

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

D16465
O/kmg

_____AD3d_____

Submitted - September 19, 2007

FRED T. SANTUCCI, J.P.
GLORIA GOLDSTEIN
MARK C. DILLON
DANIEL D. ANGIOLILLO, JJ.

2007-02449

DECISION & ORDER

Washington Ramirez, respondent, v
JIB II Express, et al., appellants.

(Index No. 11049/04)

Baker, McEvoy, Morrissey & Moskovits, P.C., New York, N.Y. (Holly E. Peck of counsel), for appellants.

Ferro, Kuba, Mangano, Skylar, Gacovino & Lake, P.C., (Kenneth E. Mangano and George J. Parisi of counsel), for respondent.

In an action to recover damages for personal injuries, the defendants appeal from an order of the Supreme Court, Kings County (Schack, J.), entered January 26, 2007, which denied their motion for summary judgment dismissing the complaint on the ground that the plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102(d).

ORDERED that the order is reversed, on the law, with costs, and the defendants' motion for summary judgment dismissing the complaint is granted.

The defendants established their prima facie entitlement to judgment as a matter of law by proffering evidence showing that the plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102(d) as a result of the subject accident (*see Toure v Avis Rent A Car Sys.*, 98 NY2d 345; *Gaddy v Eycler*, 79 NY2d 955, 956-957; *see also Giraldo v Mandanici*, 24 AD3d 419; *Kearse v New York City Tr. Auth.*, 16 AD3d 45, 49-50). The Supreme Court erred in finding that the plaintiff's submissions raised a triable issue of fact.

SANTUCCI, J.P., GOLDSTEIN, DILLON and ANGIOLILLO, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

October 9, 2007

RAMIREZ v JIB II EXPRESS