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This memorandum is uncorrected and subject to revision before
publication in the New York Reports.

No. 225 SSM 36
Justin M. Shubbuck,
Respondent,
v.
Sean M. Conners et al.,
Appellants.

Submitted by Merrill Biscone, for appellants.
Submitted by Wayne C. Felle, for respondent.

MEMORANDUM:

The order of the Appellate Division should be modified,
with costs to defendants, by remitting the matter to Supreme
Court for further proceedings in accordance with this memorandum
and, as so modified, affirmed.

Plaintiff's own testimony, without more, was insufficient to establish by a reasonable certainty his loss of future wages as a result of the accident. In this case, the W-2 forms and tax returns that plaintiff introduced demonstrated his yearly income post accident but they were not probative of a reduction in future wages as a result of the accident because they did not compare his pre and post accident income nor compare his post accident income with the income of similarly situated employees in plaintiff's company. Accordingly, there is "no valid line of reasoning and permissible inferences which could possibly lead rational [people] to the conclusion reached by the jury on the basis of the evidence presented at trial" (Cohen v Hallmark Cards, 45 NY2d 493, 499 [1978]).

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On review of submissions pursuant to section 500.11 of the Rules, order modified, with costs to defendants, by remitting to Supreme Court, Erie County, for further proceedings in accordance with the memorandum herein and, as so modified, affirmed. Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

Decided October 21, 2010