

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

D30513
H/kmb

_____AD3d_____

Submitted - March 9, 2011

MARK C. DILLON, J.P.
JOHN M. LEVENTHAL
ARIEL E. BELEN
LEONARD B. AUSTIN
JEFFREY A. COHEN, JJ.

2010-06721

DECISION & ORDER

Connie Park, respondent,
v Komal H. Shaikh, et al., appellants.

(Index No. 28870/08)

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

Sim & Park, LLP, New York, N.Y. (Sang J. Sim of counsel), for respondent.

In an action to recover damages for personal injuries, the defendants appeal from an order of the Supreme Court, Queens County (Kitzes, J.), dated May 6, 2010, 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 affirmed, with costs.

The defendants met their prima facie burden of 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). In support of their motion, the defendants relied, inter alia, on the affirmed report of Dr. Gregory Montalbano, an orthopedic surgeon. Dr. Montalbano examined the plaintiff and, although he found that she exhibited diminished range of motion in, among other things, the lumbar region of her spine, he concluded that this symptom was caused by degenerative disc disease unrelated to the subject motor vehicle accident.

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In opposition, the plaintiff raised a triable issue of fact by submitting reports from, inter alia, her treating physician, Dr. Michael Trimba, attesting that her limitations resulted from trauma causally related to the subject accident, rather than from degenerative disease (*see Licari v Elliott*, 57 NY2d 230, 239; *Compass v GAE Transp., Inc.*, 79 AD3d 1091). Accordingly, the Supreme Court properly denied the defendants' motion for summary judgment dismissing the complaint (*see Benitez v Lashnitz*, 70 AD3d 879).

DILLON, J.P., LEVENTHAL, BELEN, AUSTIN and COHEN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court