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| Motelson v Ford Motor Co. |
| 2014 NY Slip Op 07926 |
| Decided on November 18, 2014 |
| Court of Appeals |
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| This opinion is uncorrected and subject to revision before publication in the Official Reports. |

Decided on November 18, 2014

No. 195

[*1]Elissa Motelson, & c., et al., Appellants,

v

Ford Motor Company, et al., Respondents. (And Another Action.)

Brian J. Isaac, for appellants.

Wendy Lumish, for respondent Ford Motor Company.

MEMORANDUM:

The order of the Appellate Division should be affirmed, with costs.

The issue of whether plaintiffs Gary Motelson and Evan Motelson had suffered [*2]and/or would continue to suffer emotional distress, as a result of being placed in a zone of danger wherein they witnessed the death of Steven Motelson, while asserted in the

complaint, was not argued to the jury at trial. Nor was this question addressed in Supreme Court's charge or submitted to the jury on the verdict sheet. Significantly, the questions on the verdict sheet concerning the roof support system asked the jury about the causation of "Steven Motelson's injuries and death," and not about harms to any others. Plaintiffs did not object to the jury charge or verdict sheet. In these circumstances, Supreme Court erred when it set aside the jury verdict and ordered a new trial on damages.

* * * * *

Order affirmed, with costs, in a memorandum. Chief Judge Lippman and Judges Graffeo, Read, Smith, Pigott, Rivera and Abdus-Salaam concur.

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