

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

D36787  
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Submitted - November 28, 2012

REINALDO E. RIVERA, J.P.  
THOMAS A. DICKERSON  
JOHN M. LEVENTHAL  
PLUMMER E. LOTT, JJ.

2011-09957  
2011-09960

DECISION & ORDER

Marisol Rodriguez, et al., appellants, v Josue Zabala,  
respondent.

(Index No. 22855/09)

James M. Visser, Bronx, N.Y., for appellants.

Adams, Hanson, Rego, Carlin, Hughes, Kaplan & Fishbein, Lake Success, N.Y.  
(Jacqueline Doody of counsel), for respondent.

In an action, inter alia, to recover damages for personal injuries, etc., the plaintiffs appeal (1), as limited by their brief, from so much of an order of the Supreme Court, Queens County (Taylor, J.), dated October 5, 2011, as granted that branch of the defendant's motion which was for summary judgment dismissing the causes of action to recover damages for personal injuries on the ground that the plaintiff Marisol Rodriguez did not sustain a serious injury within the meaning of Insurance Law § 5102(d) as a result of the subject accident, and denied their cross motion, inter alia, for summary judgment on the issue of serious injury, and (2) from an order of the same court, also dated October 5, 2011.

ORDERED that the appeal from the second order dated October 5, 2011, is dismissed as abandoned; and it is further,

ORDERED that the first order dated October 5, 2011, is affirmed insofar as appealed from; and it is further,

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

December 19, 2012

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The defendant met his prima facie burden of showing that the plaintiff Marisol Rodriguez 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 Eyster*, 79 NY2d 955, 956-957). The defendant submitted competent medical evidence establishing, prima facie, that the alleged injuries to the cervical and lumbar regions of the plaintiff Marisol Rodriguez's spine did not constitute serious injuries within the meaning of Insurance Law § 5102(d) (*see Moran v Kollar*, 96 AD3d 811; *Ramkalawon v Correa*, 95 AD3d 982; *Rodriguez v Huerfano*, 46 AD3d 794, 795).

In opposition, the plaintiffs failed to raise a triable issue of fact. Accordingly, the Supreme Court properly granted that branch of the defendant's motion which was for summary judgment dismissing the causes of action to recover damages for personal injuries.

The appeal from the second order dated October 5, 2011, must be dismissed as abandoned (*see Sirma v Beach*, 59 AD3d 611, 614), as the plaintiffs do not seek reversal of that order in their brief.

The plaintiffs' remaining contentions are without merit.

RIVERA, J.P., DICKERSON, LEVENTHAL and LOTT, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court