

Carballo v Chawla

2005 NY Slip Op 30057(U)

March 29, 2005

Supreme Court, Queens County

Docket Number: 0022244/2442

Judge: Duane A. Hart

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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: Honorable, DUANE A. HART IAS PART 18
Justice

LAURA CARBALLO,

Plaintiff,

Index No: 22244/03

-against-

Motion Date:

January 5, 2005

Cal. No.: 7

SATISH CHAWLA, et al.,

Defendant.

The following papers numbered 1 to 16 read on this motion.

PAPERS
NUMBERED

Notice of Motion-Affidavits-Exhibits	1 - 4
Answering Affidavits-Exhibits.....	5 - 8
Cross-Motion.....	9 - 12
Replying Affidavits.....	13 - 14
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On September 4, 2002, plaintiff and defendants were involved in an automobile accident on 71st Street, near its intersection with 32nd Avenue, Queens County. Thereafter, plaintiff commenced an action alleging that she suffered serious physical injuries caused by defendants' negligence.

Issue was joined, discovery proceeded, EBT's were held and Note of Issue filed.

Citing Insurance Law, Sections 5102 and 5104, Defendants Satish Chawla and Amit Chawla seek summary judgment, dismissing the action. They assert that plaintiff has not met the standards for serious injuries defined by the sections. They allege that the injuries of which plaintiff complains, are not serious injuries within the meaning of the section. Rather, say defendants, plaintiff suffered "soft tissue" injuries.

According to defendant, plaintiff's injuries show bulges at C5-6, C6-7, herniation of L5-S1, L3-L4, acute lumbar radiculopathy, among other injuries. Finally, say these defendants, doctors designated by them have examined plaintiff and expressed their medical opinion that plaintiff does not suffer from any disability as a result of the accident.

Specifically, the Chawlas argue that plaintiff has not shown that her injuries prevented her from performing substantially all of her usual and customary daily activities for at least ninety (90) days of the first one-hundred eighty (180) days immediately after the injuries. They add that plaintiff has not suffered a death, dismemberment, significant disfigurement, fracture or loss of fetus. They add that plaintiff has not sustained a permanent total loss of use of a body organ, member function or system; nor is there a claim that plaintiff has suffered a permanent consequential limitation of the use of a body function or system or significant limitation of the use of a body organ or member. They emphasize that none of the injuries claimed by plaintiff are serious injuries. They point to the nature, kind and length of treatment that plaintiff received as demonstrating that the injuries are not serious. Nor, they conclude, has she shown that her economic loss goes beyond basic economic loss as defined in the statute.

In a cross motion, defendant Hernandez also seeks summary judgment dismissing the summons and complaint on the same grounds. Defendant Hernandez' argument for dismissal is identical to those of his co-defendants. He submits a report by a doctor, who reviewed plaintiff's radiology films and reports, and concluded that he could not confirm that plaintiff's discs at L3-4 and L5-S1 were abnormal.

Plaintiff opposes the motions. Contrary to their positions, she asserts that she suffered serious injuries as a result of their negligence and that those injuries have continued to adversely affect her since the accident. By way of example, she says that she has been unable to work full time since the accident, adding that before the accident she exercised "almost every day." Since the accident, she says, she has been unable to roller blade or run while she ran or roller bladed six days a week before the accident. This is in addition to her constant neck pain and problems doing housework, standing, walking and difficulty caring for her child.

Plaintiff contends that she has sustained injuries which have caused permanent consequential limitation of a use of a body organ or member and significant limitation of use of a body function or system. She says that as a result of these injuries, she has met the 90/180 day rule set by the statute. In support of her contention she points to a September 12, 2002 range of motion test which shows some degree of loss of motion to her spine. She had, she says, received treatment between the time of the accident and December 2002 under no-fault but since December 2002, when her no-fault benefits ran out, she has not received any treatment because of a lack of medical benefits.

Upon review, defendants' motions are denied. Plaintiff has overcome defendants' prima facie showing that she did not meet the standards outlined by the statute. See Toure v. Avis Rent a Car Systems, Inc., 98 NY2d 345, Howard v. King, 307 AD2d 278.

Dated: March 29, 2005

Duane L. Hart

J.S.C.