

# The New York Jury Verdict Reporter

128 Carleton Avenue, East Islip, New York 11730



## KINGS COUNTY - SUPREME COURT

### MOTOR VEHICLE

#### Center Line

**XIX/29-8** MOTOR VEHICLE – 79 YEAR OLD DRIVE CROSSES DOUBLE YELLOW LINE, STRIKING VEHICLE CONTAINING TWO ELDERLY WOMEN – LIABILITY CONCEDED DURING TRIAL – THEIR VEHICLE THEN HIT BY TRUCK – WRONGFUL DEATH OF 76-YEAR OLD DRIVER AND 73-YEAR OLD PASSENGER – DIRECTED VERDICT FOR TRUCK DRIVER

William Simonson, as Ex. Of the Est. of Ioli Simonson v. Isidore Bernstein, James Bello, and Agar Contracting, Inc. 32965/00 Anthony Comisa, as Adm. Of the Est. of Anna Comisa, a/k/a Anne Comisa v. Isidore Bernstein; William Simonson, as Ex. Of the Est. Ioli Simonson; Jaime John Bello; and Agar Contracting, 1727/99 5-day trial Verdict 12/18/01 Kings Supreme

**JUDGE** Diana A. Johnson

**VERDICT** \$1,307,000 for Est. of Simonson. Breakdown: \$1,000,000 for 20-25 minutes of conscious pain and suffering (5/1); \$7,000 for funeral expenses (6/0); the remainder was for wrongful death (6/0) (over 1 year), broken down as follow: \$77,000 each for Ioli Simonson's three adult sons, William, Michael, and Dennis; \$15,000 each for her three grandchildren; \$6,000 each for her great-grandchildren.

\$450,000 for Est. of Comisa for wrongful death (over 1 year), broken down as follows: \$125,000 each for Anna Comisa's two adult sons, Anthony and Nicholas; \$60,000 each for her three grandchildren; \$10,000 each for her two great-grandchildren.

Liability: Bernstein conceded liability before summations: directed verdict for Bello, Agar, and Simonson as Deft. Jury: 3 male, 3 female. **A post-trial motion is pending.**

#### PLAINTIFF

**ATTORNEY(S)** Daniel Flanzig, Esq.\* Mineola, NY, for Simonson as Pltf. Joel A. Horowitz, Manhattan, trial counsel to Cohen, Frankel & Ruggeiro, L.L.P., Manhattan, for Comisa

#### DEFENSE

**ATTORNEY(S)** Robert N. Paessler of McMahon, Martine & Gallagher, Manhattan, for Bernstein Patrick J. Moynihan of Penino & Moynihan, L.L.P., White Plains, for Bello and Agar Andrew J. Gentile of Bilello & Walisever, Woodbury, for Simonson as Deft.

\*When published Daniel Flanzig, Esq. was a partner with Joachim, Flanzig, Frommer, Flanzig & Cerrato.

## FACTS

These two actions, which were joined for trial, arose out of an accident that occurred at the intersection of Flatlands and E. 80th St. in Brooklyn at 1PM on 9/9/97. Testimony indicated the Deft. Bernstein, age 79, was traveling south on E. 80th at about 20 mph. He testified that he stepped on what he thought to be the brake, but the car accelerated from 20 to 40 mph. He stated that rather than turn the car to the right toward the sidewalk where there were pedestrians, he swerved to the left to avoid colliding with the cars in front of him, and crossed the double yellow line into oncoming traffic in the north bound lane of E. 80th St., through a red traffic signal. He testified that he then blacked out.

Eyewitness accounts indicated that Bernstein's vehicle then traveled into the intersection, broadsiding a car traveling west on Flatlands, driven by Pltf.'s decedent, Simonson, age 76, in which Pltf.'s Decedent Comisa, age 73, was a front seat passenger. The impact was so significant that Comisa was thrown from the car, and Simonson was partially ejected from her seat. Testimony indicated that immediately on impact, the Simonson vehicle was pushed into the left eastbound lane of Flatlands, in front of Deft. Agar's truck driven by Bello (directed verdict for both), which was fully loaded with railroad ties, that was traveling east in the left lane on Flatlands. Bello testified at deposition that he had no opportunity to stop; his truck rolled over Comisa, who had previously been ejected from the car, and the Simonson vehicle.

After Bernstein's vehicle struck the Simonson car, it continued across the intersection, sticking a parked car, pushing it off its parking spot and into the middle of E. 80th St.; Bernstein's car then jumped the curb, sideswiped and then hit the brick wall of a supermarket, traveling onward until it hit a large garbage container, pushing it 10-15 feet until they both came to rest.

All parties stipulated that the accident caused the death of both Pltf.'s decedents. Bernstein initially testified at his deposition that he thought that the brakes had malfunctioned, but during trial he testified that he stepped on what "he thought" as the brake. After his testimony, Bernstein conceded liability. Against Agar and Bello, Pltfs. claimed that the truck was traveling 40 mph in a 30 mph zone. An accident investigation officer testified that the truck left 150-foot skid marks after striking decedent and the Simonson vehicle and was traveling in excess of the posted speed limit of 30 mph. The officer conceded on cross-examination that Bello's actions did not contribute to the accident. The courts ruled that even though the Agar truck was speeding, its speed was not the proximate cause of the accident and directed a verdict in Agar and Bello's favor.

An eyewitness who was the first individual to reach the Simonson car after it stopped, testified that Comisa was dead when he arrived. Decedent, age 73 at the time of her death, is survived by her two sons, three grandchildren, two great grandchildren. No claim was made for conscious pain and suffering.

The eyewitness testified that he then went to Simonson's aid. He testified that Simonson, who was partially in her seat and partially in the passenger seat, was moaning and alive when he arrived. He stated that he stayed with her, and told her that help was on the way. A member of the New York City fire department testified that when Simonson was removed to an ambulance 22 minutes after the accident, he heard let a slight moan, and she wiped her forehead in the area where she had received a laceration. She was taken to Brookdale Hospital; she was pronounced dead at 1:44 PM. Original hospital records were lost, and a photocopy was of such poor quality, that it was not allowed in as evidence.

Simonson, age 76 at the time of her death, is survived by her three sons, three grandchildren, and four great-grandchildren. The award to her estate included \$1,000,000 for 20-25 minutes of conscious pain and suffering. Demonstrative Evidence: photos of the vehicles and their ultimate locations; photos of the truck; police reports, diagrams; death certificates; medical examiner's reports, which stipulated that the accident was the cause of decedents' deaths. Offer: \$90,000 offered before trial for each decedent; \$100,000 for each offered at trial; demand: before jury selection Comisa demanded \$200,000 increased to \$250,000 after Deft.'s testimony; Simonson demanded \$750,000. Jury Deliberation: approximately 6 hours. Carriers: Allstate for Bernstein (\$100,00/\$300,000 policy with \$2,000,000 excess); Geico for Simonson as Deft. Fulcrum for Agar and Bello.