

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

D30413
O/kmb

_____AD3d_____

Argued - February 22, 2011

DANIEL D. ANGIOLILLO, J.P.
ANITA R. FLORIO
JOHN M. LEVENTHAL
ROBERT J. MILLER, JJ.

2010-03834

DECISION & ORDER

Robert John Jordan, Jr., respondent-appellant, v Port
Authority of New York and New Jersey, et al.,
appellants-respondents.

(Index No. 34077/06)

James M. Begley, New York, N.Y. (Melissa Banks of counsel), for appellants-
respondents.

Robert Washuta, P.C., New York, N.Y., for respondent-appellant.

In an action to recover damages for personal injuries, the defendants appeal, as limited by their brief, from so much of an order of the Supreme Court, Kings County (Rothenberg, J.), dated March 15, 2010, as granted that branch of the plaintiff's motion which was pursuant to CPLR 4404(a) to set aside the jury verdict on the issue of liability as contrary to the weight of the evidence and for a new trial, and the plaintiff cross-appeals, as limited by his brief, from so much of the same order as, in effect, denied those branches of his motion which were pursuant to CPLR 4401 for judgment as a matter of law on the issue of liability and pursuant to CPLR 4404(a) to set aside the jury verdict and for judgment as a matter of law.

ORDERED that the order is affirmed insofar as appealed and cross-appealed from, without costs or disbursements.

A jury verdict in favor of a defendant should not be set aside as contrary to the weight of the evidence unless the evidence preponderates so heavily in the plaintiff's favor that the verdict could not have been reached on any fair interpretation of the evidence (*see Lolik v Big V*

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Supermarkets, 86 NY2d 744, 746; *Cedeno v McNulty*, 39 AD3d 683, 683; *Nicastro v Park*, 113 AD2d 129). While great deference must be accorded to the credibility determinations of the jury, “a trial court’s discretion to set aside the verdict is at its broadest when it appears that the unsuccessful litigant’s evidentiary position was particularly strong compared to that of the victor” (*Barbieri v Vokoun*, 72 AD3d 853, 855 [internal quotation marks and citations omitted]; see *Nicastro v Park*, 113 AD2d at 136).

The Supreme Court properly granted that branch of the plaintiff’s motion which was pursuant to CPLR 4404(a) to set aside the verdict as contrary to the weight of the evidence and for a new trial. A fair interpretation of the evidence did not support the jury’s finding that the defendant driver was free from negligence in the operation of his motor vehicle and the happening of the accident. The plaintiff testified that the defendant driver sped through a stop sign and failed to yield the right-of-way to the plaintiff, causing the accident. Both the plaintiff, who was familiar with the intersection where the accident occurred, and an employee of a business located at that intersection testified that the defendant driver had a stop sign in the direction in which he was traveling. The defendant driver, who did not remember the details of the accident, could not recall whether there was a stop sign at the relevant corner. Moreover, video footage from two surveillance cameras depicting the accident is dark, blurry, and inconclusive on the issues of whether the stop sign existed on the relevant corner and whether it was not visible on the night in question. Thus, under the circumstances of this case, the Supreme Court properly set aside the jury verdict and directed a new trial. The plaintiff, however, is not entitled to judgment as a matter of law in his favor, as issues of fact exist as to whether he also was at fault in causing the accident (see *Casaregola v Farkouh*, 1 AD3d 306, 307; *Brucaliere v Garlinghouse*, 304 AD2d 782, 782; *Batal v Associated Univs.*, 293 AD2d 558, 560; *Rockman v Brosnan*, 280 AD2d 591, 592).

Since a new trial was granted, we note that the Supreme Court erred in issuing the missing or obscured stop sign charge to the jury, but that it was proper for the court to admit into evidence the testimony, business records, and photographs offered by a Port Authority Central Automotive Division employee (see CPLR 4518[a]; *Cubeta v York Intl. Corp.*, 30 AD3d 557, 561; *Morgan v Pascal*, 274 AD2d 561, 561; cf. *Colon v Futterman*, 222 AD2d 548, 549).

ANGIOLILLO, J.P., FLORIO, LEVENTHAL and MILLER, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court