

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

D33500  
C/kmb

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - December 14, 2011

REINALDO E. RIVERA, J.P.  
ANITA R. FLORIO  
RANDALL T. ENG  
L. PRISCILLA HALL  
JEFFREY A. COHEN, JJ.

2010-09020  
2011-07475

DECISION & ORDER

Billy Muniz, appellant, v Jasbir Singh, respondent.

(Index No. 4266/08)

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Ferro, Kuba, Mangano, Skylar, P.C., Hauppauge, N.Y. (Rebecca J. Fortney of counsel), for appellant.

Baker, McEvoy, Morrissey & Moskovits, P.C., New York, N.Y. (Stacy R. Seldin of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals (1), as limited by her notice of appeal and brief, from so much of an order of the Supreme Court, Queens County (Lane, J.), dated August 10, 2010, as granted those branches of the defendant's motion which were for summary judgment dismissing so much of the complaint as sought to recover damages based on alleged serious injuries under the permanent consequential limitation of use and significant limitation of use categories of Insurance Law § 5102(d) and (2), as limited by her brief, from so much of an order of the same court dated March 3, 2011, as, upon granting that branch of her motion which was for leave to renew her opposition to the defendant's prior motion for summary judgment, and upon granting the defendant's motion for reargument of that branch of his prior motion which was for summary judgment dismissing so much of the complaint as sought to recover damages based on an alleged serious injury under the 90/180-day category of Insurance Law § 5102(d), which had been denied in the order dated August 10, 2010, vacated the order dated August 10, 2010, and thereupon granted the defendant's motion for summary judgment dismissing the complaint in its entirety.

December 27, 2011

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ORDERED that the appeal from the order dated August 10, 2010, is dismissed, as that order was vacated by the order dated March 3, 2011, made upon renewal and reargument; and it is further,

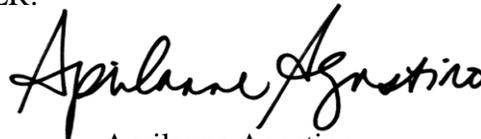
ORDERED that the order dated March 3, 2011, is reversed insofar as appealed from, on the law, and, upon renewal and reargument, the defendant's motion for summary judgment dismissing the complaint is denied in its entirety; and it is further,

ORDERED that one bill of costs is awarded to the plaintiff.

The plaintiff alleged, inter alia, that as a result of the subject accident, the cervical and lumbosacral regions of her spine, as well as her left knee, sustained certain injuries. On his motion for summary judgment dismissing the complaint, the defendant submitted competent medical evidence establishing, prima facie, that the certain of the alleged injuries were not caused by the subject accident (*see Pommells v Perez*, 4 NY3d 566, 579; *Jilani v Palmer*, 83 AD3d 786, 787). However, on her motion, inter alia, for leave to renew her opposition to the defendant's motion for summary judgment dismissing the complaint, the plaintiff submitted competent medical evidence raising a triable issue of fact as to whether those alleged injuries were caused by the accident (*see Perl v Meher*, \_\_\_\_\_ NY3d \_\_\_\_\_, 2011 NY Slip Op 08452, \*5-6; *Sforza v Big Guy Leasing Corp.*, 51 AD3d 659, 660-661; *Jaramillo v Lobo*, 32 AD3d 417, 418). Accordingly, upon renewal, the Supreme Court should have denied the defendant's motion for summary judgment dismissing the complaint in its entirety, and relief upon reargument should not have been granted.

RIVERA, J.P., FLORIO, ENG, HALL and COHEN, JJ., concur.

ENTER:



Aprilanne Agostino  
Clerk of the Court