

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

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_____AD3d_____

Argued - June 9, 2008

FRED T. SANTUCCI, J.P.
DANIEL D. ANGIOLILLO
RANDALL T. ENG
CHERYL E. CHAMBERS, JJ.

2007-05700

DECISION & ORDER

Marzieh Moshiri, appellant, v Alejandro Batista,
et al., respondents.

(Index No. 10228/02)

Omrani & Taub, P.C., New York, N.Y. (Jay L.T. Breakstone of counsel), for appellant.

Fogarty, Felicione & Duffy, P.C., Mineola, N.Y. (Patrick J. Fogarty of counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals, on the ground of inadequacy, from a judgment of the Supreme Court, Kings County (Partnow, J.), dated May 4, 2007, which, upon a jury verdict, awarded her the principal sum of only \$35,000.

ORDERED that the judgment is affirmed, with costs.

On appeal, the plaintiff claims that her award of damages was inadequate. She argues that it was inconsistent for the jury to accept her claims under the so-called “90/180 day rule,” and yet reject her claims that she sustained a “significant limitation of use of a body function or system” and a “permanent consequential limitation of use of a body organ or member,” and that such inconsistency warrants a new trial on the issue of damages. However, the plaintiff’s contention in this regard is not preserved for appellate review since she did not raise it before the jury was discharged (*see Barry v Manglass*, 55 NY2d 803, 806; *Steginsky v Gross*, 46 AD3d 671, 672). The awards for

future medical expenses and for past and future pain and suffering did not deviate materially from what would be considered reasonable compensation (*see* CPLR 5501[c]; *Ruiz v Hart Elm Corp.*, 44 AD3d 842, 842).

SANTUCCI, J.P., ANGIOLILLO, ENG and CHAMBERS, 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