

203 A.D.2d 331, 610 N.Y.S.2d 71
(Cite as: 203 A.D.2d 331, 610 N.Y.S.2d 71)

FIND Request: 203 A.D.2d 331

Supreme Court, Appellate Division, Second Department,
New York.

Lila KAHN, et al., Appellants,

v.

QUEENS SURFACE TRANSIT CORP., et al., Respondents.

April 11, 1994.

Bus rider filed personal injury action after she fell while stepping off the bus. The Supreme Court, Queens County, DiTucci, J., entered judgment on a jury verdict for the bus company. Rider appealed. The Supreme Court, Appellate Division, held that: (1) no abuse of discretion occurred in the refusal to allow the rider to conduct a demonstration, using specially constructed boxes, of how she fell while stepping off the bus onto a driveway cut that was allegedly five and three-quarter inches lower than the curb at which the bus usually stopped, and (2) evidence supported the jury's finding that the bus company was not negligent.

Judgment affirmed.

West Headnotes

[1] Evidence 157 ↪ 188

157 Evidence

157VI Demonstrative Evidence

157k188 k. Exhibition of Person or Object in General. Most Cited Cases

No abuse of discretion occurred in refusal to allow bus rider to conduct demonstration, using specially constructed boxes, of how she fell while stepping off bus onto driveway cut that was allegedly five and three-quarter inches lower than curb at which bus usually stopped.

[2] Carriers 70 ↪ 318(8)

70 Carriers

70IV Carriage of Passengers

70IV(D) Personal Injuries

70k309 Actions for Injuries

70k318 Sufficiency of Evidence

70k318(8) k. As to Negligence in Taking Up or Setting Down Passengers. Most Cited Cases

Evidence supported jury's finding that bus company was not negligent, despite rider's claim that she fell when she had to step almost six inches further when bus stopped at driveway cut, rather than beside curb at which it usually stopped.

**71 Simon & Newman, Forest Hills (Morris J. Newman, of counsel; Mark J. Keller, on the brief), for appellants.

Sweetbaum & Sweetbaum, Lake Success (Marshall D. Sweetbaum, of counsel), for respondents.

Before BALLETTA, J.P., and ROSENBLATT, RITTER and ALTMAN, JJ.

MEMORANDUM BY THE COURT.

*331 In an action to recover damages for personal injuries, etc., the plaintiffs appeal from a judgment of the Supreme Court, Queens County (Di Tucci, J.), dated March 18, 1992, which, upon a jury verdict finding that the defendants were not at fault in the happening of the accident, dismissed the complaint.

ORDERED that the judgment is affirmed, with costs.

The injured plaintiff fell as she stepped off a bus owned by the defendant Queens Surface Transit Corp. and operated by the defendant Angelo Di-Conza. She claimed that instead of stopping the bus at the curb, where it normally stopped, the defendant bus driver negligently stopped the bus at a driveway used by Arby's restaurant, which was cut approximately 5 and 3/4 inches lower than the curb thereby increasing the total distance from the bus step to ground level to 10 **72 inches. The injured plaintiff

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also claimed that the driveway was not a part of the designated bus stop. Two transit employees, who *332 were also passengers on the bus, disputed the injured plaintiff's claim, and testified that the bus stopped at the curb as usual and not at the driveway.

[1] We find no improvident exercise of discretion in the trial court's refusal to allow a demonstration of the manner in which the injured plaintiff fell, using two wooden steps which had been constructed by the plaintiffs' lawyer, one representing the curb height and the other the additional 5 and 3/4 inch depth of the driveway, to show the difference in height between the curb and the driveway (*see generally, Uss v. Town of Oyster Bay*, 37 N.Y.2d 639, 376 N.Y.S.2d 449, 339 N.E.2d 147).

[2] "[W]hether a jury verdict is against the weight of the evidence is essentially a discretionary and factual determination" (*see, Nicastro v. Park*, 113 A.D.2d 129, 132, 495 N.Y.S.2d 184). We find that the jury's verdict finding that the defendants were not negligent was supported by a fair interpretation of the evidence (*see, Nicastro v. Park, supra*).

N.Y.A.D. 2 Dept., 1994.
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