

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

D33051
H/nl

_____AD3d_____

Argued - November 7, 2011

REINALDO E. RIVERA, J.P.
JOHN M. LEVENTHAL
ARIEL E. BELEN
SHERI S. ROMAN, JJ.

2010-08020
2011-02232

DECISION & ORDER

Damian Ragabear, et al., appellants, v Faraz Lallmahamad,
et al., respondents.

(Index No. 30462/08)

Abbott Bushlow & Schechner, LLP, Ridgewood, N.Y. (Richard Schechner of
counsel), for appellants.

Richard T. Lau, Jericho, N.Y. (Gene W. Wiggins of counsel), for respondents Frank
Caputo, Jr., and Theresa Cotrone.

In an action, inter alia, to recover damages for personal injuries, the plaintiffs appeal, as limited by their brief, (1) from so much of an order of the Supreme Court, Kings County (Silber, J.), dated June 29, 2010, as granted those branches of the separate motions of the defendant Faraz Lallmahamad, and the defendants Frank Caputo, Jr., and Theresa Cotrone, which were for summary judgment dismissing so much of the complaint insofar as asserted by the plaintiff Gangawattie Charran as alleged that she sustained a serious injury to her right knee under the significant limitation of use and the permanent consequential limitation of use categories of Insurance Law § 5102(d) insofar as asserted against each of them, and (2) from so much of an order of the same court dated December 9, 2010, as, upon reargument, adhered to so much of the original determination in the order dated June 29, 2010, as granted those branches of the separate motions of the defendant Faraz Lallmahamad, and the defendants Frank Caputo, Jr., and Theresa Cotrone, which were for summary judgment dismissing so much of the complaint insofar as asserted by the plaintiff Gangawattie Charran as alleged that she sustained a serious injury to her right knee under the significant limitation of use and the permanent consequential limitation of use categories of Insurance Law § 5102(d) insofar as asserted against each of them.

ORDERED that the appeal from the order dated June 29, 2010, is dismissed, as that order was superseded by the order dated December 9, 2010, made upon reargument; and it is further,

December 20, 2011

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ORDERED that the appeal by the plaintiff Damian Ragabear from the order dated December 9, 2010, is dismissed, as he is not aggrieved by the portions of the order appealed from (*see* CPLR 5511); and it is further,

ORDERED that the order dated December 9, 2010, is reversed insofar as appealed from by the plaintiff Gangawattie Charran, on the law, and, upon reargument, the determination in the order dated June 29, 2010, granting those branches of the separate motions of the defendant Faraz Lallmahamad, and the defendants Frank Caputo, Jr., and Theresa Cotrone, which were for summary judgment dismissing so much of the complaint insofar as asserted by the plaintiff Gangawattie Charran as alleged that she sustained a serious injury to her right knee under the significant limitation of use and the permanent consequential limitation of use categories of Insurance Law § 5102(d) insofar as asserted against each of them is vacated, and those branches of the separate motions are denied; and it is further,

ORDERED that one bill of costs is awarded to the plaintiff Gangawattie Charran, payable by the defendants.

Upon reargument, the Supreme Court, inter alia, adhered to so much of its original determination as granted those branches of the separate motions of the defendant Faraz Lallmahamad, and the defendants Frank Caputo, Jr., and Theresa Cotrone (hereinafter collectively the defendants), which were for summary judgment dismissing so much of the complaint insofar as asserted by the plaintiff Gangawattie Charran as alleged that she sustained a serious injury to her right knee under the significant limitation of use and the permanent consequential limitation of use categories of Insurance Law § 5102(d) insofar as asserted against each of them.

In opposition to the defendants' prima facie showings that she did not sustain a serious injury to her right knee under those categories, Charran submitted competent medical evidence raising a triable issue of fact as to whether the alleged injuries to her right knee constituted a serious injury under those categories of Insurance Law § 5102(d) as a result of the subject accident (*see McKenna v Williams*, 89 AD3d 698; *Munoz v Irizarri*, 87 AD3d 1056; *Awadh v Moronta*, 86 AD3d 524; *Mitchell v Casa Redimix Concrete Corp.*, 83 AD3d 1015; *Dixon v Fuller*, 79 AD3d 1094, 1094-1095). Accordingly, the Supreme Court should have, upon reargument, vacated the determination in the order dated June 29, 2010, granting those branches of the defendants' separate motions which were for summary judgment dismissing so much of the complaint insofar as asserted by Gangawattie Charran as alleged that she sustained a serious injury to her right knee under the significant limitation of use and the permanent consequential limitation of use categories of Insurance Law § 5102(d) insofar as asserted against each of them, and thereupon denied those branches of the separate motions.

RIVERA, J.P., LEVENTHAL, BELEN and ROMAN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court