

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

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ROBERT DIBENEDETTO,

Plaintiff(s),

-against-

JAMES ABREU and MARIBEL ABREU,

Defendant(s),

-----X

DCM Part 4

Present:

Hon. John A. Fusco

DECISION AND ORDER

Index No.: 100321/09

Motion No.: 3851-003

The following papers numbered 1 to 3 were marked fully submitted on this 12th day of January, 2012:

Papers	Numbered
Notice of Motion by Plaintiff(s) with supporting Papers and Exhibits (dated October 17, 2011).....	1
Affirmation In Opposition by Defendant(s) (dated December 20, 2011).....	2
Reply Affirmation by Plaintiff(s) (dated January 4, 2012).....	3

After the trial of plaintiff's claim for personal injuries sustained as a result of a motor vehicle accident with defendant, plaintiff filed the aforementioned motion to overturn the jury verdict on the issue of damages as against the weight of the evidence.

The Court of Appeals held that the standard to determine when a jury verdict should be overturned as against the weight of the evidence is "whether " "the evidence so preponderate[d] in favor of the [plaintiff] that [the verdict] could not have been reached on any fair interpretation of the evidence' " (*Lolik v. Big V Supermarkets, Inc.*, 86 N.Y.2d 744, 655 N.E.2d 163, 631 N.Y.S.2d 122 (1995) *quoting* *Moffatt v. Moffatt*, 86 A.D.2d 864, 447 N.Y.S.2d 313, *affd.* 62 N.Y.2d 875, 478 N.Y.S.2d 864, 467 N.E.2d 528) The evidence presented by plaintiff, including

the testimony of Denny Julewicz, D.C.M., Jonathan Gordon, M.D., and Kenneth Chapman, M.D., established that plaintiff met the test presented under the Insurance Law § 5102(d), in that his injuries prevented him from performing substantially all of his usual and customary daily activities for more than ninety out of the first 180 days following the accident and a significant limitation of use of body function or system. Accordingly, it is hereby

ORDERED, that the motion of plaintiff to set aside the verdict rendered on October 12, 2011 is granted; and it is further

ORDERED, that the matter proceed to trial on the issues of damages only; and it is further

ORDERED, that the parties are to report to the Jury Coordinating Part on February 27, 2012 at 9:30 a.m.

Dated: January 13, 2012

E N T E R

Hon. John A. Fusco
Justice of the Supreme Court