

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

D21062
Y/hu

_____AD3d_____

Submitted - October 15, 2008

STEVEN W. FISHER, J.P.
ROBERT A. LIFSON
JOSEPH COVELLO
RUTH C. BALKIN, JJ.

2008-01594

DECISION & ORDER

Yong Deok Lee, et al., respondents, v Bikram
Singh, et al., appellants.

(Index No. 1974405)

Baker, McEvoy, Morrissey & Moskovits, P.C., New York, N.Y. (Stacy R. Seldin of
counsel), for appellants.

In an action to recover damages for personal injuries, the defendants appeal, as limited by their brief, from so much of an order of the Supreme Court, Queens County (Dorsa, J.), dated January 7, 2008, as denied their motion for summary judgment dismissing the complaint on the ground that the plaintiffs 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 did not meet their prima facie burden of showing that the plaintiffs 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, 956-957). Since the defendants failed to establish their prima facie entitlement to judgment as a matter of law in the first instance, it is unnecessary to consider whether the opposing papers were sufficient to raise a triable issue of fact (*see Coleman v Shangri-La Taxi, Inc.*, 49 AD3d 587; *Monkhouse v Maven Limo, Inc.*, 44 AD3d 630, 631; *Coscia v 938 Trading Corp.*, 283 AD2d 538).

FISHER, J.P., LIFSON, COVELLO and BALKIN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

November 18, 2008

YONG DEOK LEE v SINGH