Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D12465
C/cb

_____AD3d_____ Submitted - September 13, 2006

ROBERT W. SCHMIDT, J.P.
DAVID S. RITTER
WILLIAM F. MASTRO
STEVEN W. FISHER
MARK C. DILLON, JJ.

2005-07256 DECISION & ORDER

Noel Blackman, plaintiff, Jaycinth Blackman,
appellant, v Norberto Rodriguez, et al., respondents,
et al., defendants.

(Index No. 12616/03)

Marylyn P. Lipman, P.C., Brooklyn, N.Y., for appellant.

Ahmuty, Demers & McManus, Albertson, N.Y. (Brendan T. Fitzpatrick of counsel), for respondents.

In an action to recover damages for personal injuries, etc., the plaintiff Jaycinth Blackman appeals from so much of an order of the Supreme Court, Nassau County (Ayres, J.), entered June 14, 2005, as granted the cross motion of the defendants Norberto Rodriguez and Genco Auto Electric, Inc., for summary judgment dismissing the complaint insofar as asserted against them on the ground that she did not sustain a serious injury within the meaning of Insurance Law § 5102(d).

ORDERED that the order is reversed insofar as appealed from, on the law, with costs, and the cross motion for summary judgment dismissing the complaint insofar as asserted against the defendants Norberto Rodriguez and Genco Auto Electric, Inc. is denied.

The defendants Norberto Rodriguez and Genco Auto Electric, Inc., failed to make a prima facie showing that the injured plaintiff, Jaycinth Blackman, did not sustain a serious injury within the meaning of Insurance Law § 5102(d) (*see Toure v Avis Rent A Car Sys*., 98 NY2d 345;

Gaddy v Eyler, 79 NY2d 955). Accordingly, it is unnecessary to reach the question of whether the plaintiff's papers were sufficient to raise a triable issue of fact (*see Coscia v 938 Trading Corp*., 283 AD2d 538).

SCHMIDT, J.P., RITTER, MASTRO, FISHER and DILLON, JJ., concur.

ENTER:

James Edward Pelzer
Clerk of the Court