

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

D33122
H/kmb

_____AD3d_____

Submitted - November 16, 2011

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

2011-03597

DECISION & ORDER

Maggie Tiesha Jones, appellant, v Raheem A.
Hampton, respondent.

(Index No. 5542/08)

Law Offices of Joel L. Getreu, P.C., New York, N.Y. (Willard G. LaFauci of counsel), for appellant.

Cheven, Keely & Hatzis, New York, N.Y. (William B. Stock of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Queens County (Strauss, J.), dated November 16, 2010, which granted the defendant's renewed 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 defendant's renewed motion for summary judgment dismissing the complaint is denied.

The defendant failed to meet his prima facie burden of showing that the plaintiff did not sustain a serious injury under the permanent consequential limitation of use and/or significant limitation of use categories of Insurance Law § 5102(d) (*see Toure v Avis Rent A Car Sys.*, 98 NY2d 345; *Gaddy v Eyley*, 79 NY2d 955, 956-957). The defendant submitted an affirmed medical report from an examining orthopedic surgeon, who noted the existence of a significant limitation in lumbar flexion (*see Karvay v Gueli*, 77 AD3d 625, 626). Although the examining physician nonetheless

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concluded that the lumbosacral region of the plaintiff's spine was normal, he failed to adequately explain that conclusion in light of his finding of a significant limitation (*cf. Gonzales v Fiallo*, 47 AD3d 760).

Additionally, although the defendant demonstrated, *prima facie*, that the plaintiff's alleged injuries were not caused by the accident, in opposition, the plaintiff raised a triable issue of fact in that regard (*see Jaramillo v Lobo*, 32 AD3d 417, 418).

Accordingly, the defendant's renewed motion for summary judgment dismissing the complaint should have been denied.

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

ENTER:


Matthew G. Kiernan
Clerk of the Court