

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

D33934
C/nl

_____AD3d_____

Argued - January 19, 2012

REINALDO E. RIVERA, J.P.
THOMAS A. DICKERSON
CHERYL E. CHAMBERS
LEONARD B. AUSTIN, JJ.

2010-06810
2011-00471

DECISION & ORDER

Jason Arroyo, etc., et al., respondents, v Christopher J. Fox, appellant, et al., defendant.

(Index No. 9345/08)

Gordon & Silber, P.C., New York, N.Y. (Andrew B. Kaufman of counsel), for appellant.

O'Dwyer & Bernstien, LLP, New York, N.Y. (Steven Aripotch of counsel), for respondents.

In an action to recover damages for personal injuries, etc., the defendant Christopher J. Fox appeals (1), as limited by his brief, from so much of a judgment of the Supreme Court, Nassau County (Galasso, J.), entered June 25, 2010, as, upon a jury verdict finding that the plaintiff Jason Arroyo sustained a serious injury under the 90/180-day category of Insurance Law § 5102(d), is in favor of that plaintiff and against him in the principal sum of \$175,000 for past pain and suffering, and (2) from an order of the same court entered July 26, 2010, which denied his application, in effect, pursuant to CPLR 4404 to set aside the jury verdict and for judgment as a matter of law, to set aside the jury verdict as contrary to the weight of the evidence and for a new trial, or, in the alternative, to reduce the amount of damages awarded on the ground of excessiveness.

ORDERED that on the Court's own motion, the notice of appeal from the order entered July 26, 2010, is treated as an application for leave to appeal, and leave to appeal is granted (*see* CPLR 5701[c]); and it is further,

ORDERED that the judgment is affirmed insofar as appealed from; and it is further,

February 14, 2012

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

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

Contrary to the appellant's contentions, the jury verdict finding that the plaintiff Jason Arroyo sustained a serious injury under the 90/180-day category of Insurance Law § 5102(d) was legally sufficient, as it was supported by a valid line of reasoning and permissible inferences (*see Cohen v Hallmark Cards*, 45 NY2d 493, 499). The jury verdict was not contrary to the weight of the evidence, as it was based on a fair interpretation of the evidence (*see Lolik v Big V Supermarkets*, 86 NY2d 744, 746). Moreover, the jury award for past pain and suffering was not excessive and did not deviate materially from what would be considered reasonable compensation under the facts of this case (*see CPLR 5501[c]*).

RIVERA, J.P., DICKERSON, CHAMBERS and AUSTIN, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino
Clerk of the Court