

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

D21507
O/kmg

_____AD3d_____

Argued - November 24, 2008

REINALDO E. RIVERA, J.P.
DANIEL D. ANGIOLILLO
RANDALL T. ENG
ARIEL E. BELEN, JJ.

2007-09222

DECISION & ORDER

Steven G. Shalot, appellant, v Schneider
National Carriers, Inc., et al., respondents.

(Index No. 6332/04)

Sedaghati & Associates, P.C., New York, N.Y. (Eitan Alexander Ogen of counsel),
for appellant.

Lester Schwab Katz & Dwyer, LLP, New York, N.Y. (Harry Steinberg and Steven
B. Prystowsky of counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals from a judgment of the Supreme Court, Kings County (Johnson, J.), dated August 28, 2007, which, upon a jury verdict on the issue of liability, is in favor of the defendants and against him dismissing the complaint.

ORDERED that the judgment is affirmed, with costs.

On the morning of December 26, 2002, one day after a six-inch snowfall, the plaintiff was driving his vehicle on Lawrence Street in New Hyde Park. He entered the intersection with New Hyde Park Road, intending to make a left turn, when the rear of his vehicle was struck by a tractor-trailer being driven on New Hyde Park Road by the defendant Aleksander Orer in the course of his employment with the defendant Schneider National Carriers, Inc. (hereinafter Schneider). The plaintiff and Orer each alleged that he had a green light.

The plaintiff contends that the Supreme Court erred in giving the jury an emergency doctrine instruction because Orer was not faced with a sudden and unforeseen occurrence. However,

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any alleged error in charging the emergency doctrine was harmless and does not require a reversal under the circumstances of this case. Following the court's instructions, the jury found that Orer was negligent, but that his negligence was not a substantial factor in causing the accident. Thus, the jury rejected the emergency doctrine when it found that Orer was negligent (*c.f. Amodeo v Cumella*, 41 AD3d 396, 398; *see generally Silverstein v Marine Midland Trust Co. of N.Y.*, 35 AD3d 840).

Contrary to the plaintiff's position, the Supreme Court properly admitted into evidence photographs of a tractor-trailer that was similar to the tractor-trailer involved in the accident, since Orer testified that the photographs fairly and accurately represented the tractor-trailer he was driving at the time of the accident (*see Cubeta v York Intl. Corp.*, 30 AD3d 557, 561; *Kartychak v Consolidated Edison of N.Y.*, 304 AD2d 487). Additionally, the testimony given by the defendants' accident reconstruction expert verified that the tractor-trailer depicted in the photographs was comparable in height and length to the one involved in the accident.

The plaintiff's remaining contentions are without merit.

RIVERA, J.P., ANGIOLILLO, ENG and BELEN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court