

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

D28876
Y/hu

_____AD3d_____

Submitted - October 20, 2010

REINALDO E. RIVERA, J.P.
JOSEPH COVELLO
RANDALL T. ENG
JOHN M. LEVENTHAL
LEONARD B. AUSTIN, JJ.

2010-00885

DECISION & ORDER

Lori Lapin Jones, etc., respondent, v Ehtaramul Hoae,
et al., appellants.

(Index No. 15625/08)

Baker, McEvoy, Morrissey & Moskovits, P.C., New York, N.Y. (Robert D. Grace of counsel), for appellants.

Arze & Mollica, LLP, Brooklyn, N.Y. (Raymond J. Mollica of counsel), for respondent.

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, Kings County (Starkey, J.), dated December 2, 2009, as denied their motion for summary judgment dismissing the complaint on the ground that Marsha Stein did not sustain a serious injury within the meaning of Insurance Law § 5102(d).

ORDERED that the order is affirmed insofar as appealed from, with costs.

The defendants met their prima facie burden of showing that Marsha Stein 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).

In opposition, the plaintiff raised a triable issue of fact as to whether Marsha Stein sustained a serious injury to the cervical and/or lumbar regions of her spine as a result of the subject

accident (*see Evans v Pitt*, _____AD3d _____, 2010 NY Slip Op 07138 [2d Dept]; *Tai Ho Kang v Young Sun Cho*, 74 AD3d 1328).

Accordingly, the Supreme Court properly denied the defendants' motion for summary judgment dismissing the complaint.

RIVERA, J.P., COVELLO, ENG, LEVENTHAL and AUSTIN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court