

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: Honorable, ALLAN B. WEISS IAS PART 2  
Justice

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JULIO SURILLO, ET AL

Plaintiffs,

-against-

DOLLAR RENT A CAR, ET AL

Defendants.

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Index No: 13199/02

Motion Date : 6/16/04

Motion Cal. No: 22

The following papers numbered 1 to 16 read on this motion by defendants for summary judgment dismissing the complaint on the grounds that plaintiffs have not sustained a serious injury within the meaning of Sections 5102 and 5104 of the Insurance Law.

	PAPERS NUMBERED
Notice of Motion-Affidavits-Exhibits .....	1 - 4
Answering Affidavits-Exhibits.....	5 - 14
Replying Affidavits.....	15 - 16

Upon the foregoing papers it is ordered that this motion is granted and the complaint is dismissed. On December 8, 2001 the plaintiffs' vehicle was involved in an accident when it was hit in the rear. Fortunately, no one was seriously injured.

Defendants have submitted competent medical evidence including the affirmations of their examining orthopedist and/or neurologist, the reports of the results of the plaintiffs' X-ray, MRI and EMG/NCV studies and the plaintiffs' deposition testimony which establish, prima facie, that none of the plaintiffs sustained a serious injury within the meaning of Insurance Law § 5102(d) as a result of the accident. (See, Gaddy v. Eyler, 79 NY2d 955 [1992]; Jackson v. New York City Tr. Auth., 273 AD2d 200 [2000]; Greene v. Miranda, 272 AD2d 441 [2000]). Thus, the burden shifts to the plaintiffs to demonstrate the existence of a triable issue of fact by submitting competent medical proof. (see, Gaddy v. Eyler, supra; Licari v. Elliott, 57 NY2d 230, 235 [1982]; Lopez v. Senatore, 65 NY2d 1017 [1985]). This the

plaintiffs failed to do.

The majority of the plaintiffs' submissions consisting of inadmissible medical records were not considered. (see, Grasso v. Angerami, 79 NY2d 813; Magro v. Huang, AD3rd [2004], 777 NYS2d 318; Shinn v. Catanzaro, 1 AD3d 195 [2003]; Jenkins v. Diamond, 308 AD2d 510 [2003].) The only admissible evidence submitted was an affidavit of each plaintiff complaining of pain in various areas of the back, neck, shoulder or knee. Plaintiffs also submitted an affidavit of a Dr. Quereshi who examined, but did not treat, the plaintiffs on May 18, 2004 and prepared the affidavit to be used as opposition to the defendants' motion. The affidavits of Dr. Quereshi are insufficient to raise a question of fact warranting a trial. (Oquendo v. New York City Transit Authority, 246 AD2d 635;; Almonacid v. Meltzer, 222 AD2d 631 [1995]; Orr v. Miner, 220 AD2d 567 [1995]; Beckett v. Conte, 176 AD2d 774 [1991]). The restrictions of movement set forth in the affidavits are based upon the plaintiffs' complaints of pain without any objective medical evidence of an underlying injury. Conclusions, even of an examining doctor, which are unsupported by objective medical proof, are insufficient to defeat a motion for summary judgment. (Merisca v. Alford, 243 AD2d 613 [1997]; Lincoln v. Johnson, 225 AD2d 593, 593-594 [1996]; Giannakis v. Paschilidou, 212 AD2d 502, 503 [1995]). As a whole the opinion that plaintiff' injuries are permanent and significant is conclusory and speculative and merely tailored to meet statutory requirements. (Lopez v. Senatore, 65 NY2d 1017, 1019; Marshall v. Albano, 182 AD2d 614; Waldman v. Dong Kook Chang, 175 AD2d 204).

Finally, since the plaintiffs failed to submit objective medical evidence substantiating the existence of a medically determined injury, their subjective complaints of pain and their inability to perform certain tasks is insufficient to raise a question of fact that they were unable to perform substantially all of their daily activities for not less than 90 of the first 180 days subsequent to the accident (see, Mu Ying Zhu v. Zhi Rong Lin, 1 AD3d 416 [2003]; Jackson v. New York City Tr. Auth., 273 AD2d 200 [2000]).

Dated: July 12, 2004  
D#16

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J.S.C.