Bicyclist Sustains Fractures of Both Legs when Struck by Police Car; Appeals Court Upholds Trial Judge's Increase to $750,000 for Pain and Suffering after Jury Awarded only $100,000

Posted on February 13, 2010 by John Hochfelder

On August 15, 2004, then 20 year old Ervin Jordan was on his bicycle in Wyandanch, New York (Suffolk County) attempting to cross a road known as Straight Path at its intersection with State Avenue.

Jordan was peddling along, just like this fellow:

At the same time, and on State Avenue only a block away from Jordan, a county police officer received a dispatch advising of a robbery in progress. The **police officer made a quick U-turn and headed to the crime scene**. He didn't get very far. **Though he saw Jordan on his bicycle, the police officer slammed right into him.**

It wasn't this one but here's a classic Suffolk County police car:

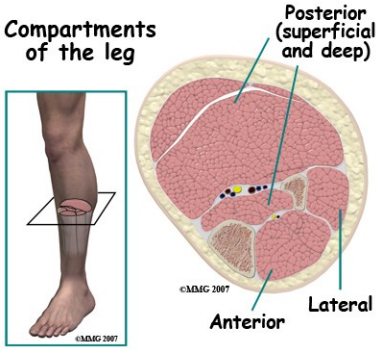
In the ensuing personal injury lawsuit, the county claimed that Jordan could not prove that the officer drove with reckless disregard for the safety of others. That standard is higher and much more difficult to prove than ordinary negligence. Under New York's **Vehicle and Traffic Law Section 1104**, that standard is applied in favor of police officers in car accidents while responding to a police call.

The Suffolk County **jury that heard this case ruled that the officer had indeed been reckless.**

In the trial on damages that followed, the jury was apprised of **plaintiff's injuries**:

- fractured tibia and fibula in **both** legs with bone chips and butterfly fragments in each
- open reduction internal fixation in **both** legs with rods and screws
- compartment syndrome (the compression of nerves and blood vessels within an enclosed space) requiring two additional surgeries know as fasciotomies (surgical incisions to relieve neurovascular pressure in a muscle compartment)
- skin graft procedures on both legs each leaving 28 cm scars
- continuing pain, limited range of motion and inability to pursue athletics or activities with his two young children

Here is what compartment syndrome looks like in the lower leg area:



After evaluating all of those injuries (which required a three week hospitalization followed by six weeks in a rehabilitation facility), **the jury awarded plaintiff $100,000 for his pain and suffering** ($50,000 past – 3 ½ years, $50,000 future – 51 years).

The trial judge, though, found that sum inadequate and ordered an increase to $750,000 ($250,000 past, $500,000 future). The defendant appealed and last week in **Jordan v. County of Suffolk** (2nd Dept. 2010), the appellate judges agreed with the lower court judge and **upheld the increase to $750,000.**

The appellate court decision disclosed nothing at all about the nature of the injuries and it also failed to set forth the reasons for upholding the trial judge's increase. **The trial judge's decision in Jordan v. County of Suffolk** did discuss the injury details but the judge's references to allegedly relevant prior cases supporting his decision are not very helpful. The judge cited these four cases:

1. Brandwein v. New York City Transit Authority (1st Dept. 2005) – dealing with an ankle fracture sustained by a 26 year old woman who thereafter underwent three surgeries and at trial was awarded $30,000 by the jury for her past pain and suffering and nothing for the future. The appellate court increased the past pain and suffering sum to **$60,000** but affirmed the denial of any future award because the plaintiff's subsequent injuries were fund to have been due to a pre-existing degenerative disease known as Charcot-Marie-Tooth Syndrome.
2. Kane v. Coundorous (1st Dept. 2004) – the appellate court sustained $250,000 for future pain and suffering for a man who suffered a **herniated disc** in his back and underwent a failed laminectomy and subsequent spinal fusion
3. Fischl v. Carbone (2nd Dept. 1993) – the appellate court sustained a pain and suffering award of **$515,000 ($300,000 past – 7 years, $215,000 future)** for injuries to a 29 year old athletic veterinarian including spiral fractures of her tibia and fibula, leaving her with a disfigured leg and unable to resume sports or her prior profession
4. Shurgan v. Tedesco (2nd Dept. 1992) – the appellate court sustained the trial judge's increase of the jury's pain and suffering award to $150,000 in a **facial scarring** case

While the judges in Jordan v. County of Suffolk properly increased the award (and they could have evaluated the pain and suffering of Mr. Jordan at much more than $750,000 without being unreasonably generous), they nonetheless either did not explain their reasons for the higher awards or (as to the trial judge) purported to so so by citing prior cases that have little relevance.

Here are two cases (just from the Appellate Division's 2nd Dept.) that the judges could and should have cited and discussed:

- **Brown v. Elliston** (2nd Dept. 2008) - **$700,000** ($300,000 past, $400,000 future) for a 53 year old man with comminuted fractures to the shaft of his tibia and fibula requiring open reduction and internal fixation of a rod down the length of his shin
- **Bajwa v. Saida, Inc**. (2nd Dept. 2004) - **$700,000** for a 61 year old construction worker with spiral fractures of his tibia and fibula requiring open reduction and internal fixation with an intermedullary rod

Perhaps the judges would have found useful **our review of tibia and fibula fracture lawsuits and appellate decisions, here.**

Inside Information:

- The jury determined that both parties were negligent and they assigned 25% of the fault to Jordan. Therefore, **his gross recovery was reduced from $750,000 to $562,500**
- In his closing, plaintiff's attorney, **Oscar Michelen** had asked the jury for a pain and suffering verdict of $1,000,000. I hear that when the county attorney told the appellate judges in oral argument that $100,000 was a reasonable sum for Mr. Jordan's injuries one of the judges was so surprised that he blurted out, **"Maybe in 1920."** Clearly, he and his colleagues on the bench had a much higher figure in mind. And clearly, too, Mr. Michelen's request for $1,000,000 for his client was reasonable and his advocacy was superlative.