

STATE OF NEW YORK  
SUPREME COURT: ERIE COUNTY

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JAMES PIEDMONT,

Plaintiff,

-vs-

Decision

Index No. 805512/2015

RAYMOND P. MANGOLD and  
SARAH A. MANGOLD

Defendants.

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STEPHEN C. CIOCCA, ESQ.  
Attorney for Plaintiff

ROBERT E. GALLAGHER, JR, ESQ.  
Attorney for Defendants

Colaiacovo, J.

The above-captioned matter was tried before this Court on June 12<sup>th</sup> and 13<sup>th</sup> of this year. The jury returned a verdict in favor of the Plaintiff and awarded a total of six hundred and eighteen thousand nine hundred and twenty-three dollars (\$618,923). Defendants have now moved pursuant to CPLR §4404 and §4406 for an Order setting aside and/or reducing the verdict because the “defendants believe that the verdict, as rendered, exceeds what is fair and reasonable compensation . . .” Gallagher Affirmation at par. 8.

Plaintiff opposes the motion on the basis that “the verdict rendered by the jury was fair and appropriate, did not shock the conscience, and was in accordance with the evidence presented over the course of the trial.” Ciocca Affidavit at par. 9.

### Decision

The Defendants’ Motion having been duly submitted, and after due consideration of said Motion with attached exhibits, as well as Plaintiff’s opposition papers, it is the Court’s opinion that the jury’s verdict should remain undisturbed.

Defendant correctly points out that damages in a personal injury verdict “should not be reviewed as excessive . . . unless the amount shocks the conscience . . . of the court, is unconscionable, or has no basis in fact from the record (citations omitted).” Gallagher Affirmation at par. 13. The parties agree, and cite to the same source, that the Court’s discretion in this regard “should be exercised sparingly.” Gallagher Affirmation at par. 13 and Ciocca Affidavit at par. 13 citing 4 Weinstein-Korn-Miller, N.Y. Civ. Prac. Par. 4404.10.

“A jury verdict in favor of a plaintiff should not be set aside as contrary to the weight of the evidence unless the evidence so preponderated in favor of the defendant that the jury could not have reached the verdict by any fair interpretation of the evidence (citations omitted). Whether a jury verdict should be set aside as contrary to the weight of the evidence does not involve a question of law, but rather requires a discretionary balancing of many factors (citations omitted). In making this determination, the Court must proceed with considerable caution, ‘for in the absence of indications that substantial justice has not been done, a successful litigant is entitled to the benefits of a favorable jury verdict’ (citation omitted). Generally, ‘[f]act finding is the province of the jury,’ whose ability to see and hear the witnesses should be accorded deference (citation omitted).” Acosta v. City of New York, 84 A.D.3d 706, 708 (2d Dept. 2011).

There is nothing in the record of this case that would motivate the Court to invade the province of the jury. The jury heard from treating physician, Dr. Marc Fineberg, and a physical therapist regarding the Plaintiff’s injuries and treatment. The jury also heard from a defense expert who testified generally regarding the plaintiff’s injuries, that Dr. Fineberg’s findings were accurate, that the Plaintiff’s surgery was “reasonable and necessary”, and that the Plaintiff’s injuries and symptoms were related to the accident. See Ciocca

Affidavit at par. 33. Not only did the jury hear about the Plaintiff's present condition, but it also heard about how he could be affected in the future.

The Court agrees with the Plaintiff that "the argument being made appears to simply request the Court to impose its judgment about case value over that of a unanimous jury." Ciocca Affidavit at par. 14. The Court is not prepared to so.

Therefore, it is hereby ORDERED, that the Motion to set aside and/or reduce the verdict be, and hereby is, DENIED.

Dated: October 10<sup>th</sup>, 2017  
Buffalo, New York



Hon. Emilio Colaiacovo, J.S.C.

**GRANTED**

OCT 10, 2017

BY   
JUDITH M. CONNERS  
COURT CLERK