

Spetter v Alliance Towing Corp.
2009 NY Slip Op 00032
Decided on January 6, 2009
Appellate Division, First Department
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Decided on January 6, 2009

Saxe, J.P., Nardelli, Buckley, Moskowitz, Renwick, JJ.

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[*1]Job M. Spetter, Plaintiff-Respondent,

v

Alliance Towing Corp., et al., Defendants-Appellants, John Doe No. 1, Defendant.

Wilson, Elser, Moskowitz, Edelman & Dicker LLP, New York
(Richard E. Lerner of counsel), for appellants.
Raymond E. Kerno, Mineola, for respondent.

Judgment, Supreme Court, Bronx County (Norma Ruiz, J.), entered January 3, 2008,
after a jury trial, awarding plaintiff damages for past and future pain and suffering in the
principal amounts of \$30,000 and \$200,000 (over five years), respectively, plus interest,
costs and disbursements, unanimously affirmed, without costs.

The testimony of plaintiff's treating physician and expert sufficiently established that
the herniated disc in plaintiff's neck was caused by the subject accident and caused a
significant and permanent loss of range of motion (*see Toure v Avis Rent A Car Sys.*, 98

NY2d 345 [2002]). While defendants' experts opined that plaintiff's neck condition was due to degenerative changes, no basis exists to disturb the jury's resolution of this credibility issue (*see Apuzzo v Ferguson*, 20 AD3d 647, 648 [2005]; *Jones v Davis*, 307 AD2d 494, 496 [2003], *lv dismissed* 1 NY3d 566 [2003]). The damage award does not deviate materially from what would be reasonable compensation under the circumstances (*cf. Kithcart v Mason*, 51 AD3d 1162 [2008]). We find defendants' remaining contentions unavailing.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: JANUARY 6, 2009

CLERK

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