

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

D36937
O/kmb

_____AD3d_____

Argued - December 4, 2012

PETER B. SKELOS, J.P.
L. PRISCILLA HALL
SHERI S. ROMAN
JEFFREY A. COHEN, JJ.

2011-07686

DECISION & ORDER

Ysidra Espinal, etc., respondent, v Waldo J. Vargas,
appellant.

(Index No. 28411/08)

Cheven, Keely & Hatzis, New York, N.Y. (Thomas Torto and Jason Levine of counsel), for appellant.

Michael A. Cervini, Elmhurst, N.Y. (Robin Mary Heaney of counsel), for respondent.

In an action, inter alia, to recover damages for wrongful death and conscious pain and suffering, etc., the defendant appeals from a judgment of the Supreme Court, Queens County (Lane, J.), dated June 10, 2011, which, upon the granting of the plaintiff's motion pursuant to CPLR 4401 for judgment as a matter of law on the issue of liability made at the close of the evidence, and upon a jury verdict on the issue of damages awarding the plaintiff, individually, the principal sum of \$24,000 for economic loss and, as administrator for the estate of Elvia L. Collado, the principal sums of \$250,000 for the decedent's conscious pain and suffering and \$275,000 in punitive damages, is in favor of the plaintiff and against him in the principal sum of \$549,000.

ORDERED that the judgment is affirmed, with costs.

Contrary to the defendant's contention, there was sufficient evidence to support the award for conscious pain and suffering. The plaintiff's expert testified that the decedent was conscious for 39 minutes between the time the accident occurred and the time she was placed under anesthesia for surgery. During that time, the decedent experienced abdominal bleeding and sharp pain from broken ribs which perforated her lungs, and she was "moaning" and "groaning" in response to questioning. Accordingly, we find that a verdict awarding damages for conscious pain and suffering was warranted (*see McDougald v Garber*, 73 NY2d 246; *Ramos v Shah*, 293 AD2d

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Moreover, under the circumstances of this case, it cannot be said that the jury's award for conscious pain and suffering was excessive, since it did not deviate materially from what would be reasonable compensation (*see* CPLR 5501[c]).

The defendant's remaining contentions are without merit.

SKELOS, J.P., HALL, ROMAN and COHEN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court