

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

D33259
G/kmb

_____AD3d_____

Submitted - November 30, 2011

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

2011-01183

DECISION & ORDER

Mi Sook Jeong, etc., appellant, v Daniel A. Callaghan,
et al., respondents.

(Index No. 6647/09)

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

Mendolia & Stenz, Westbury, N.Y. (Stuart M. Kurland of counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Queens County (Weiss, J.), entered December 14, 2010, which granted the defendants' motion for summary judgment dismissing the complaint on the ground that Yoon Hee Kim 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 plaintiff alleged, inter alia, that as a result of the subject accident, her daughter, Yoon Hee Kim, sustained injuries to the cervical and lumbosacral regions of her spine. The defendants met their burden of establishing their prima facie entitlement to judgment as a matter of law by submitting competent medical evidence establishing that the alleged injuries to those regions did not constitute serious injuries within the meaning of Insurance Law § 5102(d) (*see Gaddy v Eyler*, 79 NY2d 955; *Rodriguez v Huerfano*, 46 AD3d 794, 795; *see also Karpinos v Cora*, _____ AD3d_____, 2011 NY Slip Op 08566 [2d Dept 2011]).

However, in opposition, the plaintiff submitted competent medical evidence raising

December 13, 2011

Page 1.

MI SOOK JEONG v CALLAGHAN

a triable issue of fact as to whether the alleged injuries to the cervical and lumbosacral regions of her daughter's spine 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). Furthermore, contrary to the Supreme Court's determination, the plaintiff provided a reasonable explanation for any alleged cessation of her daughter's medical treatment (*see Abdelaziz v Fazel*, 78 AD3d 1086).

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:


Aprilanne Agostino
Clerk of the Court