New Judicial Decisions in Knee Injury Cases Set Pain and Suffering Awards between $250,000 and $900,000

Posted on March 29, 2009 by John Hochfelder

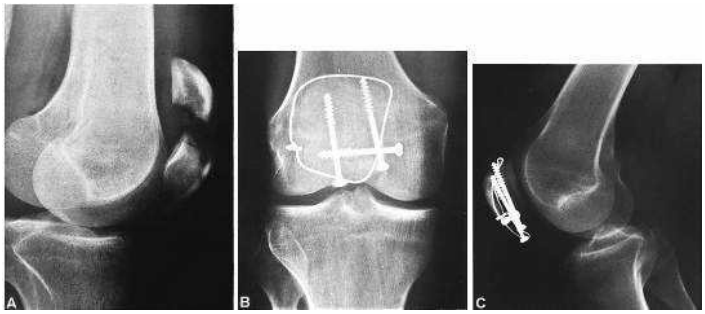
Judicial decisions in several recent cases demonstrate the **wide range of possible outcomes for pain and suffering awards in knee injury cases.**

We last visited this topic when discussing the New York City police officer who shot himself in the knee and convinced a jury not only that the city was at fault but also that he should recover **$4,500,000**. That case will not be over until an appeals court rules. We expect a significant reduction in the pain and suffering award, if not an outright dismissal on liability grounds. We are following.

A very significant knee injury award for pain and suffering was largely upheld on appeal early last year in Urbina v. 26 Court Street Associates LLC . There, a 31 year old laborer fell off a scaffold and suffered both an intra-articular patella fracture and a torn meniscus. After three surgeries, he still needed at least two total knee replacements. Mr. Urbina was left with permanent pain, a limp and severe disabilities. The jury's $3,500,000 pain and suffering verdict ($1,000,000 past, $2,500,000 future) was reduced on appeal to **$2,200,000** ($700,000 past, $1,500,000 future).

In the meantime, a Nassau County judge in a trip and fall case has issued a post-trial decision in Linzer v. Town of Oyster Bay reducing a $950,000 pain and suffering verdict ($450,00 past, $500,000 future) to **$375,000** ($150,000 past, $225,000 future). In that case, a 45 year old doctor sustained a comminuted **intra-articular fracture of her right leg's patella (the kneecap)** requiring surgery to insert two metal screws to hold two large bony fragments together and sewing a third piece, all so that the patella would be held together.

Here's what that knee looked like after surgery:



After trial, the defense made a motion to set aside the $950,000 verdict as against the weight of the evidence. Justice F. Dana Winslow issued a decision on the post-trial motion that addressed all of the injuries and discussed the case precedent cited by each side.

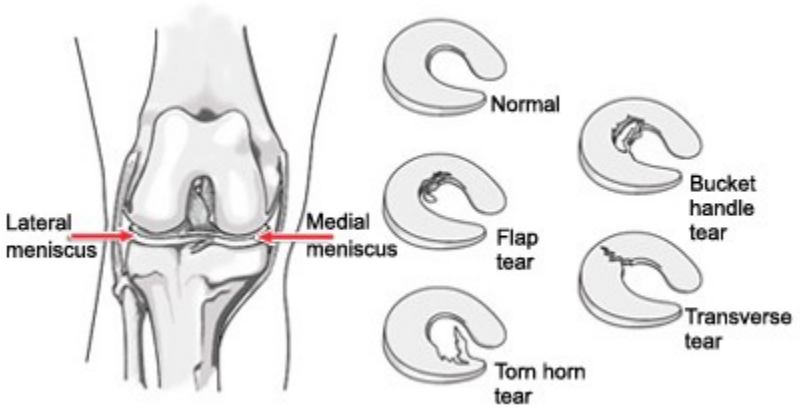
In reducing the jury verdict, the judge was influenced by the facts that Dr. Linzer:

- did not suffer from any post surgery complications
- was on pain medication for only one month
- had no limp
- returned to work three months after the surgery

In a recent appellate court decision, the court in **Smith v. Manhattan & Bronx Surface Transit Operating Authority** upheld a Bronx county jury's **$900,000** verdict for pain and suffering in favor of a 43 year old woman who injured her knee when boarding a bus whose driver closed the door on her causing her knee to twist, and then he drove away and dragged her about eight feet.

Ms. Smith sustained these injuries:

1. tears of her medial and lateral menisci
2. torn cruciate ligament
3. torn cartilage
4. permanent osteochondral defect



She underwent **arthroscopic surgery** but by the time of trial six years later, plaintiff had developed significant scar tissue, had substantial range of motion deficits and suffered from continuing pain, buckling and weakness all of which her doctor said were permanent injuries that **would require more surgery including a knee replacement.**

Lastly, we mention **Gaston v. City of New York**, in which a Bronx county jury awarded the grand total of $5,000 for past pain and suffering and nothing at all for future pain and suffering for a woman who suffered a **torn meniscus** that necessitated surgical repair. The appeals court found those awards to be unreasonable and ordered an increase to **$250,000** ($200,000 past, $50,000 future).

The cases discussed here make plain that the **range of damage verdicts in knee injury cases is quite wide** - not only for the juries ($5,000 in the Gaston case to $3,500,000 in the Urbina case) but also for the appeals courts ($250,000 in Gaston to $2,200,000 in Urbina). As we see in Gaston, when the jury awards a figure the appeals court finds is too low, then there will be an increase but not to the highest figure the court would have sustained. Instead, as in Gaston, the courts will increase an unreasonably low award to the lowest amount that would have been upheld as not unreasonably low. And when an award is found to be unreasonably high, the appeals court will simply order a reduction to a figure that is the highest it would have sustained.

If the jury comes in too high or too low well then watch out because the appellate court will not make it all just perfect. The **appellate courts will merely order an increase or a decrease into**

a range they deem reasonable. And in knee injury cases, the range of sustainable pain and suffering awards is quite wide.