

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

D33426
O/kmb

_____AD3d_____

Submitted - November 9, 2011

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

2011-00782

DECISION & ORDER

Veronica Shields, respondent, v New York Livery
Leasing, Inc., et al., appellants.

(Index No. 29969/09)

Baker, McEvoy, Morrissey & Moskovits, P.C., New York, N.Y. (Robert D. Grace
of counsel), for appellants.

Rubenstein & Rynecki, Brooklyn, N.Y. (Kliopatra Vrontos of counsel), for
respondent.

In an action, inter alia, to recover damages for personal injuries, the defendants appeal from an order of the Supreme Court, Kings County (Saitta, J.), dated December 2, 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 plaintiff alleged, inter alia, that the lumbosacral region of her spine and her shoulders sustained certain injuries as a result of the subject accident. In support of their motion for summary judgment, the defendants submitted competent medical evidence establishing, prima facie, that the alleged injuries did not constitute serious injuries within the meaning of Insurance Law § 5102(d) (*see Toure v Avis Rent A Car Sys.*, 98 NY2d 345; *Gaddy v Eycler*, 79 NY2d 955, 956-957; *Staff v Yshua*, 59 AD3d 614).

December 27, 2011

Page 1.

SHIELDS v NEW YORK LIVERY LEASING, INC.

In opposition, the plaintiff provided competent medical evidence raising a triable issue of fact as to whether the alleged injuries to the lumbosacral region of her spine constituted serious injuries under the permanent consequential limitation of use and significant limitation of use categories of Insurance Law § 5102(d) (*see Dixon v Fuller*, 79 AD3d 1094). Accordingly, the Supreme Court properly 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