

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

D54851
M/htr

_____AD3d_____

Submitted - December 7, 2017

REINALDO E. RIVERA, J.P.
LEONARD B. AUSTIN
FRANCESCA E. CONNOLLY
ANGELA G. IANNACCI, JJ.

2016-09426

DECISION & ORDER

Scott E. Meyer, et al., appellants, v Nikki K.
Panagiotidis, et al., respondents.

(Index No. 66774/14)

Gruenberg Kelly Della, Ronkonkoma, NY (Zachary M. Beriloff of counsel), for appellants.

Bello & Larkin, Hauppauge, NY (John C. Meszaros of counsel), for respondents.

In an action to recover damages for personal injuries, etc., the plaintiffs appeal from an order of the Supreme Court, Suffolk County (Pastorella, J.), dated August 30, 2016, which granted the defendants' motion for summary judgment dismissing the complaint on the ground that the plaintiff Scott E. Meyer 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 Scott E. Meyer (hereinafter the injured 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 injury to the lumbar region of the injured plaintiff's spine did not constitute a serious injury under either the permanent consequential limitation of use or significant limitation of use categories of Insurance Law § 5102(d) (*see Staff v Yshua*, 59 AD3d 614).

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In opposition, however, the plaintiffs raised a triable issue of fact as to whether the injured plaintiff sustained a serious injury to the lumbar region of his spine under the permanent consequential limitation of use and significant limitation of use categories of Insurance Law § 5102(d) (*see Perl v Meher*, 18 NY3d 208, 218-219).

Accordingly, the Supreme Court should have denied the defendants' motion for summary judgment dismissing the complaint.

RIVERA, J.P., AUSTIN, CONNOLLY and IANNACCI, JJ., concur.

ENTER: 

Aprilanne Agostino
Clerk of the Court