

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D12090  
Y/hu

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Argued - June 20, 2006

ANITA R. FLORIO, J.P.  
GLORIA GOLDSTEIN  
WILLIAM F. MASTRO  
STEVEN W. FISHER, JJ.

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2005-09111

DECISION & ORDER

Shamel Ferguson, etc., et al., appellants, v  
Mohammad Z. Iqbal, et al., respondents,

(Index No. 31470/00)

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Kramer & Dunleavy, LLP, New York, N.Y. (Denise M. Dunleavy, Jonathan R. Ratchik, and Lenore Kramer of counsel), for appellants.

Wilson, Elser, Moskowitz, Edelman & Dicker, LLP, New York, N.Y. (Gregory S. Katz and Debra A. Adler of counsel), for respondent Mohammad Z. Iqbal.

In an action to recover damages for personal injuries, etc., the plaintiffs appeal from a judgment of the Supreme Court, Kings County (Schneier, J.), entered August 25, 2005, which, upon a jury verdict on the issue of liability, is in favor of the defendants and against them, dismissing the complaint.

ORDERED that the judgment is affirmed, with costs to the defendant Mohammad Z. Iqbal.

The plaintiffs contend that the Supreme Court committed reversible error in declining to instruct the jury that any negligence of the infant plaintiff's mother could not be imputed to the infant plaintiff. Pursuant to General Obligations Law § 3-111, the contributory negligence of an infant plaintiff's parent or custodian shall not be imputed to the infant in an action brought by the infant to recover damages for personal injuries.

Here, the Supreme Court instructed the jury regarding the applicable principles of law

concerning the defendants' potential liability for negligence. At no time was the issue of contributory or comparative negligence ever presented to the jury. Accordingly, there was no need to instruct the jury that the mother's contributory negligence could not be imputed to the infant plaintiff, since the jury found the defendants free from negligence and was never presented with any question of the infant plaintiff's negligence (*see Palazzo v Hartford Ins. Co. of Midwest*, 10 AD3d 711, 712; *Weingarten v Landesman*, 137 AD2d 520; *cf. Avram v Haddad*, 88 AD2d 942 [failure to instruct the jury that any negligence by the infant plaintiff's brother could not be imputed to the infant plaintiff constituted reversible error where the jury had been given a comparative negligence charge]).

Similarly unavailing is the plaintiff's contention that the court erred in failing to instruct the jury with respect to Vehicle & Traffic Law § 1146, and that a violation of that statute constitutes negligence. The court properly charged the jury regarding New York City Traffic Regulations § 4-04(d), which superseded Vehicle & Traffic Law § 1146 (*see Vehicle & Traffic Law § 1642*[10]; *Ferreira v New York City Tr. Auth.*, 79 AD2d 596).

FLORIO, J.P., GOLDSTEIN, MASTRO and FISHER, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court