

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

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C/hu

_____AD3d_____

Argued - March 4, 2009

STEVEN W. FISHER, J.P.
DANIEL D. ANGIOLILLO
RUTH C. BALKIN
ARIEL E. BELEN, JJ.

2007-10863

DECISION & ORDER

Robert Colon, respondent, v Triborough Bridge
and Tunnel Authority, appellant.

(Index No. 3808/00)

Wallace D. Gossett (Steve S. Efron, New York, N.Y. [Renee L. Cyr], of counsel),
for appellant.

Di Tomasso & Di Tomasso (Pollack, Pollack, Isaac & De Cicco, New York, N.Y.
[Brian J. Isaac and Diane K. Toner], of counsel), for respondent.

In an action to recover damages for personal injuries, the defendant appeals, as limited by its brief, from so much of a judgment of the Supreme Court, Kings County (Levine, J.), entered August 8, 2007, as, upon so much of a jury verdict on the issue of damages as awarded the plaintiff the sums of \$240,000 for past lost earnings and \$345,000 for future lost earnings over 8 years and upon the denial of its motion pursuant to CPLR 4401 to set aside the entire verdict as contrary to the weight of the evidence and for a new trial, is in favor of the plaintiff and against it.

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

The jury's findings regarding the plaintiff's past and future lost earnings were based on a fair interpretation of the conflicting evidence, and thus were not contrary to the weight of the evidence (*see Lolik v Big V Supermarkets*, 86 NY2d 744, 746; *Vaval v NYRAC, Inc.*, 31 AD3d 438; *Kravitz v City of New York*, 300 AD2d 362, 363; *Nicastro v Park*, 113 AD2d 129, 134-135). Insofar

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as the defendant challenges the legal sufficiency of the evidence of the plaintiff's lost earnings, such challenge is not preserved for appellate review (*see Tomaszewski v Seewaldt*, 11 AD3d 995).

FISHER, J.P., ANGIOLILLO, BALKIN and BELEN, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court