

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

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Argued - March 2, 2018

WILLIAM F. MASTRO, J.P.
CHERYL E. CHAMBERS
SANDRA L. SGROI
JOSEPH J. MALTESE, JJ.

2017-00234

DECISION & ORDER

Sharon Israel Iam, appellant, v Ralph Santaniello,
et al., respondents.

(Index No. 4093/13)

Jonah Grossman, Jamaica, NY (Lawrence B. Lame of counsel), for appellant.

Breen & Clancy, Hauppauge, NY (Anne Marie Caradonna and Michael Clancy of
counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Suffolk County (William B. Rebolini, J.), dated November 21, 2016. The order granted the defendants' motion for summary judgment dismissing the complaint.

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

This action arises from a motor vehicle accident that occurred on the Long Island Expressway on September 7, 2011. The plaintiff commenced this action to recover damages for personal injuries allegedly sustained by her in the accident. The defendants moved 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) as a result of the accident. The Supreme Court granted the defendants' motion, and the plaintiff appeals.

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 accident

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(see *Toure v Avis Rent A Car Sys.*, 98 NY2d 345; *Gaddy v Eycler*, 79 NY2d 955, 956-957). In opposition, however, the plaintiff raised a triable issue of fact as to whether the injuries at issue were attributable to pre-existing conditions or were causally related to or exacerbated by the subject accident (see *Qurashi v Hittin*, 51 AD3d 652, 652; cf. *McKenzie v Redl*, 47 AD3d 775).

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

MASTRO, J.P., CHAMBERS, SGROI and MALTESE, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court