

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

D21527
Y/kmg

_____AD3d_____

Argued - October 24, 2008

FRED T. SANTUCCI, J.P.
JOSEPH COVELLO
JOHN M. LEVENTHAL
ARIEL E. BELEN, JJ.

2007-08943

DECISION & ORDER

Jesus Taveras, respondent, et al., plaintiff, v
Muhammad A. Amir, et al., appellants,
et al., defendants.

(Index No. 28477/02)

Philip J. Rizzuto, P.C., Carle Place, N.Y. (Kristen N. Reed of counsel), for appellants
Muhammad A. Amir and Thurston Steed.

Russo, Keane & Toner, LLP, New York, N.Y. (Thomas F. Keane of counsel), for
appellants Lakhwinder Singh and Platform Taxi Service, Inc.

Block & O'Toole (Pollack, Pollack, Isaac & De Cicco, New York, N.Y. [Brian J.
Isaac and Jillian Rosen]) of counsel, for respondent.

In an action to recover damages for personal injuries, etc., the defendants Muhammad A. Amir and Thurston Steed appeal, and the defendants Lakhwinder Singh and Platform Taxi Service, Inc., separately appeal, from a judgment of the Supreme Court, Kings County (Schack, J.), entered August 29, 2007, which, upon a jury verdict on the issue of liability finding these defendants 100% at fault in the happening of the accident, upon the granting of the motion of the plaintiff Jesus Taveras for judgment as a matter of law on the issue of serious injury, and upon a jury verdict on the issue of damages finding that the plaintiff Jesus Taveras sustained damages in the sums of \$1,000,000 for past pain and suffering, \$5,000,000 for future pain and suffering, \$150,000 for past lost earnings, \$774,299 for future lost earnings, and \$2,339,077 for future medical expenses, is in favor of the plaintiff and against them.

December 23, 2008

Page 1.

TAVERAS v AMIR

ORDERED that the judgment is modified, on the facts and in the exercise of discretion, by deleting the provisions thereof awarding damages for past pain and suffering, future pain and suffering, future lost earnings, and future medical expenses; as so modified, the judgment is affirmed, with costs to the appellants, and the matter is remitted to the Supreme Court, Kings County, for a new trial on the issue of damages as to those causes of action only, and for the entry of an amended judgment thereafter, unless within 30 days after service upon the plaintiff Jesus Taveras of a copy of this decision and order, he shall serve and file in the office of the Clerk of the Supreme Court, Kings County, a written stipulation consenting to reduce the verdict as to damages for past pain and suffering from the sum of \$1,000,000 to the sum of \$500,000, for future pain and suffering from the sum of \$5,000,000 to the sum of \$1,250,000, for future lost earnings from the sum of \$774,299 to the sum of \$500,000, and for future medical expenses from the sum of \$2,339,027 to the sum of \$250,000, and to the entry of an amended judgment accordingly; in the event the plaintiff Jesus Taveras so stipulates, then the judgment, as so reduced and amended, is affirmed, without costs or disbursements.

Contrary to the appellants' contention, the Supreme Court did not err in granting the motion of the plaintiff Jesus Taveras (hereinafter the plaintiff) for judgment as a matter of law on the issue of whether he sustained a serious injury in the subject motor vehicle accident. Viewing the evidence in the light most favorable to the defendants, as we must, we find that there is no rational process by which the trier of fact could conclude that the plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102(d) (*see Campo v Neary*, 52 AD3d 1194; *Harwood v Hinds*, 295 AD2d 949). The Supreme Court also did not improvidently exercise its discretion in precluding the testimony of two expert witnesses who had been retained by the defendants Emerito DeLeon and Elrac, Inc. The plaintiff did not receive disclosure of these witnesses until the trial was already under way (*see* CPLR 3101[a]), and their testimony was not even offered on behalf of DeLeon or Elrac, Inc., who had previously settled with the plaintiff, and who were dismissed from the action following the liability verdict (*see generally Fava v City of New York*, 5 AD3d 724).

The jury's award of damages will not be disturbed unless the award deviates materially from what would be reasonable compensation (*see* CPLR 5501[c]; *Tyberg v Tomasino*, 19 AD3d 405; *Pellegrino v Felici*, 278 AD2d 212, 213). The damage awards deviated materially from what would be reasonable compensation to the extent indicated herein (*see Wallace v Stonehenge Group, Ltd.*, 33 AD3d 789, 790).

The appellants' remaining contentions are without merit.

SANTUCCI, J.P., COVELLO, LEVENTHAL and BELEN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court