

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

D20956
Y/kmg

_____AD3d_____

Argued - September 15, 2008

WILLIAM F. MASTRO, J.P.
ROBERT A. LIFSON
EDWARD D. CARNI
RANDALL T. ENG, JJ.

2007-02151
2007-10039

DECISION & ORDER

Salvatore Kalmeta, et al., plaintiffs-respondents,
v Charles R. Poelker, et al., defendants
third-party plaintiffs-appellants; New York
City Department of Sanitation, et al., third-party
defendants-respondents.

(Index No. 16166/04)

Rivkin Radler LLP, Uniondale, N.Y. (Evan H. Krinick, Cheryl F. Korman, Harris J. Zakarin, and Melissa M. Murphy of counsel), for defendants third-party plaintiffs-appellants.

Harry I. Katz, P.C., Fresh Meadows, N.Y. (Shayne, Dachs, Corker, Sauer & Dachs, LLP [Jonathan A. Dachs], of counsel), for plaintiffs-respondents.

In an action to recover damages for personal injuries, etc., the defendants third-party plaintiffs appeal (1) from an interlocutory judgment of the Supreme Court, Kings County (Schneier, J.), dated March 6, 2007, which upon a jury verdict, is in favor of the plaintiffs and against them on the issue of liability and in favor of the third-party defendants and against them, dismissing the third-party complaint, and (2), as limited by their brief, from so much of an order of the same court (Dabiri, J.) dated September 17, 2007, as denied that branch of their motion which was to reduce the jury's awards for past and future pain and suffering.

ORDERED that the interlocutory judgment is affirmed; and it is further,

November 5, 2008

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ORDERED that the order is affirmed insofar as appealed from; and it is further,

ORDERED that one bill of costs is awarded to the plaintiffs-respondents.

Although the parties introduced alternative versions of the manner in which the accident occurred, the jury was entitled to credit the version offered by the injured plaintiff (*see Rahman v Smith*, 40 AD3d 613, 614; *Buchberger v Barrack*, 151 AD2d 632, 632-633), and the jury's verdict could have been reached on a fair interpretation of the evidence (*see Perez v Navarro*, 148 AD2d 509, 510; *Nicastro v Park*, 113 AD2d 129).

Under the circumstances presented here, the jury's award for past and future pain and suffering did not materially deviate from what would be considered reasonable compensation (*see CPLR 5501[c]*; *DeSimone v Royal GM, Inc.*, 49 AD3d 490, 491; *Stylianou v Calabrese*, 297 AD2d 798, 799).

The defendants third-party plaintiffs' remaining contentions are either not properly before this Court or without merit.

MASTRO, J.P., LIFSON, CARNI and ENG, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court