

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

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Submitted - June 13, 2018

REINALDO E. RIVERA, J.P.  
ROBERT J. MILLER  
COLLEEN D. DUFFY  
HECTOR D. LASALLE, JJ.

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2017-00107

DECISION & ORDER

Paula Pickle, appellant, v Jarel M. Johnson,  
respondent.

(Index No. 62007/13)

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Friedman Sanchez, LLP, Brooklyn, NY (Fabien Robley of counsel), for appellant.

Dodge & Monroy, P.C., Lake Success, NY (Mark T. Scopinich 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 (Arthur G. Pitts, J.), dated November 15, 2016. The order granted the defendant's motion 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).

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 plaintiff commenced this action to recover damages for personal injuries that she alleges she sustained on June 23, 2011, when the motor vehicle she was driving collided with a motor vehicle driven and owned by the defendant, in Shirley, Suffolk County. The defendant 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 subject accident. The Supreme Court granted the defendant's motion. The plaintiff appeals.

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). In

opposition, however, the plaintiff raised a triable issue of fact as to whether she sustained serious injuries to her left shoulder and the cervical and lumbar regions of her 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 defendant's motion for summary judgment dismissing the complaint.

RIVERA, J.P., MILLER, DUFFY and LASALLE, JJ., concur.

ENTER:   
Aprilanne Agostino  
Clerk of the Court