

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

D71996
Y/htr

_____AD3d_____

Submitted - December 16, 2022

REINALDO E. RIVERA, J.P.
ROBERT J. MILLER
LINDA CHRISTOPHER
JANICE A. TAYLOR, JJ.

2020-06282

DECISION & ORDER

Shantell Pickering, appellant, v Mohammad A.
Basar, defendant, V.A. Cruz-Zapata, et al.,
respondents.

(Index No. 519164/16)

Dell & Dean, PLLC (Mischel & Horn, P.C., New York, NY [Scott T. Horn], of counsel), for appellant.

Baker, McEvoy & Moskovits, P.C. (Robert D. Grace, Brooklyn, NY, of counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Kings County (Debra Silber, J.), dated August 12, 2020. The order granted the motion of the defendants V.A. Cruz-Zapata and MTE Transportation Corp. for summary judgment dismissing the complaint insofar as asserted against them 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.

ORDERED that the order is reversed, on the law, with costs, and the motion of the defendants V.A. Cruz-Zapata and MTE Transportation Corp. for summary judgment dismissing the complaint insofar as asserted against them is denied.

The plaintiff commenced this action to recover damages for personal injuries that she allegedly sustained in a motor vehicle accident. The defendants V.A. Cruz-Zapata and MTE Transportation Corp. (hereinafter together the defendants) moved for summary judgment dismissing the complaint insofar as asserted against them 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. In an order

dated August 12, 2020, the Supreme Court granted the 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., Inc.*, 98 NY 2d 345; *Gaddy v Eycler*, 79 NY 2d 955, 956-957). The papers submitted by the defendants failed to eliminate triable issues of fact regarding 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).

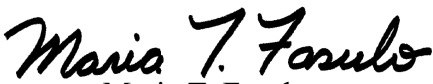
Since the defendants failed to meet their prima facie burden, it is unnecessary to determine whether the submissions by the plaintiff in opposition were sufficient to raise a triable issue of fact (*see Che Hong Kim v Kossoff*, 90 AD3d at 969).

The parties' remaining contentions either are without merit or need not be reached in light of our determination.

Accordingly, the Supreme Court should have denied the defendants' motion for summary judgment dismissing the complaint insofar as asserted against them.

RIVERA, J.P., MILLER, CHRISTOPHER and TAYLOR, JJ., concur.

ENTER:


Maria T. Fasulo
Clerk of the Court