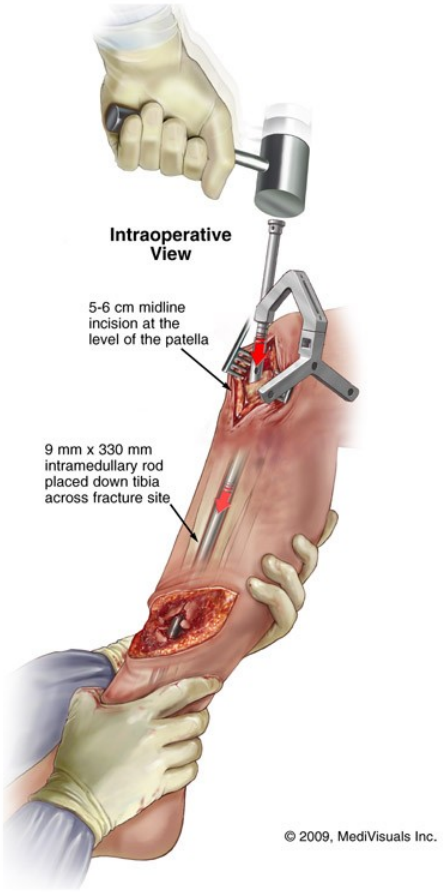
Leg Fracture Verdicts for Pain and Suffering in New York Injury Cases Upheld on Appeal for $1,100,000 and $1,500,000

Posted on February 22, 2009 by John Hochfelder

A broken or fractured **tibia** (the shin bone) is the most common long-bone injury. Several types of fractures can occur, ranging from the hairline stress fractures common in runners to severe open fractures (where the skin is broken) often resulting from motor vehicle accidents. And when severe, the **fibula** (the long, thin lateral or outside bone of the lower leg) is also fractured - thus the term **tib-fib fractures**.

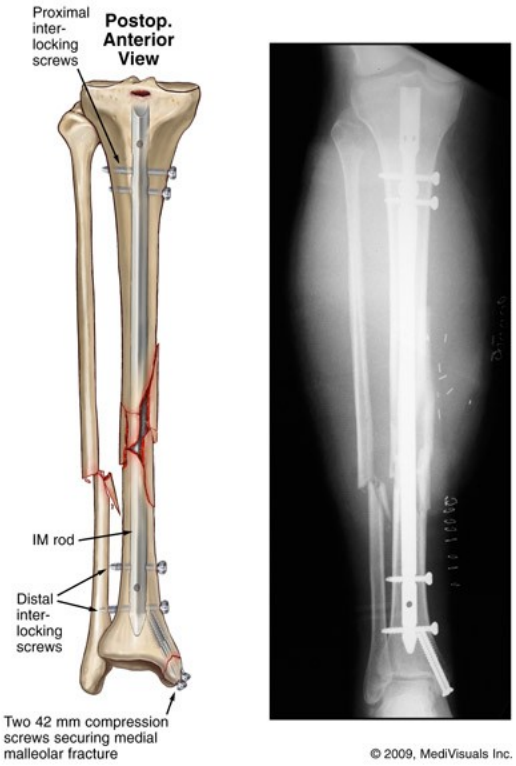
An appellate court in New York has just upheld a **$1,100,000** jury verdict for a 45 year old woman's pain and suffering ($500,000 past, $600,000 future) for fractures of her tibia and fibula. In Keating v. SS&R Management Co., Lori Keating was a passenger in a taxi that was struck by another car. She sustained an open fracture of her tibia and a fracture of her fibula, requiring six surgical procedures performed over the course of three years, including external fixation and internal fixation, as well as skin, muscle and nerve grafts. The Manhattan jury was also told of the fact that Ms. Keating's fractures did not heal (non-union), causing her significant pain and leaving her with severe scarring. The jury awarded her a whopping $12,000,000 for her pain and suffering ($5,000,000 past, $7,000,000 future) but those amounts were reduced by the trial judge to the amounts then sustained this month by the appellate court.

Here's an intraoperative (during surgery) illustration of the type of open reduction internal fixation ("ORIF") surgery that Ms. Keating underwent **showing how the rod is placed down into the tibia**:



In another recent appellate case, Bello v. New York City Transit Authority, a jury's **$1,500,000** verdict for pain and suffering ($750,000 past, $750,000 future) was upheld for Vidal Bello, a boy who was seven years old when he was struck by a moving bus that then rolled over his leg resulting in open tib-fib fractures as well as a degloving injury to that leg (i.e, the skin was torn away, or avulsed). By the time of trial, Vidal had already suffered through eight surgical procedures including external fixation, grafting and placement of an intramedullary rod.

Here's what his leg looked like with the **intramedullary rod in place**:



Vidal also had ugly scarring from the accident, a permanently curved leg and a limp that would only get worse over the course of his entire life.

The Keating and Bello cases are important in evaluating the upper limits of lower leg pain and suffering verdicts and settlements; however, it's also important to appreciate that juries can award much lower amounts that will be sustained and that the appellate courts are not forced to modify up or down jury verdicts that to the litigants seem too low or too high. The standard, as we have previously discussed here and here, is simply this as set forth in CPLR 5501:

- The jury's pain and suffering award will be deemed excessive or inadequate "if it deviates materially from what would be reasonable compensation."

CPLR 5501 is not much of a guide for injured persons or their attorneys. Add to that the fact that appellate court decisions routinely fail to advise the readers of the precise injuries or the disabilities suffered. Worse yet: the appellate court cases often cite as support (for their rulings increasing or decreasing a jury award) cases that do not even deal with or discuss the injuries in the pending case.

As readers of this blog know, it is our aim to fill these voids as much as possible by digging into these cases, to find out -- from appellate briefs, trial transcripts, trial court motions and the like -- exactly what it was that happened to the injured plaintiff. In that way, all concerned with injury case pain and suffering evaluation can have more and relevant information with which to make educated settlement and trial decisions.

We leave you with an example of a recent appellate court case dealing with the reduction of a jury's award for pain and suffering in a a case involving comminuted fractures to the shaft of a 53 year old man's tibia and fibula. In Brown v. Elliston, a pedestrian was injured in 2003 when a car hit him and came to a stop on top of his leg and then rolled back over it a second time. In 2006, a Suffolk County jury awarded Mr. Brown $800,000 for his pain and suffering ($300,000 past, $500,000 future) after hearing evidence that Brown's leg was in a hard cast for nine months, he developed an ulcer at the fracture site, he had open reduction internal fixation surgery and was left with an angled foot and a limp. All of that was gleaned from the appellate court decision which then goes on to reduce the future pain and suffering jury award from $500,000 to $400,000 while affirming the $300,000 past pain and suffering award - total appellate determination: **$700,000**.

Here's what is disturbing about the decision in Brown:

- There is no mention of Mr. Brown's prior accident, in 1995, when he was crushed between two garbage trucks and left totally disabled, unable to walk well and on narcotic pain medication. The defense briefs on appeal which we dug up made much of these facts. The appeals court makes no mention of them. That's simply not instructive, if not downright unfair, to future litigants and their attorneys who constantly need to evaluate injury cases and seek to do so in large part with guidance from appellate court precedent. After all, when both sides are fully informed as to injury case evaluation, then there will be more settlements and fewer trials. Aren't those admirable goals and aren't they to be facilitated by lofty appeals courts?
- There is no explanation at all for why the appeals court chose to reduce the future pain and suffering award from $500,000 to $400,000. That's not such a large percentage and one wonders: why not reduce by $50,000? why not by $250,000? For most people, $50,000 here and $250,000 there are significant amounts and if we are to have appeals court judges who were not present at the trials reduce or increase the jury's verdicts by these or any similar amounts then are we not entitled to some explanation?
- The cases cited are not instructive. For example, the first and the most recent case cited is Singh v.Catamount Development Corp. That's a case involving a 14 year old boy in a skiing accident who sustained both a fractured femur and a fractured shoulder. No tibia or fibula fractures. And there, the plaintiff returned to competitive skiing 10 months after his accident. So why refer at all to that case as precedent in which there was an upward modification to $300,000 (the jury had awarded $18,000 for past pain and suffering and nothing for future)? What's the relevance? What lesson is the court trying to impart? Beats me - it's totally unclear.

We will continue our effort to shine light on and analyze significant pain and suffering verdicts and settlements so that persons with traumatic injuries and their attorneys can evaluate their own cases with more knowledge and information than is available from the publicly reported court decisions.