

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

D33906
O/kmb

_____AD3d_____

Submitted - January 24, 2012

MARK C. DILLON, J.P.
ANITA R. FLORIO
CHERYL E. CHAMBERS
SHERI S. ROMAN, JJ.

2011-05011

DECISION & ORDER

Marysue Leven Gellis, respondent,
v Gaunha Q. Singho, et al., appellants.

(Index No. 9903/08)

Wilson, Elser, Moskowitz, Edelman & Dicker, LLP, White Plains, N.Y. (Glen S. Feinberg of counsel), for appellants.

Levine & Grossman, Mineola, N.Y. (Steven Sachs of counsel), for respondent.

In an action to recover damages for personal injuries, the defendants appeal from an order of the Supreme Court, Rockland County (Walsh II, J.), entered May 13, 2011, 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 defendants established their prima facie entitlement to judgment as a matter of law by demonstrating that the plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102(d) to her brain or the cervical region of her spine as a result of the subject accident (*see Toure v Avis Rent A Car Sys.*, 98 NY2d 345; *Gaddy v Eyler*, 79 NY2d 955, 956-957; *see also Matthews v Cupie Transp. Corp.*, 302 AD2d 566).

In opposition, the plaintiff raised a triable issue of fact as to whether she sustained a serious injury to her brain under the permanent consequential limitation of use category of

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Insurance Law § 5102(d) as a result of the subject accident (*see Perl v Meher*, 18 NY3d 208). Accordingly, the Supreme Court properly denied the defendants' 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).

DILLON, J.P., FLORIO, CHAMBERS and ROMAN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court