

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FOURTH DEPARTMENT

Lahren v. Boehmer Transportation Corp.

49 A.D.3d 1186 · Decided March 14, 2008

SUMMARY

In this personal injury action arising from a motor vehicle accident, defendants conceded liability and the jury awarded damages for various past and future losses. The court upheld the admission of surveillance evidence, the cross-examination concerning housing expenses, the future-damages award, and the denial of future loss-of-consortium damages. It also affirmed a collateral-source offset for future medical expenses under CPLR 4545(c).

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Fourth Department
WRITING FOR THE COURT	Present-Hurlbutt, J.P.; Smith, J.; Centra, J.; Lunn, J.; Fahey, J.
JURISDICTION	New York
DECIDED	March 14, 2008
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiffs appealed from Supreme Court's post-trial rulings concerning evidentiary issues, the adequacy of future damages and loss-of-consortium damages, and a collateral-source offset.
STANDARD OF REVIEW	Whether the verdict materially deviated from reasonable compensation under CPLR 5501(c), whether a damages award was against the weight of the evidence, and whether evidentiary and trial-management claims were preserved for appellate review.
PRECEDENTIAL VALUE	Published Appellate Division decision; precedential within the applicable New York state court system.
PARTIES	Plaintiffs v. Defendants

TOPICS

- personal injury
- damages
- evidence
- preservation of error
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether plaintiffs waived their challenge to admission of the surveillance videotape by stipulating to its admission at trial.
2. Whether defendants could cross-examine plaintiff about her rent to show her financial ability to move to a residence better suited to her alleged disabilities and thereby mitigate damages.
3. Whether plaintiffs preserved their challenge to the time limit imposed on examination of their medical expert.
4. Whether plaintiffs preserved a challenge that the verdict was internally inconsistent.
5. Whether the awards for future damages materially deviated from reasonable compensation.
6. Whether the denial of future loss-of-consortium damages was against the weight of the evidence.
7. Whether Supreme Court properly granted a collateral-source offset for future medical expenses under CPLR 4545(c).

HOLDINGS

1. Plaintiffs waived appellate review of the admission of the surveillance videotape by stipulating to its admission at trial.
2. The trial court properly permitted cross-examination concerning the amount plaintiff paid in rent because the inquiry was relevant to whether she had the financial ability to move to a more appropriate residence and mitigate her damages.
3. Plaintiffs did not preserve for appellate review their challenge to the limitation of their attorney's direct and redirect examination of plaintiff's doctor because they failed to object at trial.
4. Plaintiffs failed to preserve their claim that the verdict was inconsistent because they did not object before the jury was discharged.
5. The award for future damages did not materially deviate from reasonable compensation.
6. The failure to award damages for future loss of consortium was not against the weight of the evidence.
7. Supreme Court properly granted a collateral-source offset for the award of future medical expenses because the evidence established with reasonable certainty that the expenses would be replaced or indemnified by no-fault insurance.

KEY QUOTATIONS

“Although evidence of a party’s wealth generally is not admissible, the question at issue herein was not an inquiry solely into plaintiff’s wealth.” (1187)

“We conclude on the record before us that the award for future damages does not deviate materially from what would be reasonable compensation” (1188)

“Implicit in the award of damages for future medical expenses was the jury’s finding that the entire award was for expenses that will be medically necessary and causally related to the accident.” (1189)

FACTUAL BACKGROUND

LeeAnn Lahren was injured in a motor vehicle accident, for which defendants conceded liability. Plaintiffs sought damages including future medical, household, rehabilitative, pain-and-suffering, and loss-of-consortium damages. Evidence concerning plaintiff's future medical and rehabilitative needs, possible future surgeries, and limitations on recreational activities was contested, and surveillance evidence contradicted some testimony about those limitations. Plaintiff had no-fault automobile insurance coverage available to reimburse medically necessary and causally related medical expenses.

PROCEDURAL HISTORY

Plaintiffs brought a personal-injury action arising from a motor vehicle accident, and defendants conceded liability. After a damages trial, the jury awarded damages for past and future medical expenses, household expenses, pain and suffering, and past loss of consortium. Supreme Court denied plaintiffs' post-trial motion to set aside portions of the verdict and granted defendants a collateral-source offset for future medical expenses; the Appellate Division upheld those rulings.

DISPOSITION

affirmed

CASES CITED

- Matter of James Jerome C. v. Mary Elizabeth J., 31 A.D.3d 1184, 1184-1185 (2006)
- Wittman v. Wittman, 302 A.D.2d 914 (2003)
- Laidlaw v. Sage, 158 N.Y. 73, 103 (1899)
- Rupert v. Sellers, 48 A.D.2d 265, 269 (1975)
- Andrew v. Hurh, 34 A.D.3d 1331 (2006), leave denied, 8 N.Y.3d 808 (2007)
- Heraud v. Weissman, 276 A.D.2d 376, 377 (2000), leave denied, 96 N.Y.2d 705 (2001)
- McEwen v. Akron Fire Co., 251 A.D.2d 1044 (1998)
- Ramos v. Ramos, 234 A.D.2d 439 (1996)
- Lolik v. Big V Supermarkets, 86 N.Y.2d 744, 746 (1995)
- Phelinger v. Krawczyk, 37 A.D.3d 1153, 1154 (2007)
- Oden v. Chemung County Industrial Development Agency, 87 N.Y.2d 81, 83-84 (1995)
- Caruso v. LeFrois Builders, 217 A.D.2d 256, 258-259 (1995)

OPINION

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PER CURIAM.

*1187Memorandum: Plaintiffs commenced this action seeking damages for injuries sustained by LeeAnn Lahren (plaintiff) in a motor vehicle accident. Defendants conceded liability and, following a trial on damages, the jury awarded plaintiffs damages for past and future medical expenses, past and future household expenses, past and future pain and suffering, and past loss of consortium. Supreme Court denied plaintiffs' post-trial motion to set aside that part of the jury verdict awarding future damages and awarding no damages for future loss of consortium and granted that part of defendants' post-trial motion for a collateral source offset with respect to the award for future medical expenses. We note at the outset that, although defendants' post-trial motion also sought a collateral source offset for past "medical/household" expenses, the court's decision indicates that the parties stipulated to an offset for those expenses. In support of their post-trial motion, plaintiffs contended, inter alia, that the court erred in admitting a surveillance videotape in evidence. The record establishes, however, that plaintiffs stipulated to its admission in evidence at trial, and plaintiffs thus are deemed to have waived any contention with respect to it (see generally *Matter of James Jerome C. v Mary Elizabeth J.*, 31 AD3d 1184, 1184-1185 [2006]; *Wittman v Wittman*, 302 AD2d 914 [2003]). Plaintiffs also contended in support of their post-trial motion that the court erred in permitting defendants' attorney to cross-examine plaintiff concerning the amount paid for rent on her home. We reject that contention. Although evidence of a party's wealth generally is not admissible (see generally *Laidlaw v Sage*, 158 NY 73, 103 [1899]; *Rupert v Sellers*, 48 AD2d 265, 269 [1975]), the question at issue herein was not an inquiry solely into plaintiff's wealth. Rather, the question was relevant to establish that plaintiff had the financial ability to move to a more appropriate single-floor residence in order to accommodate her alleged disabilities resulting from the motor vehicle accident, thereby mitigating her damages. *1188Plaintiffs failed to preserve for our review their further contention in support of their post-trial motion that the court erred in requiring their attorney to limit his direct and re-direct examination of plaintiff's doctor to 30 minutes inasmuch as they failed to register an objection thereto at trial (see CPLR 5501 [a] [3]), and their post-trial motion does not preserve that contention for our review (see *Andrew v Hurh*, 34 AD3d 1331 [2006], lv denied 8 NY3d 808 [2007]; *Heraud v Weissman*, 276 AD2d 376, 377 [2000], lv denied 96 NY2d 705 [2001]). In addition, "[b]y not raising an objection to the verdict before the jury was discharged, plaintiff[s] failed to preserve for our review [their] contention that the verdict is inconsistent" (*McEwen v Akron Fire Co.*, 251 AD2d 1044 [1998]). Insofar as plaintiffs relied in support of their post-trial motion on evidence concerning the necessity for future household, medical and rehabilitative services, that evidence was contested, as was the evidence that plaintiff would require two future surgeries. Additionally, the testimony of plaintiff and her husband that plaintiff would be unable to partake in many of the recreational activities that she enjoyed before the accident was belied by the surveillance evidence. We conclude on the record before us that the award for future damages does not deviate materially from what would be reasonable compensation (see generally CPLR 5501 [c]; *Ramos v Ramos*, 234 AD2d 439 [1996]), and that the failure to award damages for

future loss of consortium is not against the weight of the evidence (see generally *Lolik v Big V Supermarkets*, 86 NY2d 744, 746 [1995]; *Phelinger v Krawczyk*, 37 AD3d 1153, 1154 [2007]). Lastly, the court properly granted that part of defendants' motion for a collateral source offset for the award of future medical expenses. "CPLR 4545 (c) authorizes the court in a personal injury action to reduce the amount of the plaintiff[s'] award if it finds that any element of the economic loss encompassed in the award was or will be replaced, in whole or in part, from a collateral source" (*Oden v Chemung County Indus. Dev. Agency*, 87 NY2d 81, 83-84 [1995]). In reducing the amount of the award, the court must find that "any such cost or expense was or will, with reasonable certainty, be replaced or indemnified . . . from [the] collateral source" (CPLR 4545 [c]; see *Caruso v LeFrois Bldrs.*, 217 AD2d 256, 258-259 [1995]). Here, the jury awarded plaintiffs \$71,106.49 for future medical expenses, and the parties stipulated that plaintiff had \$175,000 in available no-fault automobile insurance coverage and was previously paid the sum of \$38,310.17 by her no-fault carrier. The "no-fault claim analyst" assigned to plaintiff's file by *1189plaintiffs no-fault insurance carrier testified at the collateral source hearing that the carrier would continue to reimburse plaintiff for any medical expenses that it found to be medically necessary and causally related to the accident. Implicit in the award of damages for future medical expenses was the jury's finding that the entire award was for expenses that will be medically necessary and causally related to the accident. Thus, "[t]his is not a case where it is unclear whether plaintiff would be eligible for collateral source payments" (*Caruso*, 217 AD2d at 259). Present-Hurlbutt, J.P, Smith, Centra, Lunn and Fahey, JJ.