

Marquez v 305 E. 85th St. Realty, LLC

2012 NY Slip Op 31995(U)

July 20, 2012

Supreme Court, New York County

Docket Number: 113311/2008

Judge: Anil C. Singh

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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

HON. ANIL C. SINGH
SUPREME COURT JUSTICE
PRESENT: _____
Justice

PART 67

Index Number : 113311/2008
MARQUEZ, JOSEPH
vs.
85TH STREET BUILDERS, LLC
SEQUENCE NUMBER : 002
VACATE

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ No(s) 1
Answering Affidavits — Exhibits _____ No(s) 2
Replying Affidavits _____ No(s) 3

Upon the foregoing papers, it is ordered that this motion is *decided in accordance with the annexed order.*

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

**DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER**

FILED

JUL 27 2012

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 7/27/12

[Signature]
HON. ANIL C. SINGH, J.S.C.
SUPREME COURT JUSTICE

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 61

-----X
JOSEPH MARQUEZ,

Plaintiff,

-against-

305 EAST 85TH STREET REALTY, LLC,
85TH STREET BUILDERS, LLC and
KNK CONSTRUCTION, LLC,

Defendants.
-----X

DECISION AND
ORDER

Index No.
113311/2008

Motion Sequence: 002

FILED

JUL 27 2012

NEW YORK
COUNTY CLERK'S OFFICE

HON. ANIL C. SINGH, J.:

Plaintiff moves pursuant to CPLR 5501 to increase the jury's award of damages for past and future pain and suffering. Defendants oppose the motion.

Plaintiff Joseph Marquez sustained personal injuries during the course of his employment as a tin knocker at a construction site in August 2008. Marquez tripped and partially fell into a floor penetration while working at premises at 305 East 85th Street in Manhattan. He was treated for injuries to his back, left knee, and shoulders. Plaintiff underwent spinal fusion surgery, which resulted in a non-union.

A jury trial was held before me in January and February 2012. At the close of evidence, the Court granted plaintiff's motion for a directed verdict on liability

[* 3]
pursuant to Labor Law 240(1) and 241(6).

The jury awarded plaintiff the sum of \$200,000 for past pain and suffering and \$175,000 for future pain and suffering over 13 years. The jury also made an award for future medical expenses in the sum of \$200,000 for a period of 20 years.

Discussion

The amount of damages to be awarded a plaintiff for personal injuries is a question for the jury (Firmes v. Chase Manhattan Automotive Finance Corp., 50 A.D.3d 18, 28 [2d Dept., 2008]). “The standard for reviewing the inadequacy or excessiveness of a jury award is whether it deviates materially from what would be reasonable compensation (CPLR 5501[c])” (Turuseta v. Wyassup-Laurel Glen Corp., 91 A.D.3d 632, 634 [2d Dept., 2012] (internal quotation marks omitted)). “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” (Id., at 635).

A verdict “will not be set aside unless the preponderance of the evidence is so great that the jury could not have reached its verdict upon any fair interpretation of the evidence” (Pavlou v. City of New York, 21 A.D.3d 74, 76 [1st Dept., 2005]). Moreover, the evidence must be construed in the light most favorable to the party that prevailed at trial (Motichka v. Cody, 279 A.D.2d 310 [1st Dept., 2001]).

* 4]

Where the case presents conflicting expert testimony, “[t]he weight to be accorded the conflicting testimony of experts is a matter peculiarly within the province of the jury” (Torricelli v. Pisacano, 9 A.D.3d 291 [1st Dept., 2004] (citation omitted); see also Cholewinski v. Wisnicki, 21 A.D.3d 791 [1st Dept., 2005]).

During the trial, defendant elicited testimony and presented medical records to show that plaintiff did not injury his back when he fell at his workplace in August 2008. Instead, defendant offered evidence to show that plaintiff’s back injury was causally connected to a subsequent fall in May 2009. Defendant’s counsel called the jury’s attention to plaintiff’s own medical records from Orlin & Cohen Orthopedic Associates, LLP, as evidence that plaintiff’s back injury arose from the subsequent, unrelated accident.

For example, defendant called the jury’s attention to office notes for May 5, 2009, indicating that plaintiff was suffering from back pain since he fell on May 3, 2009. The record also indicated that the date of injury was May 3, 2009. According to defendant, subsequent office visits at Orlin & Cohen continued to reference the date of May 3, 2009, as the date when plaintiff’s lower back pain originated.

The record also reflects that, on cross-examination, plaintiff acknowledged that some of his medical records, completed by him, established a date of back

injury in May 2009, months after the subject accident (Trial Transcript, pp. 772-774).

Considering the medical facts and circumstances of this case, the evidence that plaintiff's back injury could have been caused by a subsequent fall, as well as comparable precedent, we conclude that the award of \$200,000 for the plaintiff's past pain and suffering and \$175,000 for future pain and suffering does not deviate materially from what is reasonable compensation. We reject the authorities cited by the plaintiff as insufficiently similar to the nature, extent, circumstances and duration of the injuries he sustained.

Finally, plaintiff asserts that the jury award for future damages is internally inconsistent because the jury awarded damages for future pain and suffering for 13 years but awarded damages for medical care for 20 years.

In short, plaintiff's contention is a non sequitur. Damages for pain and suffering are separate and distinct from damages for medical care, and there does not appear to be any case law requiring such damages to be awarded for precisely the same amount of time. Plaintiff's contention is, therefore, meritorious.

For the above reasons, plaintiff's motion is denied.

The foregoing constitutes the decision and order of the court.

Date: 7/25/12
New York, New York

FILED
JUL 27 2012
NEW YORK
COUNTY CLERK'S OFFICE

Anil C. Singh