

881 N.Y.S.2d 892
Supreme Court, Appellate Division,
Second Department, New York.

Clyde DAVISON, appellant,

v.

NEW YORK CITY TRANSIT
AUTHORITY, respondent.

June 16, 2009.

Attorneys and Law Firms

Friedman, Khafif & Sanchez (Arnold E. DiJoseph, P.C.,
New York, N.Y. [Arnold E. DiJoseph III] of counsel), for
appellant.

Wallace D. Gossett, New York, N.Y. (Steve S. Efron of
counsel), for respondent.

Opinion

*871 In an action to recover damages for personal injuries,
the plaintiff appeals from a judgment of the Supreme Court,
Kings County (Schack, J.), dated November 21, 2007, which,
upon the granting of the defendant's motion pursuant to CPLR
4404 to set aside, as contrary the weight of the evidence, a jury
verdict on the issue of liability, finding the defendant 70%
at fault and the plaintiff 30% at fault in the happening of an
accident, and, in effect, for judgment in its favor as a matter of
law, is in favor of the defendant and against him, dismissing
the complaint.

ORDERED that the judgment is reversed, on the law and
the facts, with costs, the defendant's motion to set aside the

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verdict is denied, the jury verdict on the issue of liability is
reinstated, and the matter is remitted to the Supreme Court,
Kings County, for a trial on the issues of damages.

The Supreme Court improperly awarded the defendant
judgment as a matter of law, and improperly set aside the
jury verdict as contrary to the weight of the evidence. A jury
verdict should not be set aside as contrary to the weight of the
evidence unless the jury could not have reached the verdict
by any fair interpretation of the evidence (*see Lolik v. Big V
Supermarkets*, 86 N.Y.2d 744, 631 N.Y.S.2d 122, 655 N.E.2d
163; *Nicastro v. Park*, 113 A.D.2d 129, 134, 495 N.Y.S.2d
184). *872 Whether a jury verdict should be set aside as
contrary to the weight of the evidence does not involve a
question of law, but rather requires a discretionary balancing
of many factors (*see Cohen v. Hallmark Cards*, 45 N.Y.2d
493, 410 N.Y.S.2d 282, 382 N.E.2d 1145; *Nicastro v. Park*,
113 A.D.2d 129, 495 N.Y.S.2d 184). It is for the jury
to make determinations as to the credibility of the witnesses,
and it is accorded great deference as it had the opportunity
to see and hear the witnesses (*see Bertelle v. New York City
Tr. Auth.*, 19 A.D.3d 343, 796 N.Y.S.2d 415). Under the
circumstances, the jury's determination was supported by a
fair interpretation of the evidence, and the Supreme Court
should not have set aside the verdict (*see generally Soto
v. New York City Tr. Auth.*, 6 N.Y.3d 487, 813 N.Y.S.2d
701, 846 N.E.2d 1211; *Derdiarian v. Felix Contr. Corp.*, 51
N.Y.2d 308, 434 N.Y.S.2d 166, 414 N.E.2d 666).

RIVERA, J.P., ENG, CHAMBERS, and HALL, JJ., concur.

Parallel Citations

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