

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

D12183
C/mv

_____AD3d_____

Argued - September 5, 2006

THOMAS A. ADAMS, J.P.
GLORIA GOLDSTEIN
WILLIAM F. MASTRO
ROBERT A. LIFSON, JJ.

2004-10567

DECISION & ORDER

Gina Fulmore, etc., et al., respondents-appellants,
v City of New York, et al., defendants, New York City
Transit Authority, et al., appellants-respondents.

(Index No. 22319/00)

Wallace D. Gossett (Steve Efron, New York, N.Y., of counsel), for appellants-respondents New York City Transit Authority and David Zollo.

Bryan M. Rothenberg (Fiedelman & McGaw, Jericho, N.Y. [Ross P. Masler] of counsel), for appellant-respondent Joseph Fontana.

Breadbar, Garfield & Schmelkin, New York, N.Y. (The Breakstone Law Firm, P.C., Bellmore, N.Y. [Jay L. T. Breakstone and Martin R. Garfield] of counsel), for respondents-appellants.

In an action to recover damages for personal injuries, etc., (1) the defendants New York City Transit Authority and David Zollo appeal, as limited by their brief, from so much of a judgment of the Supreme Court, Kings County (Vaughan, J.), entered November 3, 2004, as, upon a jury verdict finding that the defendant David Zollo, a bus driver for the defendant New York City Transit Authority, was 70% at fault in the happening of the accident, the defendant Joseph Fontana was 20% at fault in the happening of the accident, and the infant plaintiff, Gina Fulmore, was 10% at fault in the happening of the accident, and awarding the infant plaintiff damages in the sum of \$1,250,000 for past pain and suffering, is in favor of the infant plaintiff, Gina Fulmore, and against the defendant New York City Transit Authority, (2) the defendant Joseph Fontana appeals, as limited

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by his brief, from so much of the same judgment is in favor of the infant plaintiff, Gina Fulmore, and against him, and (3) the plaintiffs cross-appeal, as limited by their notice of appeal and brief, from so much of the same judgment as failed to award the infant plaintiff, Gina Fulmore, damages for future pain and suffering.

ORDERED that the judgment is affirmed insofar as appealed and cross-appealed from, without costs or disbursements.

The verdict as to liability was based upon a fair interpretation of the evidence, and accordingly, will not be set aside as against the weight of the evidence (*see Corcoran v People's Ambulette Serv.*, 237 AD2d 402). Furthermore, the damages awarded to the infant plaintiff for past pain and suffering did not deviate materially from what would be reasonable compensation (*see CPLR 5501[c]*).

The plaintiffs' contention is without merit.

ADAMS, J.P., GOLDSTEIN, MASTRO and LIFSON, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court