

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

D30190
W/kmb

_____AD3d_____

Argued - January 25, 2011

MARK C. DILLON, J.P.
JOSEPH COVELLO
ANITA R. FLORIO
L. PRISCILLA HALL, JJ.

2010-01869
2010-01870

DECISION & ORDER

In the Matter of Allstate Insurance Company,
respondent, v Tae Hong Ji, et al., appellants.

(Index No. 7173/09)

Sim & Park, LLP, New York, N.Y. (Sang J. Sim of counsel), for appellants.

Robert P. Tusa, Garden City, N.Y. (Donald Sweeney of counsel), for respondent.

In a proceeding pursuant to CPLR article 75 to permanently stay arbitration of an uninsured motorist claim, Tae Hong Ji and Yun Hee Ji appeal from (1) a decision of the Supreme Court, Queens County (Rios, J.), entered February 5, 2010, and (2) a judgment of the same court entered February 5, 2010, which, upon the decision, made after a framed-issue hearing, granted the petition and permanently stayed arbitration.

ORDERED that the appeal from the decision is dismissed, as no appeal lies from a decision (*see Schicchi v J.A. Green Constr. Corp.*, 100 AD2d 509); and it is further,

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

ORDERED that one bill of costs is awarded to the petitioner.

Where, as here, a case is determined after a hearing held before a justice, this Court's power to review the evidence is as broad as that of the hearing court, taking into account in a close case the fact that the hearing judge had the advantage of seeing the witnesses (*see Northern*

February 22, 2011

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Westchester Professional Park Assoc. v Town of Bedford, 60 NY2d 492, 499; *Matter of Progressive Northeastern Ins. Co. v Harding*, 63 AD3d 947; *Matter of New York Cent. Mut. Fire Ins. Co. v Vento*, 63 AD3d 841, 844; *Matter of Government Employees Ins. Co. v Steinmetz*, 51 AD3d 1022).

We decline to disturb the Supreme Court's finding that there was no physical contact between the appellants' vehicle and an alleged hit-and-run vehicle (*see Matter of Government Employees Ins. Co. v Steinmetz*, 51 AD3d at 1022).

Accordingly, the Supreme Court correctly granted the petition to permanently stay arbitration.

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

ENTER:


Matthew G. Kiernan
Clerk of the Court