

Mehmeti v Miller

2018 NY Slip Op 32981(U)

October 2, 2018

Supreme Court, Richmond County

Docket Number: 150930/2013

Judge: Kim Dollard

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

ELMI MEHMETI,

Plaintiff,

-against-

JOSEPH MILLER, SU CHENG, DAN TUDOR,
and LYNN TUDOR,

Defendants.

ORDER

Hon. Kim Dollard

Index No. 150930/2013

motion 004

The following papers numbered 1, 2 and 3, were fully submitted on this 3rd day of August, 2018:

Notice of Motion on behalf of Plaintiff to set aside the verdict and/or for additur,
Attorneys Affirmation and Exhibits.....1
(Dated: June 18, 2018)

Affirmation in Opposition.....2
(Dated: July 23, 2018)

Reply Affirmation.....3
(Dated: August 2, 2018)

The plaintiff moves to set aside the verdict of \$50,000 awarded for 4 years and 9 months of past pain and suffering; the award of \$58,000 for 38 years of future pain and suffering; \$26,000 for past medical expenses; \$165,000 for future medical expenses over 38 years; and no award for future lost earnings; and/or to increase said amounts or for a new trial with respect to such damages.

The plaintiff claims that there is no rational basis for the jury's verdict and that the award should be set aside as against the weight of the evidence and/or increased.

A court may set aside a jury verdict or any judgment entered thereon and direct that judgment be entered in favor of a party entitled to judgment as a matter of law or it may order a new trial of a cause of action or separable issue where the verdict is contrary to the weight of the evidence [CPLR §4404(a)].

It is well settled that great deference should be given to a jury's interpretation of the evidence and the factual findings that have sufficient support in evidence, even if there may be evidence leading to a contrary conclusion (Vail v. Keeler, 166 A.D.2d 817, 818-19, 562 N.Y.S.2d 818, 3rd Dept., 1990).

Although the amount of damages awarded for personal injuries is a factual question for a jury to resolve, a court may set aside a jury award of damages when the award deviates materially from what would be reasonable compensation (Albanese v. Przbylowicz, 116 A.D.3d 1216, 1217, 985 N.Y.S.2d 163, 3rd Dept., 2014). The jury's interpretation of the evidence is entitled to considerable deference, and a court will not disturb it unless the evidence so preponderates in favor of the moving party that the verdict could not have been reached on any fair interpretation of the evidence (Olmstea v. Pizza Hut of America, Inc., 81 A.D.3d 1223, 917 N.Y.S.2d 742, 3rd Dept., 2011). The movant must demonstrate that the preponderance of the evidence is so greatly contrary to the verdict that the jury could not have rendered it by any fair interpretation of the evidence (Ferreira v. Wyckoff Hgts. Med. Ctr., 81 A.D.3d 587, 915 N.Y.S.2d 63, 2nd Dept., 2011).

There must be no valid line of reasoning and permissible inferences which could possibly lead rational people to the conclusion reached by the jury on the basis of the evidence presented at trial (Cohen v. Hallmark Cards, 45 N.Y.2d. 493, 1978). The trial court must afford the party opposing the motion every inference which may properly drawn from the facts presented, and the facts must be considered in a light most favorable to the nonmovant (Bacon v. Bostany, 104 A.D.3d 625, 960 N.Y.S.2d 190, 2nd Dept. 2013).

Where, as here, conflicting expert testimony is presented, the jury is entitled to accept one expert's opinion and reject that of another expert (see, Ferreira v. Wyckoff Hgts. Med. Ctr., supra; Frenchman v. Westchester Med. Ctr., 77 A.D.3d 618, 909 N.Y.S.2d 107, 2nd Dept., 2010).

Upon the evidence presented, there was a valid line of reasoning and permissible inferences which could have led the jury to conclude that the plaintiff only sustained a fibrocartilage injury to the left wrist, which plaintiff was still suffering from at the time of the trial. There was also a valid line of reasoning and permissible inferences from which a jury could conclude that plaintiff's head injury was insignificant within the meaning of Section 5102(d) of the Insurance Law of the State of New York.

In the present case, there was sharply conflicting evidence with respect to plaintiff's injuries. The plaintiff claimed traumatic brain injury, as well as orthopedic injuries consisting of a permanent triangular fibrocartilage complex of the left wrist which caused difficulty rotating the wrist and lifting objects. The testimony of defense expert, Dr. Head, cast serious doubt upon whether the plaintiff suffered a permanent traumatic brain injury. Expert testimony, together with the fact that the plaintiff continued to work in a supervisory capacity for a security company, could easily support the jury verdict. The jury could have reasonably concluded that plaintiff suffered a permanent consequential limitation of use of a body function or organ, by awarding damages for his wrist injury, while rejecting plaintiff's claim of traumatic head injury.

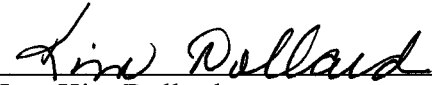
Further, the measure of damages is a question of fact for the jury, to which considerable deference should be given (Britvan v. Plaza At Latham, 266 A.D.2d 799, 698 N.Y.S.2d 759). This Court finds that the amount awarded for damages does not materially deviate from what would be reasonable compensation for the injury sustained.

Accordingly, the jury could have reasonably concluded that plaintiff suffered a permanent left wrist injury. The jury could have further reasonably concluded that the plaintiff's head injury did not constitute a "serious injury" pursuant to the no fault statute. Therefore, the amounts awarded by the jury to plaintiff did not deviate materially from what would be reasonable compensation under the circumstances presented in this case.

The trial testimony presented a valid line of reasoning and permissible inferences which could lead rational people to the conclusion reached by the jury.

Accordingly, the plaintiff's motion is denied in all respects.

ENTER



Hon. Kim Dollard
Acting Supreme Court Justice