

New York Injury Cases Blog

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Leg Amputated After Drunk College Student Struck By Subway Train - \$2,300,000 Pain and Suffering Jury Verdict

A college student, Dustin Dibble, was out on the town for four hours drinking with his buddies, he got drunk (blood alcohol level more than two times the legal limit for driving), ended up on the subway tracks (he doesn't know how he got there) and lost his leg below his knee when he was run over by a New York City subway train. This week, a Manhattan jury awarded him **\$2,300,000** for his pain and suffering. The jury found that while Dibble was 35% at fault, the subway operator was 65% at fault and that the total pain and suffering damages for this below the knee amputation injury would have been \$3,500,000 (were the city 100% at fault). Applying the rules of comparative negligence, Dibble got 65% or \$2,300,000.

And now, the [New York Post](#), [other newspapers](#), the blogosphere ([here](#), [here](#), and [here](#)) and even politicians are all abuzz about this case that appears outrageous to many.

The [mayor of New York City has spoken out calling the jury's verdict "incomprehensible"](#) and suggesting that the issue of "personal responsibility [on Dibble's part]" should have but did not carry the day in court.

No doubt too, this case will bring up anew discussions among leading writers, academics and think-tankers who, such as [Walter Olson, blogging at Overlawyered](#), often grapple with issues of personal responsibility and comparative fault in injury cases.

To put this case into some perspective, we need to look at a couple of leading appellate cases that dealt with similar issues. In [Soto v. New York City Transit Authority](#), New York's highest court ruled that an 18 year old's reckless behavior (getting drunk, running after a subway train to catch up to it and board it and then getting struck by it) was not of such a nature as to constitute the sole legal cause of his injuries (bilateral below the knee amputations). Therefore, the court held that the train operator's duties were not vitiated and the plaintiff could try to convince a jury that the operator bore all or some of the responsibility for the accident. Line Mr. Dibble, the plaintiff in the [Soto](#) case claimed that even though

he was drunk, the conductor could have and should have seen him in time to stop and was therefore negligent. Document hosted at JDSUPRA™

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In a more recent case, [Mirjah v. New York City Transit Authority](#), an appellate court found in favor of the subway operator. In that case, a drunk sitting on the subway tracks was killed when run over by a subway car coming into the station. The court dismissed the ensuing wrongful death lawsuit without a trial because it was undisputed that the train operator exercised reasonable care and the accident was unavoidable under the circumstances.

As to the damages for pain and suffering in traumatic below the knee amputation cases, it appears that the jury's evaluation was reasonable and that if the liability verdict is upheld (**this case will be appealed**), then the damages verdict will not likely be disturbed by the appellate court. For example, in [Bondi v. Bambrick](#), the appellate court upheld a **\$9,750,000** pain and suffering damages award (\$2,250,000 past, \$7,500,000 future) for a 35 year old woman who was a passenger on a motorcycle struck by a drunk driver. She had been a very active woman, underwent nine surgeries prior to trial, was left with pervasive scarring and a wound at the amputation site that would never heal, was unable to have a permanent prosthetic, would require revision surgery every 18 months and was in permanent pain.

In [Miller v. Long Island Rail Road](#), the appellate court ruled that **\$3,250,000** was proper for pain and suffering damages (\$1,300,000 past, \$1,950,000 future) for a plaintiff who suffered a below the knee amputation when he was nine years old and fell off a train and was crushed. The plaintiff was active in sports after the accident and became a medal-winning swimmer in high school and a member of the varsity track team.

So, back to the fault issues in these types of cases. Should these intoxicated plaintiffs even be permitted to present their claims to juries? Should their cases be dismissed? Should there be a law -- a statute -- that stops them from suing? These are some of the issues that will confront the courts, and society as a whole, time and again.

The defense in the [Soto](#) case argued (unsuccessfully) just these **policy points**:

- When a person has been reckless, becomes drunk, should he be barred from the courthouse in these types of cases?
- Does requiring defendants in these types of cases to take precautions conflict with other interests such as efficiency, or the safety of others not directly involved in plaintiffs' dangerous activities?
- Would allowing plaintiff to recover deliver a message at odds with socially accepted norms or values.?

These issues will not soon disappear and we will surely be revisiting them as new cases are brought, new verdicts are rendered and, perhaps, new statutes are enacted.

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