25 A.D.3d 633
Supreme Court, Appellate Division, Second Department, New York.

Christian P. BENEFIELD, respondent,
v.
HALMAR CORPORATION, defendant third-party plaintiff-respondent-appellant;
Sussex County Erectors, Inc., third-party defendant-appellant-respondent.

Jan. 24, 2006.

Synopsis

Background: Employee of subcontractor on construction project brought suit against general contractor to recover for injuries sustained in fall from ladder. General contractor brought claim against subcontractor for indemnification. The court denied parties' motions for summary judgment. Appeals were taken, and the Supreme Court, Appellate Division, affirmed as modified, 264 A.D.2d 794, 695 N.Y.S.2d 394. On remand, the Supreme Court, Orange County, Slobod, J., granted judgment after jury verdict for employee. General contractor and subcontractor appealed.

Holdings: The Supreme Court, Appellate Division, held that:

[1] award of $30,000,000 for past and future pain and suffering deviated materially from what would have been reasonable compensation;

[2] award of $5,000,000 for future medical expenses and rehabilitation was excessive; and

[3] award of $10,000,000 for future lost earnings was excessive.

Affirmed as modified.

West Headnotes (3)

[1] **Damages**
Excessive damages in general

Jury award of $30,000,000 for past and future pain and suffering of worker who was injured in fall from ladder deviated materially from what would have been reasonable compensation, and thus was excessive, warranting new trial on issue of damages for past and future pain and suffering unless worker filed written stipulation consenting to reduce verdict as to such damages to $3,200,000. McKinney's CPLR 5501(c).

4 Cases that cite this headnote

[2] **Damages**
Future expenses

Jury award of $5,000,000 for future medical expenses and rehabilitation of worker who was injured in fall from ladder deviated materially from what would have been reasonable compensation, and thus was excessive, warranting new trial on issue of damages for future medical expenses and rehabilitation unless worker filed written stipulation consenting to reduce verdict as to such damages to $400,000. McKinney's CPLR 5501(c).

3 Cases that cite this headnote

[3] **Damages**
Impairment of Earning Capacity

Jury award of $10,000,000 for future lost earnings of worker who was injured in fall from ladder deviated materially from what would have been reasonable compensation, and thus was excessive, warranting new trial on issue of damages for future lost earnings unless worker filed written stipulation consenting to reduce verdict as to such damages to $3,200,000, since award did not take into account physical nature of work, likelihood of injury, and cyclical fluctuations in construction industry. McKinney's CPLR 5501(c).

4 Cases that cite this headnote

Attorneys and Law Firms

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BARRY A. COZIER, J.P., DAVID S. RITTER, ROBERT A. SPOLZINO, and ROBERT J. LUNN, JJ.

Opinion

***634** In an action to recover damages for personal injuries, the third-party defendant, Sussex County Erectors, Inc., appeals from a judgment of the Supreme Court, Orange County (Slobod, J.), entered January 8, 2004, which, upon a jury verdict in favor of the plaintiff and against the defendant third-party plaintiff Halmar Corporation, inter alia, finding that the ****421** plaintiff sustained damages in the principal sums of $15,000,000 for past pain and suffering, $15,000,000 for future pain and suffering, $2,500,000 for future medical expenses, $2,500,000 for future rehabilitation, and $10,000,000 for future lost wages, and upon so much of an order of the same court dated April 11, 2002, as granted that branch of its motion pursuant to CPLR 4404 which was to set aside the verdict on the issue of damages only to the extent of granting a new trial unless the plaintiff stipulated to reduce the verdict as to past pain and suffering to the sum of $2,000,000, as to future pain and suffering to the sum of $5,000,000, as to future medical expenses to the sum of $500,000, as to future rehabilitation expenses to the sum of $500,000, and as to future lost wages to the sum of $4,800,000, and the plaintiff having so stipulated, is in favor of the plaintiff and against the defendant third-party plaintiff Halmar Corporation and is in favor of the defendant third-party plaintiff and against it, and the defendant third-party plaintiff Halmar Corporation cross-appeals, as limited by its brief, from stated portions of the same judgment.

ORDERED that the judgment is modified, on the facts and as an exercise of discretion, by deleting the provisions thereof awarding damages for past pain and suffering, future pain and suffering, future medical expenses, future rehabilitation, and future lost wages, and a new trial is granted on damages for those categories only unless, within 30 days after service upon him of a copy of this decision and order, the plaintiff serves and files in the office of the Clerk of the Supreme Court, Orange County, a written stipulation consenting to further reduce the verdict as to damages for past pain and suffering from the sum of $2,000,000 to the sum of $1,000,000, for future pain and suffering from the sum of $5,000,000 to the sum of $2,250,000, for future medical expenses from the sum of $500,000 to the sum of $200,000, for future rehabilitation expenses from the sum of $500,000 to the sum of $200,000, and for future lost wages from the sum of $4,800,000 to the sum of $3,200,000 and to the entry of an appropriate amended judgment in his favor; in the event that the plaintiff so stipulates, then the judgment, as so reduced and amended, is affirmed, without costs or disbursements; and it is further,

***635** ORDERED that the cross appeal by the defendant third-party plaintiff Halmar Corporation is dismissed as academic, without costs or disbursements.

On October 12, 1992, the plaintiff, then a 23–year–old ironworker, was injured when he fell approximately 25 feet from an extension ladder while performing work as part of a construction project. The defendant third-party plaintiff, Halmar Corporation (hereinafter Halmar), was the general contractor for the project. Halmar contracted with the third-party defendant, Sussex County Erectors, Inc. (hereinafter Sussex), the plaintiff's employer, to furnish and erect structural steel and install bearings as needed for the project. Their contract contained a provision requiring Sussex to indemnify Halmar for losses or casualties incurred in connection with the performance of the contract.

During the liability phase of the trial, the Supreme Court precluded Sussex from offering evidence of Halmar's alleged negligence based on this court's determination in a prior appeal that Halmar had not committed any negligent acts causally connected to the plaintiff's injuries (*see Benefield v. Halmar Corp.,* 264 A.D.2d 794, 695 N.Y.S.2d 394). The jury rendered a verdict in favor of the plaintiff on the issue of liability, and found that the work he was performing when he was ****422** injured was within the scope of the contract. In light of the jury finding and the absence of negligence on the part of Halmar, the indemnification provision of the contract was triggered. The trial court then excluded Halmar from participating in the damages phase of the trial, reasoning that any judgment against it would be satisfied by Sussex.

The Supreme Court properly precluded the admission of evidence pertaining to Halmar's alleged negligence in light of this court's previous decision and order (*see Benefield v. Halmar Corp., supra*). Thus, contrary to Sussex' contention, the judgment properly required it to indemnify Halmar.

[1] [2] [3] The damages awarded the plaintiff for past and future pain and suffering are excessive to the extent indicated as they deviate materially from what would be reasonable compensation (*see* CPLR 5501[c]; *Vasquez v. Skyline Constr. & Restoration Corp.,* 8 A.D.3d 473, 779 N.Y.S.2d 113; *Lind v. City of New York,* 270 A.D.2d 315, 705 N.Y.S.2d 59; *Baumgarten v. Slavin,* 255 A.D.2d 538, 680 N.Y.S.2d 658). The damages awarded for future medical expenses and rehabilitation, to the extent they are supported by the record, are similarly excessive to the extent indicated (*see Diaz v. Parsons Props.,* 309 A.D.2d 892, 766 N.Y.S.2d 102; *Placakis v. City of New York,* 289 A.D.2d 551, 736 N.Y.S.2d 379; *Sanvenero v. Cleary,* 225 A.D.2d 755, 640 N.Y.S.2d 174), as ***636** is the award for future lost earnings, as it does not take into account the physical nature of the work, the likelihood of injury, and the cyclical fluctuations in the construction industry (*see Klos v. New York City Tr. Auth.,* 240 A.D.2d 635, 638, 659 N.Y.S.2d 97; *Cole v. Long Is. Light. Co.,* 24 Misc.2d 221, 229, 196 N.Y.S.2d 187).

On its appeal, Halmar seeks a new trial on the issue of damages based on its exclusion from the damages phase of the trial (*see Ross v. Manhattan Chelsea Assocs.,* 194 A.D.2d 332, 334, 598 N.Y.S.2d 502; *Schulman v. Consolidated Edison Co. of N.Y.,* 85 A.D.2d 186, 447 N.Y.S.2d 722; *Phillips v. Chevrolet Tonawanda Div. of General Motors Corp.,* 43 A.D.2d 891, 352 N.Y.S.2d 73), but only if the portion of the judgment requiring Sussex to indemnify Halmar were not upheld. In light of our determination, this issue is academic.

All Citations

25 A.D.3d 633, 808 N.Y.S.2d 419, 2006 N.Y. Slip Op. 00464

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