

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

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_____AD3d_____

Submitted - December 8, 2009

MARK C. DILLON, J.P.
ANITA R. FLORIO
L. PRISCILLA HALL
SANDRA L. SGROI, JJ.

2009-00705

DECISION & ORDER

Julissa Rivera, et al., appellants, v Leonard P.
Corbett, et al., respondents, et al., defendant.

(Index No. 28678/07)

Ferro, Kuba, Mangano & Sklyar, P.C., New York, N.Y. (Kenneth E. Mangano and
George J. Parisi of counsel), for appellants.

Hawkins, Feretic & Daly, LLC, New York, N.Y. (Matthew J. Zizzamia of counsel),
for respondents.

In an action to recover damages for personal injuries, etc., the plaintiffs appeal, as limited by their brief, from so much of an order of the Supreme Court, Kings County (Balter, J.), dated November 19, 2008, as granted that branch of the motion of the defendants Leonard P. Corbett and Hope A. Riley which was for summary judgment dismissing the complaint insofar as asserted against them.

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

A vehicle owned and operated by the defendant Nelson DeJesus, Jr., collided with a vehicle owned by the defendant Leonard P. Corbett and operated by the defendant Hope A. Riley (hereinafter together the respondents). The injured plaintiffs were passengers in the DeJesus vehicle. As a result, the injured plaintiffs, and the parents of the infant plaintiffs, on behalf of their children and derivatively, commenced this action against the defendants.

The respondents established their entitlement to judgment as a matter of law by demonstrating that Riley was lawfully operating the Corbett vehicle within her own lane of traffic when the DeJesus vehicle entered into her lane of traffic and collided with the Corbett vehicle (*see* Vehicle and Traffic Law § 1128[a]; *Summers v Teddy Cab Corp.*, 50 AD3d 671; *Shuman v Maller*, 45 AD3d 566, 567; *Jacino v Sugerman*, 10 AD3d 593). In opposition, the plaintiffs failed to raise a triable issue of fact as to the comparative negligence of the respondents. The plaintiffs' contention that the motion was premature was without merit (*see* CPLR 3212[f]; *Neryaev v Solon*, 6 AD3d 510).

DILLON, J.P., FLORIO, HALL and SGROI, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court