

To commence the statutory time period for appeals as of right (CPLR §5513[a]), you are advised to serve a copy of this order with notice of entry upon all parties.

SUPREME COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

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PATRIZIA GUZZO,

Plaintiff,

-against-

DECISION & ORDER

**OSIRIS M. MERCADO and BENEDICT
CAR SERVICE CORP.,**

Index No.:59349/13
Motion # 3

Defendants.
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ADLER, J.

In this post-judgment motion, plaintiff Patrizia Guzzo moves under CPLR 4404(a) for an order (1) setting aside the jury verdict as to liability, to the extent that it found that Guzzo was partly at fault for the accident, (2) directing a verdict finding that defendants were 100% at fault, and (3) awarding a new trial as to damages unless defendants agree to an increase of the jury's award for Guzzo's past and future medical expenses. For the reasons set forth below, the motion is denied. This Court reviewed the following papers in connection with the motion:

Notice of Motion
Affirmation in Support of Christopher Roberta, Esq., with Exhibits
Affirmation in Opposition of Douglas Shearer, Esq. with Exhibits
Reply Affirmation of Christopher Roberta, Esq. with Exhibits

Background – Guzzo brought this personal injury action to recover for personal injuries that she suffered in May 2013, when a cab driven by defendant Osiris Mercado allegedly disobeyed a stop sign and struck her while she was crossing the street. In

June 2013, Guzzo commenced this action against Mercado and his employer. She alleged a negligence claim against defendants.

Trial – This Court presided over the jury trial in this action in August 2015. The jury heard Guzzo's testimony that, before she stepped off the curb to cross the street, she looked to her left to watch for oncoming traffic, and she looked to her left again while crossing. When she looked to her left while crossing, Guzzo testified, she saw Mercado's vehicle slow down while it approached the stop sign, and she assumed the vehicle would come to a halt. On cross examination, however, Guzzo stated that she looked to her left once before stepping off the curb and did not look again while crossing. The jury also reviewed surveillance videos which had recorded the accident, as well as still photographs taken from the videos.

With respect to damages, Guzzo's expert physician testified that, in the future, she would require a laminectomy and spinal fusion surgery for her back and knee replacement surgery. The expert opined that this medical treatment would cost \$ 154,000. On cross-examination, the expert conceded that the chart and other medical records he had prepared for Guzzo did not mention the need for any future surgeries.

Defendants' expert physician testified that back surgery was unnecessary, and that any need for knee replacement was the result of Guzzo's preexisting arthritis and unrelated to the injuries she had sustained during the accident. With respect to Guzzo's past medical expenses, defendants' expert opined that Guzzo had undergone arthroscopic procedures that were unnecessary or unrelated to the accident.

At the conclusion of the trial, the jury returned the following special verdicts: (1) Mercado had negligently operated the vehicle that struck plaintiff; (2) Guzzo had also

been negligent; (3) both Mercado's and Guzzo's negligence had been a substantial factor in causing Guzzo's injuries; and (4) Mercado was 70% at fault and Guzzo was 30% at fault.

For damages, the jury awarded Guzzo \$ 100,000 for past pain and suffering, \$ 100,000 for future pain and suffering (to provide compensation for five years), \$ 86,000 for past medical expenses, and \$ 84,000 for future medical expenses.

Motion – With respect to the comparative negligence finding, Guzzo argues that the determination that she was 30% at fault was against the weight of the evidence. According to Guzzo, her testimony and the video and still photographs prove that she exercised due care.

That contention is unconvincing. "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" (*DiDonna v Houck*, 111 AD3d 662, 663 [2d Dept 2013]). Here, the jury was entitled to reject Guzzo's testimony that she looked to her left both before and while she attempted to cross the street, especially since she contradicted herself during cross examination. Moreover, the video and still photographs are ambiguous, and the jury was free to evaluate whether they supported or contradicted Guzzo's testimony.

In any event, the circumstances of this case, in which plaintiff saw Mercado's vehicle approaching the stop sign, but did not see it come to a halt, presented a question of fact whether Guzzo acted reasonably by proceeding to cross the street (see *Azeem v Cava*, 92 AD3d 821 [2d Dept 2012]). The cases cited by Guzzo, in which drivers who hit pedestrians were found 100% at fault, are inapposite because they are

either distinguishable on their facts or because the opinions do not provide enough factual detail for this Court to determine their relevance.

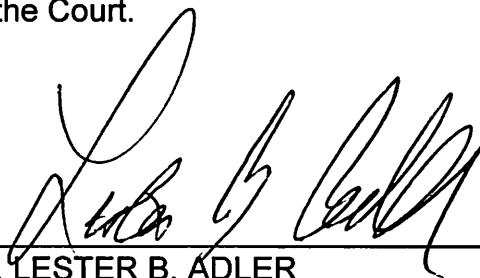
Plaintiff request for additur is also denied. Sufficient evidence was adduced at trial to support the jury award for past and future medical expenses. Defendants' expert challenged the necessity of Guzzo's past arthroscopic procedures and their connection with the automobile accident, and the jury was free to credit that testimony and reduce the award that Guzzo sought (about \$ 115,000) . Plaintiff asserts that defendants stipulated that Guzzo had incurred higher medical expenses, but defendants did not stipulate that all of those expenses were caused by the accident. As for Guzzo's future medical expenses, conflicting expert evidence was offered and the jury was entitled to credit the testimony of defendants' expert that certain procedures were unnecessary or unrelated to the accident.

Accordingly, it is hereby

ORDERED, that plaintiff's motion to set aside the verdict pursuant to CPLR 4404(a) is denied.

The foregoing constitutes the Order of the Court.

Dated: White Plains, New York
July 19, 2016


HON. LESTER B. ADLER
SUPREME COURT JUSTICE