

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

D17753  
W/kmg

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - January 2, 2008

REINALDO E. RIVERA, J.P.  
DAVID S. RITTER  
ROBERT A. LIFSON  
EDWARD D. CARNI, JJ.

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2007-07210

DECISION & ORDER

Sajid Malik, et al., respondents, v  
Mizanur Rahman, et al., appellants.

(Index No. 27509/04)

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Baker, McEvoy, Morrissey & Moskovits, P.C. (Michael I. Josephs of counsel), for  
appellants.

In an action to recover damages for personal injuries, etc., the defendants appeal, as limited by their brief, from so much of an order of the Supreme Court, Kings County (Held, J.), dated June 19, 2007, as denied that branch of their motion which was for summary judgment dismissing the complaint insofar as asserted by the plaintiff Sajid Malik on the ground that he did not sustain a serious injury within the meaning of Insurance Law § 5102(d).

ORDERED that the order is affirmed insofar as appealed from, without costs or disbursements.

The defendants failed to make a prima facie showing that the plaintiff Sajid Malik 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 Eyler*, 79 NY2d 955).

Since the defendants failed to satisfy their prima facie burden, it is unnecessary to consider whether the plaintiffs' opposition papers were sufficient to raise a triable issue of fact (*see*

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*Pomaquiza v Sibri*, \_\_\_\_\_ AD3d \_\_\_\_\_ [2d Dept, Dec. 4, 2007]; *Sayers v Hot*, 23 AD3d 453; *Coscia v 938 Trading Corp.*, 283 AD2d 538).

RIVERA, J.P., RITTER, LIFSON and CARNI, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer  
Clerk of the Court