to have plantar flexion of the left foot approximately 2/5. All other muscle strength in the left leg is abolished.

\* \* \*

X-ray and computed tomography scan showed the cutting part of knife approximately 4 inches long was completely below the skin and went through the spinal canal of the T6 level... the entire blade of knife was inside the spinal canal at the T6 level.

The description of the operation and the operative findings were as follows:

... the knife was completely transecting the spinal cord at T6 level. The knife was then removed after the one level laminectomy at the T6 level, and it was evident that the dura was cut approximately 2 centimeters long .... It was evident that the spinal cord at this level was severely injured by the knife. Approximately 85 to 90 percent of the spinal cord was cut by the knife as well as blood supply of this region was damaged by the knife.

\* \* \*

The postoperative neurologic examination is the same as before which consists of abolish of sensation at the level of T6-T7 on the right side. On the left side, below the T6 level, the patient has decreased of sensation with minimal sensation to touch, And the only voluntary muscle that worked in The lower extremity is the plantar flexion 2/5 of the left foot.

The operative report also indicated that the plaintiff suffered a pneumothorax which required the placement of a chest tube.

On May 9, 2003, plaintiff was transferred from Elmhurst Hospital to the New York Presbyterian Hospital. Plaintiff was admitted to New York Presbyterian Hospital (hereinafter referred to as "NYP") from May 9, 2003 through May 19, 2003.<sup>2</sup> As indicated by the plaintiff's chart, plaintiff was admitted to NYP for postoperative care, pain management, mobilization, physical therapy and rehabilitation.

While admitted to NYP, plaintiff was also diagnosed with having sustained Brown-Sequard Syndrome.<sup>3</sup> Radiology studies, including MRI examinations, are significant for objective findings that plaintiff is "status post T9 laminectomy with an adjacent linear hemorrhagic cord contusion consistent with a stab wound. Posterior epidural hematoma extending from approximately T6-T10.... Subarachoid blood level in the distal sac."

In addition, plaintiff was seen and treated by the child psychiatrist on staff at NYP. The child psychiatry consult and subsequent evaluations are significant for findings that Israel is suffering from depression and adjustment reaction, with crying episodes, frustration, guilt and denial of the severity of his injuries.

After plaintiff's discharge from NYP, he was admitted to the Rusk Institute of Rehabilitation Medicine for six to eight weeks

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<sup>2</sup>A certified copy of the New York Presbyterian Hospital chart was admitted in evidence as plaintiff's Exhibit 3.

<sup>3</sup> Brown-Sequard Syndrome is defined in Stedman's Medical Dictionary as "hemiparaplegia and hyperesthesia, but with loss of joint and muscle sense, on the side of the lesion, and hemianesthesia of the opposite side, in case of a unilateral compression of the spinal cord."

of postoperative care, pain management, mobilization, physical therapy and rehabilitation.<sup>4</sup>

At the inquest, plaintiff testified that since his discharge from Rusk Institute, he has had six (6) years of ongoing physical therapy (Transcript (T.) at 19-20). However, he has exhausted his insurance coverage, can no longer afford physical therapy (T. at 20) and cannot afford ameliorative surgery (T. at 15, 23).

Additionally, plaintiff has sustained disfiguring and embarrassing surgical scarring. He described the scar from the knife wound as being in the center of his back, going straight down and approximately 12 inches in length with visible markings from the staple closures (T. at 13-14). In addition, plaintiff has a scar in the area where the chest tube was inserted which he described as being on the left side, below his armpit and being approximately two to three inches in diameter (T. at 12-13).

Plaintiff further testified concerning how his life has changed as a result of the injuries that he sustained from the unprovoked, criminal assault and stabbing. Prior to the stabbing, plaintiff was an active 15 year old who regularly engaged in physical activity including basketball, snow boarding, skiing, football, running and handball (T. at 20). As a result of his injuries and physical limitations, he can no longer participate in these activities (T. at 20-21).

The following testimony was elicited at the inquest:

Q. Has the incident and your condition  
affected your social life at all?

\* \* \*

A. I lost a lot of confidence in myself,  
people look at me sometimes, I have a  
limp, and my confidence is way down,  
and I just haven't been the same since.

Q. Have you been able to - - have you been  
rejected by any girls based upon your  
condition?

A. I had before my incident, I was dating  
this girl and we broke up because of the  
situation.

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<sup>4</sup> A certified copy of the plaintiff's chart from the Rusk Institute of Rehabilitation Medicine was admitted in evidence as plaintiff's Exhibit 5.

- Q. Why do you believe you broke up?
- A. Because of my injury, I couldn't go out with her, I used to stay home most of the time.....
- Q. Now ... how has your emotional state been since the incident?
- A. I have just been thinking about it a lot, it is always on my mind, everywhere I go.
- Q. Would you describe yourself as depressed?
- A. .. I guess you could say depressed, it is not to the extent where I want to kill myself, you know, but it is always with me. It really hurts me inside that I have to go through this, my whole routine, my whole teen life I was basically disabled from 15 to 22, I am 22 right now, I have been disabled, so it hasn't been easy, my whole life has changed.
- Q. Have you been able to get employment?
- A. No, I was supposed to be a barber, that is what I was supposed to do, it runs in my family, I couldn't do that, I can't stand for very long. (T. at 21-22).

In summary, the plaintiff, Israel Mastov, has sustained the following injuries and conditions as a result of the brutal and unprovoked stabbing: stab wound at the thoracic level of the spine transecting 85% - 90% of the spinal cord; Brown-Sequard Syndrome; complete loss of sensation in the right leg; markedly diminished sensation of the left leg; markedly decreased motor function of the right leg; laminectomy at the T6 level; right foot drop; pneumothorax; hemiparaplegia and hyperesthesia of the right leg and hemianesthesia of the left leg; depression and adjustment reaction; plaintiff ambulates with a limp and wears a brace on his right leg; permanent and disfiguring scarring; diminution of the quality of life; loss of enjoyment of life's pleasures and pursuits.<sup>5</sup>

Plaintiff has suffered six (6) years and five (5) months of past pain and suffering and will have 52.9 years of future pain and suffering based upon the life expectancy chart.

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<sup>5</sup> See PJI 2:280.1

### III. DISCUSSION

Under CPLR 4518(c), medical records are admissible as evidence as long as they are duly certified, sworn or affirmed (Grasso v. Angerami, 79 NY2d 813, 814 [1991]; Laquerre v. Chavarria, 41 AD3d 437 [2d Dept 2007]). Here, plaintiff submitted certified medical and hospital records of New York Presbyterian Hospital, Elmhurst Hospital Center and Rusk Institute of Rehabilitation Medicine.

Accordingly, based upon plaintiff's testimony and the admitted hospital and medical records, the court finds that plaintiff has suffered a permanent injury as a result of the stabbing on May 18, 2003.

#### A. DAMAGES

Having determined plaintiff suffered a permanent injury, the court must next determine an appropriate measure of damages. "An unwarranted and excessive award after inquest will not be sustained, as to do otherwise 'would be tantamount of granting the plaintiff an 'open season' at the expense of a defaulting defendant' (citations omitted)." (Newman v. Greenblatt, 260 AD2d 616 [2d Dept 1999]).

##### 1. Damages for past and future pain and suffering

The measure of damages for pain and suffering is the fair and reasonable compensation in light of all evidence in the case (Tate v. Colabello, 58 NY2d 84 [1983]). A fair interpretation of the evidence presented in this case and a review of the range of damages awarded in cases in which similar or analogous injuries were sustained support a damages award of \$300,000.00 for six (6) years of past pain and suffering and \$600,000.00 for 52.9 years of future pain and suffering (see, Pavia v. Rosato, 154 AD2d 519, [2d Dept 1989] [damages in the sum of \$1,000,000.00 would not be excessive for a passenger in a motor vehicle accident who suffered paralysis, spasticity of his left side and a severe speech impairment]; Nassour v. City of New York, 35 AD3d 556, [2d Dept 2006] [damages in the sum of \$1,500,000.00 would not be excessive for a plaintiff who tripped and fell in a pothole and sustained: a torn meniscus in his knee requiring surgery; pain, burning and numbness in his right foot, which was diagnosed as reflex sympathetic dystrophy (RSD)]; Tejada v. City of New York, 129 AD2d 697 [2d Dept 1987] [jury verdict of \$700,000.00 not excessive for a young plaintiff who sustained a knee injury in a motor vehicle accident, as plaintiff underwent several surgical procedures, had restricted mobility and developed chronic conditions involving her back and other knee]; Lind v. City of New York, 270 AD2d 315 [2d Dept 2000] [jury verdict reduced to

\$1,500,000.00 for past pain and suffering and \$1,250,000.00 for future pain and suffering for a bicyclist who was struck by a bus and sustained a pelvic fracture, avulsion of the peritoneum, fractures of the lumbar vertebrae and fractured ribs]; Baird v. V.I.P. Management Co., Inc., 60 AD3d 608 [2d Dept 2009] [\$700,000.00 for injuries to the discs at C5-7 and three surgeries]; Sanz v. MTA-Long Island Bus, 46 AD3d 867 [2d Dept 2007] [\$400,000.00 for a plaintiff, injured in a motor vehicle accident, who sustained herniated cervical discs with numbness and tingling in both hands]; Komforti v. NYCTA, 292 AD2d 569 [2d Dept 2002] [\$500,000.00 for a plaintiff injured in a motor vehicle accident and who sustained herniated discs at the L4-L5, L5-S1 and C3-C4 levels]; Lamuraaglia v. NYCTA, 299 AD2d 321 [2d Dept 2002] [\$300,000.00 for a construction worker who sustained a fracture in the T1 vertebra and herniated discs at C3-C6]; McKithen v. City of New York, 292 AD2d 352 [2d Dept 2002] [jury verdict reduced an award for future pain and suffering to \$500,000.00 for a plaintiff who was stabbed in the back by her husband and sustained post traumatic stress disorder]).

## 2. Punitive Damages

Punitive damages may be awarded "where the wrong complained of is morally culpable, or is actuated by evil and reprehensible motives, not only to punish the defendant but to deter him, as well as others who might otherwise be so prompted, from indulging in similar conduct in the future." (Walker v. Sheldon, 10 NY2d 401, 404 [1961]). The award is "to serve as a warning to others" and "as punishment for gross misbehavior for the good of the public" (Toomey v. Farley, 2 NY2d 71, 83 [1956]).

"There is no rigid formula by which the amount of punitive damages is fixed, although they should bear some reasonable relation to the harm done and the flagrancy of the conduct causing it" (I.H.P. Corp. v. 210 Cent. Park South Corp., 16 AD2d 461, 467 [1<sup>st</sup> Dept 1962]). In order to accomplish its goals, the amount of the award depends upon the degree of culpability of the wrongdoer, the situation and sensibilities of the parties concerned, and the extent to which such conduct offends a public sense of justice and propriety. In addition, "if the purpose of punitive damages is to punish and to act as a deterrent \*\*\* unless it is of sufficient substance to 'smart', the offender in effect purchases a right to [harm] another for a price which may have little or no effect upon him. Indeed, in such situation a defendant, instead of being deterred from a repetition of his offense, may be encouraged to renew his assault". (Reynolds v. Pegler, 123 F Supp 36, 41-42 [SDNY 1954], affd 223 F2d 429, cert denied 350 US 846 [1955]).

Here, the wrongs committed by the defendant are most reprehensible and evil. An award of punitive damages is

warranted to serve as a warning to others and as a punishment for despicable behavior for the good of the public. Therefore, the evidence in this case supports an award of punitive damages in the amount of \$500,000.00.

**IV. CONCLUSION**

Accordingly, after inquest, this court awards damages in the total amount of \$300,000.00 for six (6) years of past pain and suffering; \$600,000.00 for 52.9 years of future pain and suffering; and \$500,000.00 for punitive damages.

The County Clerk is directed to enter judgment accordingly.

This constitutes the decision and order of the court.

A courtesy copy of this order is being mailed to counsel for plaintiff.

Dated: December 21, 2009

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**Howard G. Lane, J.S.C.**