

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

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Submitted - March 28, 2012

REINALDO E. RIVERA, J.P.  
RANDALL T. ENG  
CHERYL E. CHAMBERS  
SANDRA L. SGROI  
ROBERT J. MILLER, JJ.

2011-07253

DECISION & ORDER

Peter H. Davis, appellant, v John G. Wills,  
respondent.

(Index No. 11518/08)

Rosenberg & Gluck, LLP, Holtsville, N.Y. (Matthew H. Bligh of counsel), for  
appellant.

Richard T. Lau, Jericho, N.Y. (Joseph G. Gallo of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Suffolk County (Gazzillo, J.), dated May 6, 2011, which granted the defendant's motion for summary judgment dismissing the complaint on the ground that he 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 defendant's motion for summary judgment dismissing the complaint is denied.

The defendant met his 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 defendant submitted evidence establishing, prima facie, that the alleged injuries to the cervical region of the plaintiff's spine did not constitute a serious injury within the meaning of Insurance Law § 5102(d) (*see Rodriguez v Huerfano*, 46 AD3d 794, 795).

However, in opposition, the plaintiff submitted evidence raising a triable issue of fact

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as to whether the alleged injuries to the cervical region of his spine constituted a serious injury 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, 217-218). Accordingly, the Supreme Court should have denied the defendant's motion for summary judgment dismissing the complaint.

RIVERA, J.P., ENG, CHAMBERS, SGROI and MILLER, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court