

Ramratan v Shih

2018 NY Slip Op 33089(U)

October 3, 2018

Supreme Court, Queens County

Docket Number: 703961/14

Judge: Cheree A. Buggs

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NEW YORK SUPREME COURT-QUEENS COUNTY

Present: HONORABLE CHEREÉ A. BUGGS
Justice

IAS PART 30

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EDWARD RAMRATAN, AS ADMINISTRATOR OF
THE ESTATE OF ELDA RAMRATAN, DECEASED,
AND ROHITRAM RAMRATAN, INDIVIDUALLY,

Plaintiffs,

-against-

KARIN KUAN-HUI SHIH, STEPHEN LITVAK,
LONG ISLAND JEWISH MEDICAL CENTER
AND NORTSHORE LONG ISLAND JEWISH
HEALTH SYSTEM, INC.

Defendants.

DECISION AND ORDER

Index No.: 703961/14

Motion
Date: June 13, 2018

Motion Cal. No.: 48

Motion Sequence No.: 1

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The following efile papers numbered 39-54, 57-61 submitted and considered on this motion by defendant Long Island Jewish Medical Center seeking an Order pursuant to CPLR §4404(a) setting aside the jury's award of \$3,000,000.00 for decedent's conscious pain and suffering and \$750,000.00 for loss of parental guidance to Edward Ramratan as grossly excessive, materially deviating from reasonable compensation and/or the product of undue sympathy, and granting a new trial on that component unless plaintiffs stipulate to a substantial and appropriate remittitur; vacating the jury's award of \$150,000.00 for past loss of household services to Rohitran Ramratan and \$20,000 for past loss of household services to Edward Ramratan as contrary to and against the weight of the evidence, unsupported, unduly speculative and/or lacking the requisite reasonable certainty to permit such an award for economic damages, and as materially deviating from reasonable compensation.

	<u>Papers Numbered</u>
Notice of Motion-Affidavits-Exhibits.....	EF 39-54
Affirmation in Opposition-Affidavits-Exhibits.....	EF 57-60
Reply Affirmation-Affidavits-Exhibits.....	EF 61

This is an action sounding in medical malpractice action, lack of informed consent, and wrongful death, which was commenced by plaintiffs, Edward Ramratan, as Administrator of the Estate of Elda Ramratan, Deceased and Rohitram Ramratan, individually, against Karin Kuan-Hui, M.D., Long Island Jewish Medical Center and North Shore-Long Island Jewish Health System, Inc. The trial of this matter was held before Honorable Chereé A. Buggs, commencing on April 16, 2018, ending in a jury verdict on May 7, 2018 in favor of the plaintiffs. The jury found in favor of the plaintiffs on the claim of lack of informed consent, and awarded damages in the sum of \$3,000,000.00 to plaintiffs for decedent Elda Ramratan's pain and suffering; \$750,000.00 for past loss of parental guidance to Edward Ramratan; \$150,000.00 to Rohitram Ramran for past loss of household services; and \$20,000.00 for past loss of household services to Edward Ramratan.

The decedent was diagnosed with uterine cancer in February 2012. She sought consultation with Dr. Karen Shih, a gynecologic oncologist to discuss surgical management of her condition and on March 20, 2012, Dr. Shih performed an operation on the decedent at Long Island Jewish Medical Center. The operation was to be a total abdominal hysterectomy, which is the standard procedure for the removal of early uterine cancer. Intraoperatively, Dr. Shih saw that the decedent's cancer had metastasized throughout her abdomen and pelvis. Thus, a decision was made to perform an optimal debulking, during which the uterus, cervix, ovaries, fallopian tubes, omentum, and, a portion of the bladder diaphragm and sigmoid colon were to be removed. After the surgery, and upon the removed specimen being submitted to pathology, the decedent was diagnosed with Stage IVB clear cell carcinoma, an advanced and aggressive form of cancer.

During the debulking process, a portion of the sigmoid colon had to be resected; consequently, Dr. Shih performed surgical anastomosis on decedent's colon, a procedure reattaching the colon with the diseased part removed. Two days after the surgery, the decedent had an acute respiratory event from fluid overload which caused an elevation to her white blood cell count. Her condition stabilized and by March 24, 2012 her white blood cell count hit 10,000, considered to be in normal range according to the trial testimony.

On March 25, 2012, the decedent's white blood cell count went back up to 12,000 and then to 15,000. It continued to increase also the following day. The decedent began experiencing other symptoms such as pain in her abdomen; further, she stopped producing urine, and became tachycardic. It is plaintiffs' position that despite these symptoms, no action was taken until March 27, 2012 when a CAT scan was ordered of the decedent's abdomen which was ordered at 7:00 in the morning, but not performed until 7 hours later at 2:15 P.M. The radiology report indicated that the decedent had an abscess next to the part of her colon which had been operated on, likely an anastomotic leak, a condition in which the colon leaks fecal contents into the abdominal cavity, causing infection. This information was not relayed to the covering surgery consultant until 9:15 P.M. Around that same time, it became apparent that the decedent was in septic shock, and suffering from intra-abdominal compartment syndrome, intra-peritoneal adhesions and acute respiratory failure. An interventional radiologist was called for consultation to see if the abscess could be drained; however, it was too large, and a decision was made to operate.

On March 2, 2012, the decedent had the surgery which plaintiffs maintain caused the last two months of the decedent's life to be filled with disability and suffering. Since she was in septic shock at the time the surgery was performed, she had to undergo additional life saving procedures. She had to have the initial abscess drained and removed. Because of the damage to her colon, she had to undergo a diverted colostomy, a procedure in which the leaking part of the colon is removed, and the upper part of the bowel placed into an opening, called a stoma, which is then attached to an external bag used to collect fecal matter. Due to the severity of her infection, her wound site needed to be kept open with a Wound Vac inserted in the wound, a device that bridges the abdomen and suctions out fluid in order to reduce swelling. She also suffered from abdominal compartment syndrome due to the swelling and inflammation in her abdominal cavity and ultimately needed mesh and a skin graft from her thigh to close her operation wound. In order to treat her respiratory distress, an endotracheal tube was necessary and inserted down her throat, and a ventilator was attached to breathe for her. She would later need a tracheotomy.

About a month after the operation, the decedent's abdomen began filling with pus again, causing her to undergo another procedure in which vacuums were placed into the right side of her abdomen to help drain fluid. She was also caused to undergo frequent tracheostomy suctions, where a doctor inserted a catheter into her lungs to suction mucous. While in the hospital intensive care unit (ICU), other conditions began to develop because of her infection and inability to move. She developed bed sores, edema and fecal vomiting. Her mental health began to deteriorate: she became clinically depressed, and scared about her future. She was heavily sedated to help control her pain, however, Edward Ramratan testified that he saw tears streaming down his mother's face during this period. She was only able to sit on the edge of her bed for about eight minutes before she needed to rest again.

On May 23, 2012, the decedent had a build up in her breathing tubes causing her to suffocate. Plaintiffs claims that the expert testimony at trial revealed that the decedent was awake and gasping for air for at least two minutes before she lost consciousness. The asphyxiation put the decedent into cardiorespiratory arrest, causing the decedent to suffer an anoxic brain injury. She passed away from the anoxic brain damage on June 13, 2012.

After a three week trial, the jury found that Long Island Jewish Medical Center's employees had departed from good and accepted medical practices, and that these departures were substantial factors in the decedent's death. The jury awarded plaintiffs \$3,000,000.00 for decedent's pain and suffering, \$750,000.00 to Edward Ramratan for loss of parental guidance; \$150,000.00 for loss of household services to Rohitram Ramratan and \$20,000.00 for loss of household services to Edward Ramratan.

Defendant makes this post-trial motion seeking an Order pursuant to CPLR §4404(a) setting aside the jury verdict in favor of plaintiffs and directing a new trial on the issue of informed consent, and further setting aside the jury verdict on damages, and directing a new trial unless plaintiffs stipulate to a substantial reduction of the jury's awards. In support of the motion, the complete trial transcript as well as a copy of the signed jury verdict sheet were annexed as documentary evidence

to the papers. The motion was confined to the issue of damages under CPLR 5501(c), and other standards, without the defendant waiving or conceding any other issues with respect to liability or damages, incorporating all objections raised at trial and reserving the right to raise any other issues on appeal. In viewing the evidence at trial in the light most favorable to plaintiffs, defendant argues that the dollar awards deviated from prior appellate reviewed awards to plaintiffs with analogous or even worse injuries. Under such analysis, the award of \$3,000,000.00 for pain and suffering and \$750,000.00 for past loss of parental guidance to Edward Ramratan, an adult child of the decedent, drastically exceeded such awards for these categories routinely held by the Appellate Division, Second Department. Defendant contends that these awards materially deviated from reasonable compensation, and should be reduced. Defendant further contends that the damages award of \$150,000.00 to Rohitram Ramratan and \$20,000.00 to Edward Ramratan for past loss of household services are wholly unsupported by the evidence.

Regarding the award of \$3,000,000.00, defendant cites *Semel v Guzman*, 84 AD3d 1054 (2d Dept 2011) in support. In *Semel*, the Second Department affirmed a decision reducing the award (agreed to by plaintiffs in a stipulation) from \$4,500,000.00 for past pain and suffering to \$2,000,000.00. *Semel* involved a seventy-eight year old who suffered from an esophageal perforation secondary to a difficult intubation during an elective hysterectomy. Mrs. Semel developed mediastinitis, required a feeding tube, and developed an abscess in the chest. Mrs. Semel experienced one year of pain and suffering due to prolonged hospitalization and rehabilitation. Defendant contends that Mrs. Semel's injuries far exceed the decedent's in both severity and temporal length. Defendant also cites *Salmeri v Beth Israel Med. Ctr.*, 39 AD3d 841 (2d Dept 2007) where the Second Department upheld an award for past pain and suffering to a forty-nine year old plaintiff who suffered from delayed treatment of an acute perforated diverticulum causing a colon abscess, and she suffered four midline hernias, recurrent small bowel obstructions, hospitalizations, abdominal pain and other medical issues and limited mobility. In *Hoehmann v Siebkin*, 38 AD3d 839 (2d Dept 2007) the Second Department reduced a jury award of \$750,000.00 for past pain and suffering to \$525,000.00, finding that the award deviated materially from reasonable compensation. In *Hoehmann* the plaintiff alleged that the defendant failed to diagnose pancolitis and toxic megacolon leading to extreme abdominal distension, sepsis and ultimately death. Defendant cites *Salmeri* and *Hoehmann* as an instructive range for appropriate remittitur in the instant matter.

Additionally, defendant contends that the award for past loss of parental guidance deviates from reasonable compensation, and that the plaintiffs failed to substantiate their loss of household services claims with any documentary proof.

Plaintiffs opposed the motion, arguing that the motion is not timely. The jury verdict was on April 5, 2018; CPLR 4405 requires that post-trial motions be made "within fifteen days after the decision, verdict or discharge of the jury." Defendant submitted the affidavit of Kristi Robinson dated April 20, 2018, in which Ms. Robinson attested to mailing the motion papers to the plaintiffs on April 20, 2018. Plaintiffs contest the actual mailing date by submitting a copy of the actual envelope in which plaintiffs received defendant's papers, on which the United States Postal Service postmark is April 23, 2018, not April 20, 2018. However, the Appellate Division, Second

Department ruled in 2006 that a later-dated postmark did not establish that the motion was not made on the earlier date stated in the affidavit of service (*see Kresch v Saul*, 29 AD2d 863 [2d Dept 2006]). Consequently, the postmark, in the matter herein, dated the Monday after the Friday date indicated in the affidavit of service, does not establish untimeliness of the motion. Service is complete upon mailing. “Mailing means the deposit of a paper enclosed in a first class postpaid wrapper, addressed to the address, designated by a person for that purpose, or if none is designated, at that person’s last known address, in a post office or official depository under the exclusive care and custody of the United States Postal Service within the state” (*Kresch* at 864, citing language from CPLR 2103[f][1]).

Plaintiffs contended that under the facts of this case and the testimony adduced at trial, the decedent, Elda Ramratan lived a full life, making strong contributions to her community and family while alive. After immigrating to the United States from the Dominican Republic, she attended high school and some college before going to banking school, and eventually obtained a job at JPMorgan and Chase. She worked for twenty-five years as a clerk in the items processing department before retiring in 2007. She married Rohitram Ramratan on September 17, 1982, and gave birth to their son, Edward Ramratan on July 17, 1988.

Plaintiffs argue that the award to the estate in the amount of \$3,000,000.00 does not materially deviate from what other cases have found to be acceptable. Plaintiffs argue that this matter was similar to the facts of the case, *Hyung Kee Lee v New York Hosp. Queens*, 118 AD3d 750 (2d Dept 2014), which was also an action to recover damages for personal injuries and wrongful death based medical malpractice. In that case, after a jury trial, the plaintiffs were awarded damages in the principal sum of \$5,000,000.00 for the decedent’s conscious pain and suffering; \$336,000.00 for the past economic loss sustained by the distributees of the decedent’s estate, and \$2,243,560.00 for the future economic loss sustained by the distributees of the decedents estate. The trial judge granted the defendants’ motion pursuant to CPLR 4404(a) to set aside the jury verdict on damages as contrary to the weight of the evidence and as excessive only to the extent of directing a new trial on the issue of damages for the decedent’s conscious pain and suffering, unless the plaintiffs filed a written stipulation consenting to a reduction in the award for the decedent’s conscious pain and suffering from the principal sum of \$5,000,000.00 to \$3,750,000.00, without any reduction for the remaining awards. On appeal, the Appellate Division, Second Department modified the trial Court Order on the amount for past economic loss from \$336,000.00 to \$250,000.00, but upheld the amount of \$3,750,000.00 for pain and suffering. As in the instant case, Hyung Kee Lee went into septic shock due to a delay in diagnosis, and while at the hospital, she suffered from documented anxiety, agitation and a sense of impending demise. Likewise, plaintiffs contended that the evidence adduced at trial demonstrated that the decedent suffered from “unrelenting sadness,” agitation, and fear about her future. Also, Hyung Kee Lee suffered from difficulty breathing during his three and a half to five days in the hospital. Here, the decedent suffered from difficulty breathing during the two months she was alive after her surgery, and for one to two minutes immediately before passing out. And, in the *Hyung Kee Lee* case, there was testimony that before Mr. Lee lost consciousness, he experienced great pain and suffering. In this case, there was testimony that the decedent was conscious for several minutes while she suffocated, which caused cardiac arrest, brain damage and

death.

Defendant said that plaintiffs should not rely on the case *Hyung Kee Lee v New York Hosp. Queens*, 118 AD3d 750 (2d Dept 2014). In that case, the jury awarded \$5,000,000.00 for past pain and suffering which was reduced by the trial court to \$3,750,000.00 and upheld by the Appellate Division. In *Hyung Kee Lee*, the decedent was to undergo a cholecystectomy and designated as NPO, deprived of food and water for several days for unknown reasons. He became septic, remained awake, complained of pain, had difficulty breathing and told his wife that he feared his impending death. He suffered a cardiac arrest and died. Defendant argues that the matter herein is different, because the decedent became septic following the repair of her anastomotic leak and remained sedated with pain control management during her approximate three week period in the Intensive Care Unit ("ICU"). Defendant maintained that her condition improved, and she was able to be transferred out of the ICU, and was in good spirits with plans for her discharge from the hospital. Therefore, the defendant contended, the circumstances in *Lee* and the matter herein are distinguishable.

However, despite the defendant's argument that while in ICU, decedent was on sedation and with pain control, and was able to be transferred out of the ICU unit in good spirits, such facts are not supported by the record. Decedent was conscious or semi-conscious for a period following her colostomy surgery, until April 13, 2012, when she was off all sedation until sustaining an anoxic brain injury on May 23, 2012. The only evidence that decedent was happy after being taken off sedation was when she heard her voice for the first time, and when her son would visit--isolated instances of joy during this time period, which does not support the idea that the decedent was not in pain or suffering. The fact that she was getting better, resumed eating and preparing for potential discharge does not mean that she did not suffer, especially in the circumstances herein, where she suffered multiple surgeries, and spent most of her time alone in isolation in ICU or her hospital room. Expert testimony at trial regarding the 1 to 2 minutes before she died as well as multiple entries in the decedent's hospital record and radiology reports demonstrated that decedent experienced respiratory distress in the weeks and days leading up to her last 1 to 2 minutes.

Plaintiffs argue that *Rivera v City of New York*, 800 AD3d 595 (2d Dept 2011) is similar to the matter herein. In *Rivera*, a 10 year old asthmatic boy died from tension pneumothorax as a result of several intubation. For four hours and 45 minutes, the decedent had extreme difficulty breathing until he passed away. The Second Department upheld a jury verdict in the amount of \$3,500,000.00. (See also *Lubecki v City of New York*, 304 AD2d 224 [1st Dept 2003] [\$3,000,000.00 for pre-impact terror and other injuries in shooting of a hostage who died one hour later]; *Twersky v Busch*, 37 AD3d 704 [2d Dept 2007] [\$1,000,000.00 for pain during 2 ½ hours of consciousness after car accident]).

In reply, defendant states that the plaintiffs failed to make a meaningful or substantive attempt to distinguish any of the cases cited by defendant, instead relying on *Hyung Kee Lee v New York Hosp. Queens*, 118 AD3d 750 (2d Dept 2014) in support of the proposition that the jury award of \$3 million dollars for pain and suffering does not materially deviate from reasonable

compensation. Defendant argues the matter herein is not similar to that case, because the decedent in *Lee* was consciously aware of his demise. Most significantly, plaintiffs claim that the decedent was found on the floor and that “it is a fair inference that as Ms. Ramratan was asphyxiating, she was attempting to make her way to the nurse’s station.” Defendant claims that these statements are misleading and unsupported by the trial record. At the trial, Dr. Shih testified as follows:

Question: So what ends up happening to Ms. Ramratan is that they find her, someone, and we can go to the note, finds her on the medical floor and she’s unresponsive, right?

Answer: Correct, she was on the surgical floor.

(Trial Tr. 155: 9-12)

Defendant contends that there was no evidence submitted that decedent was found on the floor of her hospital room or that she was seeking assistance from nurses while she experienced her anoxic event. Rather, the decedent was found on the surgical floor of the hospital, not the floor of her room. In *Rivera v City of New York*, 80 AD3d 595 (2d Dept 2011), unlike the case at bar, the decedent asphyxiated over a period of four hours and forty-five minutes. Here, the record shows, at the most, that the decedent experienced her anoxic event for over a period of one to two minutes. The other cases cited by plaintiffs, *Lubecki v City of New York*, 304 AD2d 224 [1st Dept 2003]; *Twersky v Busch*, 37 AD3d 704 [2d Dept 2007]; *McAndrews v City of New York*, 299 AD2d 462 [2d Dept 2002] do not involve claims of medical malpractice.

Regarding the jury award for \$750,000.00 for loss of parental guidance, plaintiffs contend there was ample evidence and testimony to support it. Loss of parental guidance provides monetary awards to children due to the damage they experience when their parents die in a negligent manner. Plaintiffs points to the testimony of decedent’s son Edward Ramratan to support its position that this case is exceptional because of his closeness to his mother and his reliance on her services, guidance, nurture and financial support. He was the decedent’s only child, and looked to his mother for advice.

Question: And can you describe for us growing up what your relationship was like with your mother?

Answer: Very close. Almost as if she was, you know, my best friend. I didn’t have any brothers and sisters. I have friends but I felt like I could talk to my mom about anything. She was always there for me, so we were super close.

Question: And how was your mom’s relationship with you different than your relationship with your father?

Answer: I mean I love my dad, you know he’s – but we never really talk, you know. There is certain things I couldn’t talk to him about just because he wasn’t that kind of talkative

person my mom was and I could confide with her about things in terms of personal relationships, difficulties I am going through along that nature... My mom was kind of the one that I could talk to about anything no matter what it was, no matter what time, no matter the situation So she was kind of the main person I went to.

(Trial Tr. 717: 2-21)

Plaintiffs also maintained that testimony demonstrated that the decedent taught her son valuable lessons about finances, love, religion and tolerance.

Question: Let's talk about some of the things that you and your mom used to talk about as far as her guidance and advise and support, so things like manners, what lessons did your mom teach you regarding those types of things?

Answer: In terms of manners I think, you know, how to absolutely have proper table manners, proper etiquette, how to dress well, how to treat a lady, how to be professional. Professionalism was big, how to go about life, you know, and to be a polite and appropriate, things along that nature. Yes pretty much those type of things.

Question: what about things like with finances, like banking and paying bills, what did your mom teach you and provide support and advice regarding those issues?

Answer: She was very involved in that, teaching me how to properly save my money, how to invest, how to think about the future and not be shortsighted, and I think I learned a lot from her because she sacrificed a lot to put me through school and show me effectively, she managed her finances to be able to do that... So I was very involved and I knew what was going on and how to build my portfolio, myself financially for future and for when I have a family and things like that.

Question: And what about advise and support that your mom would give regarding relationships, girls, women, and things like that?

Answer: Everything, you know, how to treat a lady or you know, whenever I had an issue like in terms of hey, I think this girl likes me, this is what you should do... You know when I was too shy, hey, maybe you should talk to her, things like that. I could talk to her about these things. I couldn't do that with my dad. So, she would give me advice in terms of how to treat a lady and especially now with my fiancé, she's a big part of kind of helping me go forward and talk to her. So I mean I am really grateful for that so

Question: What about things like religion, culture?

Answer: Yes religion was so big. She always wanted me to stay close to my religion and not take it for granted, only when I needed it...

(Trial Tr.:746 1-5)

The decedent also encouraged her son to stay in college, and her loss left him without anyone to turn to for guidance.

Question: and for the past six years or so from 2012 to 2018 as far as your own life, when you need guidance or support, who do you look to and tell us about that?

Answer: I look to my fiancé and I think my fiancé's mother stepped in a lot. But you know, there are certain things that I, you know, I can talk to them about, but I can't go for

Question: And how is that different than the guidance you used to get from your mother when she was alive?

Answer: A lot. It was—I could get guidance from my fiancé for things like that, but if there is an issue I want to talk to about relationships, I can talk to her, but if I needed advice like how should I handle this from someone who has been married and seen these things already, there is no one there I can really talk to. And just other things in general, things that maybe I'm not—you know, some things you talk to your parent's about, I don't have it anymore. I mean I have my dad, but I can't talk to him about most subjects because I just get like a one-word answer which doesn't help most times.

Question: what about parental guidance .. You know, like for thing in the that coming up, or you plan to have kids, or buy a home some day. Future you have a wedding?

Answer: I mean mostly, as I said, I get it from my fiancé and her parents, but that's it And, you know, they have her best interests at heart at times mostly too, so, you know it's kind of just me now on my own.

(Trial Tr. 748: 18-21)

Plaintiffs contend that the testimony of Edward Ramratan gave showed that his mother, the decedent, was the parent who taught him how to live, treat others, offered him guidance and support through difficult times in his life. When considering how much or how little a jury should award a child for the loss of their parent, the jury should consider several factors, which are contained in the Pattern Jury Instruction 2:320, including the monetary losses to the child caused by the decedent's death; the character, habits and abilities of the decedent; the services which the decedent provided to her son; the value of the intellectual, moral, guidance, physical training and assistance which she would have given to her children had she lived. His father, Rohitran Ramratan testified that the decedent would pay for her son's expenses, including food and his car insurance. These factors favor a pecuniary damages award in favor of Edward Ramratan.

Also, the damages awarded for past loss of household services of \$150,000.00 to Rohitran

Ramratan and \$20,000 to Edward Ramratan are supported by expert testimony and should be upheld. The relief stems from EPTL 5-3.3, the wrongful death statute, which is different from common law derivative claim (see *Gonzalez v New York City Housing Auth.*, 77 NY2d 663 [1991]; *De Long v Erie Cty.*, 60 NY2d 296 [1983]). The economist, Dr. Debra Dwyer, gave specific testimony about the cost of the loss of services on behalf of Edward Ramratan and his father Rohitram Ramratan.

Question: And what was the total past and the total future?

Answer: so if we break that out into the past, which would be prior to April 2018, it is \$126,750, and the amount going forward from today would be \$394,199.

Question And what time period are we talking about for past?

Answer: So we are talking June 2012 through April 2018. Okay, so when she died up until today, this month.

Question: And do you have an opinion within a reasonable degree of medical certainty-withdrawn. Do you have a opinion within a reasonable degree of economic certainty as to what the value, the economic value of the loss of household services for Rohitram Ramratan is in this case because his wife passed away?

Answer: So the future amount is \$394,199, and I believe that's within economic reason.

(Trial Tr. 794: 2-4).

Therefore, plaintiffs argue, there is ample basis under New York case law to uphold the jury verdict on damages in this case.

Under CPLR 4404(a), a court “may set aside a 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, [or] in the interest of justice” (CPLR 4404[a]; *Russo v Levat*, 143 AD3d 966 [2d Dept 2016]). “Before granting a motion pursuant to CPLR 4404(a) to set aside a verdict and judgment as a matter of law, the trial court must conclude that there is simply 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 at trial...a jury verdict should not be set aside as contrary to the weight of the evidence unless the jury could not have reached the verdict by any fair interpretation of the evidence” (*Feinstein v Norwegian Christian Home & Health Ctr., Inc.*, 135 AD3d 699 [2d Dept 2016]; see also *Lang v Newman*, 12 NY3d 868 [2009]).

“It is settled and unquestioned law that opinion evidence must be based on facts in the record or personally known to the witness.” (See *Hambusch v New York City Tr. Auth.*, 63 NY2d 723, 725 [1984] [internal quotation marks omitted]; see *Cassano v Hagstrom*, 5 NY2d 643 [1959]). The

[1984] [internal quotation marks omitted]; see *Cassano v Hagstrom*, 5 NY2d 643 [1959]). The jury's finding on the amount of damages to be awarded is accorded considerable deference, however, that finding may not stand where it materially deviates from what would be reasonable compensation. (See *Day v Hosp. For Joint Diseases Ortho. Inst.*, 11 AD3d 505 [2d Dept 2004]; *Rappold v Snorac, Inc.*, 289 AD2d 1044 [4th Dept 2001].) "In a wrongful death action, an award of damages is limited to the fair and just compensation for the pecuniary injuries resulting from the decedent's death to the persons for whose benefit the action is brought" (*Estevez v Tam*, 148 AD3d 779 [2d Dept 2017]).

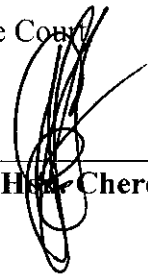
Contrary to the defendant's contentions, admissible evidence adduced at the trial established the decedent's conscious pain and suffering during the days prior to her death and on the date of her death. Here the Court finds that there is a rational view of the trial evidence which supports the jury's verdict on the issue of liability, however, the award in this case for the decedent's conscious pain and suffering in the principal sum of \$3,000,000.00 for loss of parental guidance substantially and materially deviates from what would be reasonable compensation (see *Keenan v Molloy*, 137 AD3d 868 [2d Dept 2016]; *Cramer v Benedictine Hosp.*, 301 D2d 924 [3d Dept 2003]; *Herrera v St. Martin*, 34 AD3d 529 [2d Dept 2006]; *Ramos v Shah*, 293 AD2d 459 [2d Dept 2002]; compare *Donlon v City of New York*, 284 AD2d 13 [1st Dept 2001]; see generally *Beck v Northside Med.*, 46 AD3d 499 [2d Dept 2007]; *Phiri v Joseph*, 32 AD3d 922 [2d Dept 2006]; *Jump v Facelle*, 292 AD2d 501 [2d Dept 2002]; compare *Gaspard v Aronoff*, 153 AD3d 795 [2d Dept 2017]). The Court also finds that the award made on behalf of decedent's adult son in the amount of 750,000.00 for loss of parental guidance also deviated from what would be reasonable compensation under the circumstances (see *Perez v St. Vincents Hosp. and Med. Ctr. of New York*, 66 AD3d 663 [2d Dept 2009]; see generally *Zygmunt v Berkowitz*, 301 AD2d 593 [2d Dept 2003]). The Court upholds the remaining awards of \$150,000.00 for loss of household services to Rohitram Ramratan and \$20,000.00 for loss of household services to Edward Ramratan (compare *Vertsberger v City of New York*, 34 AD3d 453 [2d Dept 2006]).

Therefore it is

ORDERED, that this matter shall be set down for a new trial in Part 30 on the issues of damages for the decedent's conscious pain and suffering and for the loss of parental guidance and for the entry of a second amended judgment thereafter, unless within 30 days after service upon the plaintiffs of a copy of this decision and Order, the plaintiffs shall serve and file in the office of the Clerk of the Supreme Court, Queens County, a written stipulation consenting to reduce the verdict as to damages for conscious pain and suffering from the principal sum of \$3,000,000.00 to the principal sum of \$1,000,000.00; and, the award of loss of parental guidance to Edward Ramratan from the principal sum of \$750,000.00 to the principal sum of \$250,000.00, and to the entry of an appropriate second amended judgment accordingly. If the parties are unable to stipulate they are directed to contact the Part 30 Clerk, Melody Taub at (718) 298-0142 for the new trial date.

This constitutes the decision and Order of the Court

Dated: October 3, 2018



Chereé A. Buggs, JSC

FILED
OCT 17 2018
COUNTY CLERK
QUEENS COUNTY