

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

D56963
G/mm

_____AD3d_____

Submitted - June 13, 2018

RUTH C. BALKIN, J.P.
CHERYL E. CHAMBERS
SHERI S. ROMAN
JOSEPH J. MALTESE
FRANCESCA E. CONNOLLY, JJ.

2017-00393

DECISION & ORDER

Jose R. Fabian, appellant, et al., plaintiff,
v County of Suffolk, et al., respondents.

(Index No. 61164/13)

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

Mark A. Cuthbertson, Huntington, NY (Matthew DeLuca of counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiff Jose R. Fabian appeals from an order of the Supreme Court, Suffolk County (Denise F. Molia, J.), entered December 19, 2016. The order, insofar as appealed from, granted that branch of the defendants' motion which was for summary judgment dismissing the complaint insofar as asserted by the plaintiff Jose R. Fabian on the ground that he 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 affirmed insofar as appealed from, with costs.

The plaintiffs, Jose R. Fabian and Cindy Membreno, commenced this action to recover damages for personal injuries they each allegedly sustained in a motor vehicle accident that occurred on November 28, 2012, in Suffolk County. The defendants moved for summary judgment dismissing the complaint on the ground that each 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 that branch of the defendants' motion which was for summary judgment dismissing the complaint

October 24, 2018

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insofar as asserted by Fabian. Fabian appeals.

The defendants met their prima facie burden of showing that Fabian 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 Eycler*, 79 NY2d 955, 956-957). The defendants submitted competent medical evidence establishing, prima facie, that the alleged injuries to the cervical and lumbar regions of Fabian's spine and his left shoulder did not constitute serious injuries 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). In opposition, Fabian failed to raise a triable issue of fact (see *Bayk v Martini*, 142 AD3d 484; *Schilling v Labrador*, 136 AD3d 884, 884-885; *Durand v Urick*, 131 AD3d 920).

Accordingly, we agree with the Supreme Court's determination to grant that branch of the defendants' motion which was for summary judgment dismissing the complaint insofar as asserted by Fabian.

BALKIN, J.P., CHAMBERS, ROMAN, MALTESE and CONNOLLY, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court