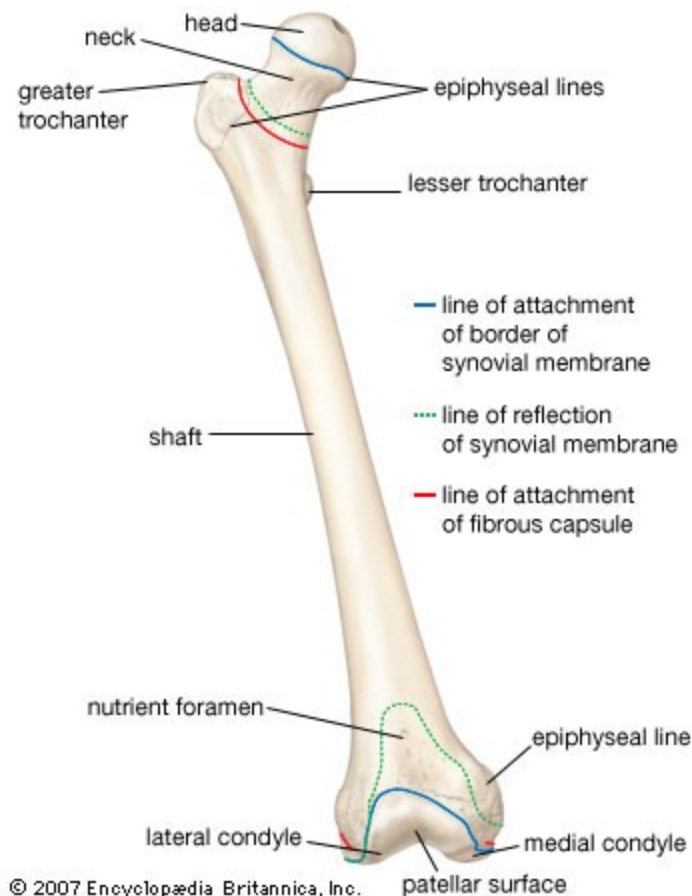


Femur Fracture Pain and Suffering Injury Cases - \$4,800,000 Upheld on Appeal in New York

Posted on February 27, 2009 by [John Hochfelder](#)

The **femur** (commonly called the thighbone) is the longest and the strongest bone in the body. To break the femur across its length, or shaft, takes a great deal of force, such as might occur in a car accident or a fall from a high place. Repairing the broken bone often requires open reduction internal fixation surgery and it's not unusual that there are also accompanying complications such as blood vessel injuries. Mid-shaft femur fracture traumatic injuries can be life-threatening injuries due to significant blood loss.

Here's what the normal, non-fractured, femur looks like:

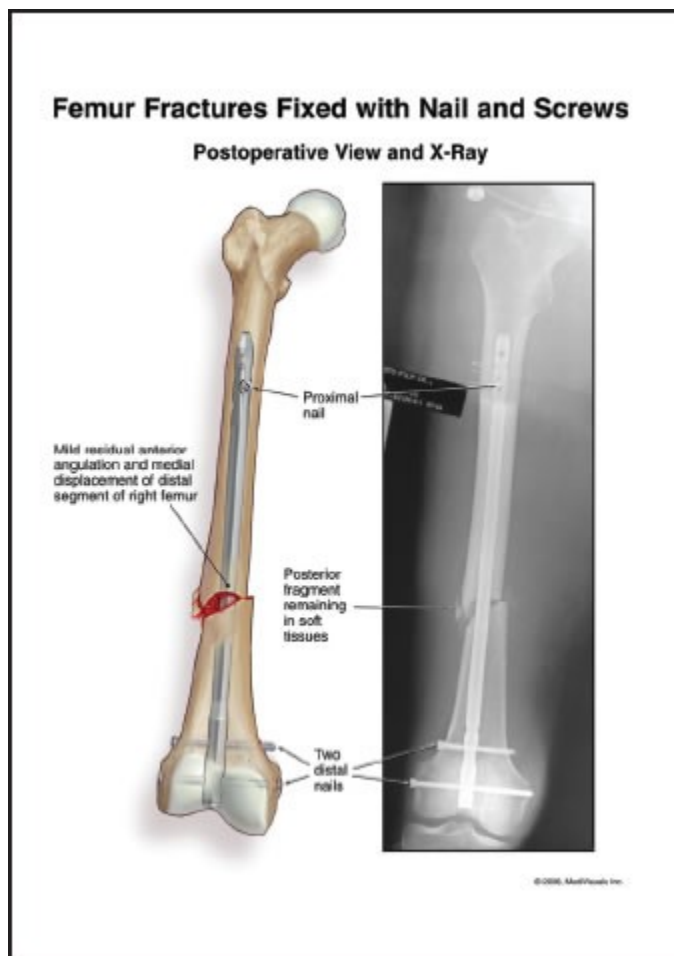


New York jurors have recognized the severity of pain and suffering from femur fracture cases and awarded significant verdicts - often in the millions. In a recent case, Mostafa v. Daraselia (Civil Court, Kings County; Index # 300737/07; 11/13/08), a 26 year old taxi driver was awarded **\$2,720,000** for his pain and suffering (\$1,900,000 past, \$825,000 future) after he suffered a comminuted femur fracture (the bone was broken into more than two distinct fragments).

In November 1994, Mostafa was walking between two cars at a gas station when one of them lurched and pinned him between the two, shearing his thighbone and also resulting in an occlusion of the artery in his leg. He underwent two emergency surgeries to repair the leg's artery and had to wait 13 days until the bone fracture could be addressed by open reduction internal fixation surgery with five screws. His doctors testified he'd need more arterial surgery and probably surgery around his knee as well.

Mr. Mostafa was left with very ugly and disfiguring scars, weakness (atrophy) in his leg's quadriceps muscle and residual reduction in his leg's range of motion. The jury, after a nine day trial in November 2008, took only an hour and 15 minutes to decide that \$1,900,000 was a fair verdict for Mostafa's terrible course of treatment and his pain and suffering over the prior four years. They then added \$825,000 for his future pain and suffering (over the course of the next 45 years).

Here's what the femur looks like after open reduction internal fixation surgery to repair the fracture:



The leading appellate cases ruling on pain and suffering for femur fracture injuries in New York indicate that an award like the one for \$2,720,000 in the Mostafa case would be upheld. For example, in Lopez v. Gomez, the appellate court affirmed a Bronx County jury's award of

\$1,500,000 just for past pain and suffering for a seven year old boy in a car accident who sustained a comminuted fracture of his femur. The boy was hospitalized for three weeks, underwent surgery and was left with leg shortening.

In Carl v. Daniel, another appeal from a Bronx County case, Colette Daniel was 12 years old when she was a passenger in a car accident in which it took a half hour to extricate her from the car and she suffered a severe comminuted fracture of her left femur. She had two surgeries within a week of the accident - one to insert a tibial pin into her leg and the other to insert an intramedullary rod into her femur. She had a third surgery two years later to have the rod removed.

Unfortunately, the severe damage to the muscle tissue surrounding the area of Colette Carl's broken leg resulted in the formation of extra bone within the muscle tissue itself. This condition, called heterotopic ossification, erodes muscle tissue, causes weakness and is very painful. Colette's doctors testified at trial, seven years after the accident, that it would increase in severity during the entire course of her life and that she would need an operation within five years to remove the excess bone once the pain became unbearable.

The jury awarded Colette Daniel \$7,000,000: \$4,000,000 for her past pain and suffering (over seven years) plus \$3,000,000 for her future pain and suffering (61 years). The trial judge ruled that these amounts were too high and he reduced them to **\$1,500,000 for past pain and suffering and \$1,000,000 for future pain and suffering.**

The defendant appealed, contending that the reduced total of \$2,500,000 was still too high. Bad move. Plaintiff's appellate counsel, Mauro, Goldberg & Lilling, widely known and respected for its work representing defendants on appeals, in this case had the guts to argue that the trial judge's reduction was erroneous and that the entire jury verdict of \$4,800,000 should be reinstated. Good move.

The appeals court compromised and ruled that **\$4,800,000** was the proper pain and suffering award for Colette Carl (\$2,300,000 past, \$2,500,000 future). It found that that the the trial judge's reduction was too much but also that the jury's figure was too high. The appellate court was impressed with the very painful and debilitating time Colette endured during her formative teenage years and it was also moved by the medical testimony at trial that Colette would endure a lifetime of pain and additional surgeries. With interest (once a judgment is entered in New York, it accrues 9% interest by law until paid), the defendant ended up paying about \$6,000,000. Had the verdict been paid after the trial judge reduced it to \$2,500,000 there would have been a savings of \$3,500,000.

Lest one think that all femur fracture cases result in million dollar pain and suffering verdicts, we leave you with two cases that resulted in significantly lower amounts. In Moore v. MTA (Supreme Court, New York County; Index # 111504/06; 7/28/08), an 87 year old woman fell inside a moving bus and fractured her femur requiring open reduction internal fixation surgery. The defense contended that Ms. Moore's fracture and her continuing disabilities stemmed from pre-existing osteoarthritis. Maybe so, but the Manhattan jury still found that a pain and suffering award of **\$450,000** was fair (\$250,000, past, \$200,000 future)

In [Singh v. Catamount Development Corp.](#), a 14 year old boy fell while skiing and sustained both a femur fracture and a shoulder fracture, with three leg surgeries and multiple post-accident dislocations of his shoulder. Vincentine Singh got only \$18,000 in past pain and suffering damages from the Manhattan jury (and nothing at all for his future pain and suffering). Why? Because this tough kid, after a 3 1/2 month recuperation, followed by physical therapy, went out and returned to competitive skiing 10 months after the accident. Good for him.

The appeals court, though, increased Singh's awards to a total of **\$300,000** (\$200,000 past, \$100,000 future). The jury clearly "bought" the defense argument that because Vincentine made a good recovery and was skiing again he should get little or nothing; however, the appeals court disagreed and ruled that, considering what this kid went through with all his surgeries and pain and with some limitations that are always present following such major trauma, an award of \$300,000 was fair.

I often tell clients that they should go out and recover as best they can, push through their pain and try to return to normalcy. Try to be better than you were. I'll take care of presenting your damage claims to the jury and I will convince them not to penalize you for being a "trooper." Jurors hate malingerers and will penalize them. They generally like "troopers" and will reward them. And if jurors make the wrong decision, well then that's what the appeals courts are for.