

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

Olive v. New York City Transit Authority

Olive v. New York City Tr. Auth., 2021 NY Slip Op 04666 (App. Div. 2021) · No. 2019-04282 · Decided August 11, 2021

SUMMARY

The Appellate Division, Second Department, affirmed an order denying the New York City Transit Authority's motion to set aside a jury verdict in a personal injury action. The court held that the liability determination was supported by a fair interpretation of the evidence and that the awards of \$200,000 for past pain and suffering and \$400,000 for future pain and suffering were not excessive.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Mark C. Dillon, J.P.; Francesca E. Connolly, J.; Angela G. Iannacci, J.; Linda Christopher, J.
JURISDICTION	New York
DECIDED	August 11, 2021
DOCKET	2019-04282
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from an order denying its CPLR 4404(a) motion to set aside the jury's liability verdict as contrary to the weight of the evidence, obtain a new trial, or set aside the pain-and-suffering damages awards as contrary to the weight of the evidence and excessive.
STANDARD OF REVIEW	A jury's liability determination will be upheld if supported by a fair interpretation of the evidence. A damages verdict may be set aside as against the weight of the evidence only if the evidence so preponderates in favor of the plaintiff that the jury could not have reached its determination on any fair interpretation of the evidence. A personal-injury award may be set aside as excessive only if it deviates materially from what would be reasonable compensation.
PRECEDENTIAL VALUE	published

PARTIES

New York City Transit Authority v. Davon Olive

TOPICS

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QUESTIONS PRESENTED

1. Whether the jury's determination that the New York City Transit Authority was liable was contrary to the weight of the evidence.
2. Whether the jury's findings concerning Olive's negligence and proximate cause were legally inconsistent or unsupported by the evidence.
3. Whether the jury's awards for past and future pain and suffering were contrary to the weight of the evidence or excessive.

HOLDINGS

1. The liability verdict was supported by a fair interpretation of the evidence and therefore was not subject to being set aside.
2. The issues of negligence and proximate cause were not inextricably interwoven, and the jury permissibly found that plaintiff was negligent but that his negligence was not a proximate cause of the accident.
3. The awards for past and future pain and suffering were supported by a fair interpretation of the evidence and therefore were not contrary to the weight of the evidence.
4. The awards of \$200,000 for past pain and suffering and \$400,000 for future pain and suffering did not materially deviate from reasonable compensation and were not excessive.

KEY QUOTATIONS

"A jury verdict on the issue of damages may be set aside 'as against the weight of the evidence only if the evidence on that issue so preponderated in favor of the plaintiff that the jury could not have reached its determination on any fair interpretation of the evidence'" (at 2)

"While 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, it may be set aside if the award deviates materially from what would be reasonable compensation" (at 2)

FACTUAL BACKGROUND

On November 1, 2011, Davon Olive, then twelve years old, slipped and fell on a puddle of water on the platform of the Grand Army Plaza subway station in Brooklyn. The jury found the New York City Transit Authority 100% liable for the accident, although it also found that Olive was negligent and that his negligence was not a

proximate cause. The jury awarded Olive \$200,000 for past pain and suffering and \$400,000 for future pain and suffering over fifty-six years.

PROCEDURAL HISTORY

Plaintiff commenced a personal-injury action after slipping on water at a subway station. Following a bifurcated trial, the jury found the Transit Authority 100% liable and awarded \$200,000 for past pain and suffering and \$400,000 for future pain and suffering. Supreme Court, Kings County, denied defendant's posttrial motion, and the Appellate Division affirmed insofar as appealed from.

DISPOSITION

affirmed

CASES CITED

- Lolik v. Big V Supermarkets, 86 N.Y.2d 744, 746 (1995)
- Moffett-Knox v. Anthony's Windows on Lake, Inc., 126 A.D.3d 768, 768-769 (2d Dep't 2015)
- Curry v. Hudson Val. Hosp. Ctr., 104 A.D.3d 898, 900 (2d Dep't 2013)
- Carter v. New York City Health & Hosps. Corp., 47 A.D.3d 661, 663 (2d Dep't 2008)
- Vainer v. DiSalvo, 107 A.D.3d 697, 698 (2d Dep't 2013)

OPINION

Olive v. New York City Tr. Auth. 2021 NY Slip Op 04666

PER CURIAM.

Olive v New York City Tr. Auth. (2021 NY Slip Op 04666) Olive v New York City Tr. Auth. 2021 NY Slip Op 04666 Decided on August 11, 2021 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on August 11, 2021

SUPREME COURT OF THE STATE OF NEW YORK

Appellate Division, Second Judicial Department MARK C. DILLON, J.P.

FRANCESCA E. CONNOLLY

ANGELA G. IANNACCI

LINDA CHRISTOPHER, JJ. 2019-04282

(Index No. 11969/12) [*1]Davon Olive, respondent, vNew York City Transit Authority, appellant. Anna Ervolina, Brooklyn, NY (Harriet Wong of counsel), for appellant. Bruce S. Reznick, P.C. (Pollack, Pollack, Isaac & DeCicco, LLP, New York, NY [Brian J. Isaac], of counsel), for respondent. DECISION & ORDER In an action to recover damages for personal injuries, the defendant appeals from an order of the Supreme Court, Kings County (Debra Silber, J.), dated March 4, 2019. The order, insofar as appealed from, denied those branches of the defendant's

motion which were pursuant to CPLR 4404(a) to set aside the jury verdict on the issue of liability as contrary to the weight of the evidence and for a new trial or, in the alternative, to set aside the jury verdict on the issue of damages for past pain and suffering and future pain and suffering as contrary to the weight of the evidence and as excessive and for a new trial on the issue of damages for past pain and suffering and future pain and suffering. ORDERED that the order is affirmed insofar as appealed from, with costs. On November 1, 2011, the plaintiff, then 12 years old, slipped and fell on a puddle of water on the platform of the Grand Army Plaza subway station in Brooklyn. The plaintiff commenced this action against the defendant, New York City Transit Authority, to recover damages for personal injuries. The case thereafter proceeded to trial. At the close of the liability phase of the bifurcated trial, the jury found that the defendant was 100% liable for the happening of the subject accident. At the close of the damages phase of the trial, the jury awarded the plaintiff \$200,000 for past pain and suffering and \$400,000 for future pain and suffering (for a period of 56 years). The defendant thereafter moved, inter alia, pursuant to CPLR 4404(a) to set aside the jury verdict on the issue of liability as contrary to the weight of the evidence and for a new trial or, in the alternative, to set aside the jury verdict on the issue of damages for past pain and suffering and future pain and suffering as contrary to the weight of the evidence and as excessive and for a new trial on the issue of damages for past pain and suffering and future pain and suffering. In the order appealed from, the Supreme Court denied the defendant's motion. The jury's determination with respect to the defendant's liability was supported by a fair interpretation of the evidence (see *Lolik v Big V Supermarkets*, 86 NY2d 744, 746). Here, contrary to the defendant's contention, the issues of negligence and proximate cause were not inextricably interwoven, and the jury's determination that the plaintiff was negligent but that his negligence was not a proximate cause of the accident was supported by a fair interpretation of the [*2]evidence (see *Moffett-Knox v Anthony's Windows on Lake, Inc.*, 126 AD3d 768, 768-769). "A jury verdict on the issue of damages may be set aside 'as against the weight of the evidence only if the evidence on that issue so preponderated in favor of the plaintiff that the jury could not have reached its determination on any fair interpretation of the evidence'" (*Curry v Hudson Val. Hosp. Ctr.*, 104 AD3d 898, 900, quoting *Carter v New York City Health & Hosps. Corp.*, 47 AD3d 661, 663). "While 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, it may be set aside if the award deviates materially from what would be reasonable compensation" (*Vainer v DiSalvo*, 107 AD3d 697, 698 [citation and internal quotation marks omitted]; see CPLR 5501[c]). Here, the verdict as to damages for pain and suffering, both past and future, was supported by a fair interpretation of the evidence. Moreover, the awards of \$200,000 for past pain and suffering and \$400,000 for future pain and suffering were not excessive, as they did not deviate materially from what would be reasonable compensation (see CPLR 5501[c]). The defendant's remaining contentions are without merit. DILLON, J.P., CONNOLLY, IANNACCI and CHRISTOPHER, JJ., concur. ENTER: Aprilanne Agostino Clerk of the Court

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