

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

D13186
T/mv

_____AD3d_____

Argued - November 6, 2006

GLORIA GOLDSTEIN, J.P.
PETER B. SKELOS
ROBERT J. LUNN
JOSEPH COVELLO, JJ.

2005-03993

DECISION & ORDER

Joel Desir, et al., respondents,
v Hector Sburlati, appellant.

(Index No. 19290/99)

Ahmuty, Demers & McManus, Albertson, N.Y. (Brendan T. Fitzpatrick of counsel),
for appellant.

Pecoraro & Schiesel, New York, N.Y. (Steven G. Schiesel of counsel), for
respondents.

In an action to recover damages for personal injuries, etc., the defendant appeals, as limited by his brief, from so much of a judgment of the Supreme Court, Queens County (Lebowitz, J.), dated January 14, 2005, as, upon a jury verdict, and upon a decision of the same court dated November 14, 2002, is in favor of the plaintiff Joel Desir and against him in the principal sums of \$200,000 for past pain and suffering, \$550,000 for future pain and suffering, and \$25,000 in punitive damages.

ORDERED that the judgment is affirmed insofar as appealed from, with costs.

The damages awards for past and future pain and suffering do not deviate materially from what would be reasonable compensation (*see Johnston v Joyce*, 192 AD2d 1124).

Further, the award of punitive damages was supported by sufficient evidence since the defendant's conviction of assault in the second degree arising out of the same events as those alleged

December 19, 2006

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in this action established the defendant's civil liability for damages for recklessly causing the plaintiff Joel Desir's injuries (*see O'Sullivan v Kim*, 29 AD3d 656; *Bazazian v Logatto*, 299 AD2d 433; *see also Allstate Ins. Co. v Zuk*, 78 NY2d 41; *D'Arata v New York Cent. Mut. Fire Ins. Co.*, 76 NY2d 659).

The defendant's remaining contention is without merit.

GOLDSTEIN, J.P., SKELOS, LUNN and COVELLO, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, sweeping initial "J".

James Edward Pelzer
Clerk of the Court