

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

D29044
H/ct

_____AD3d_____

Submitted - September 8, 2010

WILLIAM F. MASTRO, J.P.
ANITA R. FLORIO
THOMAS A. DICKERSON
ARIEL E. BELEN
PLUMMER E. LOTT, JJ.

2009-11199

DECISION & ORDER

Galal S. Algamaly, appellant, et al., plaintiff,
v Azhari H. Mirghani, et al., respondents.

(Index No. 26661/06)

Alan D. Levine, Kew Gardens, N.Y., for appellant.

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

In an action, inter alia, to recover damages for personal injuries, the plaintiff Galal S. Algamaly appeals from so much of an order of the Supreme Court, Kings County (Jacobson, J.), entered August 24, 2009, as granted those branches of the defendants' motion which were for summary judgment dismissing his claims of serious injury under the permanent consequential limitation of use and significant limitation of use categories of Insurance Law § 5102(d) on the ground that he did not sustain any such serious injuries within the meaning of that statute.

ORDERED that the order is reversed insofar as appealed from, on the law, with costs, and those branches of the defendants' motion which were for summary judgment dismissing the appellant's claims of serious injury under the permanent consequential limitation of use and significant limitation of use categories of Insurance Law § 5102(d) on the ground that he did not sustain any such serious injuries within the meaning of that statute are denied.

Under the circumstances presented in this case, we agree with the appellant's contention that the defendants failed to meet their prima facie burden of demonstrating that the appellant 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

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955, 956-957). Since the defendants did not sustain their prima facie burden, it is unnecessary to determine whether the papers submitted by the appellant in opposition were sufficient to raise a triable issue of fact (*see Strilcic v Paroly*, 75 AD3d 542; *Takaroff v A.M. USA, Inc.*, 63 AD3d 1142, 1143; *Coscia v 938 Trading Corp.*, 283 AD2d 538).

Accordingly, the defendants' motion for summary judgment should have been denied in its entirety.

MASTRO, J.P., FLORIO, DICKERSON, BELEN and LOTT, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court