

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

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_____AD3d_____

Submitted - March 29, 2018

ALAN D. SCHEINKMAN, P.J.
JEFFREY A. COHEN
COLLEEN D. DUFFY
FRANCESCA E. CONNOLLY, JJ.

2016-11117

DECISION & ORDER

Glenda Bardales, appellant, v Michael J. Monell,
et al., respondents.

(Index No. 66918/14)

Cannon & Acosta, LLP, Huntington Station, NY (June Redeker of counsel), for appellant.

Russo & Tambasco, Melville, NY (Yamile Al-Sullami of counsel), for respondents.

In an action, inter alia, to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Suffolk County (Joseph Farneti, J.), dated October 3, 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 June 12, 2013, near or at the intersection of Sweet Hollow Road and Old Country Road in Huntington. The plaintiff commenced this action to recover damages, inter alia, for personal injuries she allegedly sustained 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. The plaintiff appeals.

The defendants failed to meet 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 (*see Toure v Avis Rent A Car Sys.*, 98 NY2d 345; *Gaddy v Eyler*, 79 NY2d 955, 956-957).

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The papers submitted by the defendants failed to adequately address the plaintiff's claim, set forth in the bill of particulars, that she sustained a serious injury under the 90/180-day category of Insurance Law § 5102(d) (*see Che Hong Kim v Kossoff*, 90 AD3d 969; *Rouach v Betts*, 71 AD3d 977). Since the defendants failed to meet their prima facie burden, it is unnecessary to determine whether the papers submitted by the plaintiff in opposition were sufficient to raise a triable issue of fact (*see Che Hong Kim v Kossoff*, 90 AD3d at 969).

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

SCHEINKMAN, P.J., COHEN, DUFFY and CONNOLLY, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court