

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

Algerio v. Caribbean Air Conditioning

98 A.D.3d 465 (2d Dep't 2012) · Decided August 1, 2012

SUMMARY

The New York Appellate Division, Second Department, reviewed an order denying the plaintiffs' motion to set aside inadequate jury awards for personal-injury damages. The court held that the award for past pain and suffering materially deviated from reasonable compensation and ordered a new trial on that issue unless the defendants stipulated to increase the award from \$50,000 to \$200,000; it upheld the awards for future pain and suffering and loss of services.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Second Department
WRITING FOR THE COURT	Florio, J.P.; Balkin, J.; Hall, J.; Miller, J.
JURISDICTION	New York
DECIDED	August 1, 2012
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The plaintiffs appealed from an order denying their CPLR 4404(a) motion to set aside as inadequate or contrary to the weight of the evidence the jury's damages verdict and to obtain a new trial on specified elements of damages.
STANDARD OF REVIEW	A jury verdict is contrary to the weight of the evidence only when it could not have been reached on any fair interpretation of the evidence. An award is inadequate when it materially deviates from what would be reasonable compensation under CPLR 5501(c).
PRECEDENTIAL VALUE	published and precedential New York Appellate Division decision
PARTIES	Patrice Algerio, Algerio plaintiffs v. Caribbean Air Conditioning, defendants

TOPICS

personal injury

damages

standard of review

preservation of error

appellate procedure

PRACTICE AREAS

personal injury

damages

appellate procedure

civil procedure

QUESTIONS PRESENTED

1. Whether the jury's verdict denying damages for future pain and suffering was contrary to the weight of the evidence.
2. Whether the \$50,000 award for past pain and suffering was inadequate under CPLR 5501(c).
3. Whether the damages verdict was inconsistent and therefore required appellate relief despite the plaintiffs' failure to raise that issue before the jury was discharged.
4. Whether the plaintiffs' remaining challenge to the verdict had merit.

HOLDINGS

1. The verdict denying damages for future pain and suffering was supported by a fair interpretation of the evidence and was not contrary to the weight of the evidence.
2. The \$50,000 award for past pain and suffering was inadequate because it materially deviated from reasonable compensation in light of the nature and extent of the injured plaintiff's left-knee injury.
3. The challenge based on alleged inconsistency in the verdict was unpreserved because the plaintiffs did not raise the issue in the trial court before the jury was discharged.

KEY QUOTATIONS

“The standard for determining whether a jury verdict is contrary to the weight of the evidence is whether the verdict could not have been reached upon any fair interpretation of the evidence” (466)

“However, considering the nature and extent of the injury to her left knee, the damages award for past pain and suffering materially deviated from what would be reasonable compensation, and is inadequate to the extent indicated” (466)

FACTUAL BACKGROUND

The action sought damages for personal injuries arising from an injury to Patrice Algerio's left knee. The jury awarded \$50,000 for past pain and suffering, but no damages for future pain and suffering or loss of services. The Appellate Division concluded that the evidence supported the denial of future-pain-and-suffering damages but that the past-pain-and-suffering award materially deviated from reasonable compensation given the nature and extent of the knee injury.

PROCEDURAL HISTORY

A jury awarded \$50,000 for past pain and suffering, nothing for future pain and suffering, and nothing for loss of services. The Supreme Court, Suffolk County, denied the plaintiffs' motion to set aside the verdict and for a new trial. The Appellate Division modified the order, finding the past-pain-and-suffering award inadequate and directing a conditional new trial on that issue, while affirming the remainder of the order.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The order was modified to set aside the \$50,000 award for past pain and suffering as inadequate and to direct a new trial on that issue unless the defendants served and filed, within 30 days after service of the decision and order, a written stipulation increasing the award to \$200,000. The order was affirmed in all other respects.

CASES CITED

- Lolik v. Big V Supermarkets, 86 N.Y.2d 744, 746 (1995)
- McGovern v. Iqbal, 63 A.D.3d 803 (2009)
- Handwerker v. Dominick L. Cervi, Inc., 57 A.D.3d 615 (2008)
- Tapia v. Dattco, Inc., 32 A.D.3d 842 (2006)
- Purkiss-Riddle v. New York City Tr. Auth., 89 A.D.3d 1001 (2011)
- Adames v. Awad, 47 A.D.3d 737 (2008)
- Van Ness v. New York City Tr. Auth., 288 A.D.2d 374 (2001)
- Volino v. Long Is. R.R. Co., 83 A.D.3d 693 (2011)
- Rivera v. MTA Long Is. Bus, 45 A.D.3d 557 (2007)
- Miller v. Long Is. R.R., 286 A.D.2d 713 (2001)