

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

D34477
Y/kmb

_____AD3d_____

Submitted - March 14, 2012

MARK C. DILLON, J.P.
RUTH C. BALKIN
ARIEL E. BELEN
LEONARD B. AUSTIN, JJ.

2011-06244

DECISION & ORDER

Leslie Orgel, appellant, v Kathleen Cab Corp.,
et al., respondents.

(Index No. 10724/09)

Mallilo & Grossman, Flushing, N.Y. (Francesco Pomara, Jr., of counsel), for
appellant.

Baker, McEvoy, Morrissey & Moskovits, P.C., New York, N.Y. (Stacy R. Seldin 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 (Agate, J.), dated June 1, 2011, which granted the
defendants' 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) as a result of the subject
accident.

ORDERED that the order is reversed, on the law, with costs, and the defendants'
motion for summary judgment dismissing the complaint is denied.

The defendants met their prima facie burden of showing that the plaintiff did not
sustain a serious injury within the meaning of Insurance Law § 5102(d) 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).
The defendants submitted competent medical evidence establishing, prima facie, that the alleged
injuries to the cervical and lumbosacral regions of the plaintiff's spine did not constitute serious
injuries within the meaning of Insurance Law § 5102(d) (*see Rodriguez v Huerfano*, 46 AD3d 794,
795).

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However, in opposition, the plaintiff submitted competent medical evidence raising a triable issue of fact as to whether the alleged injuries to the cervical and lumbosacral regions of her spine constituted serious injuries under the permanent consequential limitation of use and/or significant limitation of use categories of Insurance Law § 5102(d) (*see Perl v Meher*, 18 NY3d 208, 215-218). Accordingly, the Supreme Court should have denied the defendants' motion for summary judgment dismissing the complaint.

DILLON, J.P., BALKIN, BELEN and AUSTIN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court