

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

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N/kmb

_____AD3d_____

Submitted - October 19, 2011

PETER B. SKELOS, J.P.
DANIEL D. ANGIOLILLO
ARIEL E. BELEN
PLUMMER E. LOTT
SHERI S. ROMAN, JJ.

2010-11703

DECISION & ORDER

Maryann McKenna, appellant, v Louella Williams,
et al., respondents.

(Index No. 16832/08)

Elovich & Adell, Long Beach, N.Y. (A. Trudy Adell, Mitchel Sommer, and Darryn Solotoff of counsel), for appellant.

Smith Mazure Director Wilkins Young & Yagerman, P.C., New York, N.Y. (Marcia K. Raicus of counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Nassau County (Sher, J.), entered October 27, 2010, which granted the defendants' motion for summary judgment dismissing the complaint on the ground that she did not sustain a serious injury within the meaning of Insurance Law § 5102(d).

ORDERED that the order is reversed, on the law, with costs, and the defendants' motion for summary judgment dismissing the complaint is denied.

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). The plaintiff alleged, inter alia, that as a result of the subject accident, the cervical and lumbar regions of her spine sustained certain injuries. The defendants provided competent medical evidence establishing, prima facie, inter alia, that those alleged injuries did not constitute a serious injury

November 1, 2011

McKENNA v WILLIAMS

Page 1.

within the meaning of Insurance Law § 5102(d) (*see Rodriguez v Huerfano*, 46 AD3d 794, 795). However, in opposition, the plaintiff provided competent medical evidence raising a triable issue of fact as to whether those alleged injuries constituted serious injuries under the permanent consequential limitation of use and/or significant limitation of use categories of Insurance Law § 5102(d) (*see Dixon v Fuller*, 79 AD3d 1094, 1094-1095).

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

SKELOS, J.P., ANGIOLILLO, BELEN, LOTT and ROMAN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court