

Hardeen v Wei Xin Li
2007 NY Slip Op 30213(U)
March 13, 2007
Supreme Court, Queens County
Docket Number: 0004904
Judge: David Elliot
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE DAVID ELLIOT IA Part 14
Justice

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RAMDAT HARDEEN, et al.		Number	<u>4904</u> 2004
		Motion	
		Date	<u>September 12,</u> 2006
	- against -		
		Motion	
WEI XIN LI		Cal. Number	<u>15</u>
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	x		

The following papers numbered 1 to 8 read on this motion by defendant for summary judgment dismissing plaintiffs' complaint due to plaintiffs' failure to sustain a serious injury within the meaning of Insurance Law § 5102(d).

	<u>Papers Numbered</u>
Notice of Motion - Affidavits - Exhibits	1-3
Answering Affidavits - Exhibits	4-6
Reply Affidavits	7-8

This motion was submitted to Justice Geller on September 12, 2006 and was transferred to this court due to the expiration of her term.

Upon the foregoing papers it is ordered that the motion is determined as follows:

Plaintiffs, Ramdat Hardeen and Chandrawattie Hardeen, allegedly suffered serious injuries as the result of a motor vehicle accident that occurred with the vehicle driven by defendant, Wei Xin Li, on the eastbound Long Island Expressway on June 29, 2002.

In support of the motion, defendant submits the report of Ravi Tikoo, M.D., a neurologist, dated April 5, 2006; the report of Carl Austin Weiss, M.D., an orthopedic surgeon, dated April 6,

2006; and the report of Richard A. Heiden, M.D., a radiologist, which establish collectively, prima facie, that plaintiffs did not sustain a serious injury within the meaning of Insurance Law § 5102(d) (see Toure v Avis Rent-A-Car, 98 NY2d 345; Gaddy v Eyler, 79 NY2d 955). Thus, the burden shifts to plaintiffs to come forward with sufficient rebuttal medical claims that plaintiffs did sustain a serious injury (see Licari v Elliott, 57 NY2d 230).

In opposition to the motion, plaintiffs submit the report of Surendranath K. Reddy, M.D., an orthopedist, and Robert D. Solomon, M.D., a radiologist. The report of Dr. Reddy indicates that plaintiff Ramdat Hardeen was seen initially on July 10, 2002 and was prescribed a course of physical therapy for three months, after which said plaintiff was discharged. Mr. Hardeen was seen again by Dr. Reddy over four years later, on August 7, 2006. Dr. Reddy's report indicates some limitations of plaintiff's range of motion in his cervical and lumbar spine which Dr. Reddy states is permanent. Mr. Hardeen missed one week of work after the accident.

Ms. Hardeen received physical therapy and acupuncture treatment for about four months after the accident and missed one week of work. Ms. Hardeen was examined by Dr. Reddy on August 7, 2006. Dr. Reddy's report indicates some limitation of motion of Ms. Hardeen's cervical and lumbar spine, almost identical to that of her husband.

The court determines that the affidavits of plaintiffs' physician state that both plaintiffs have sustained permanent limitations of range of motion in their cervical and lumbar spines. These affidavits, in contrast to the conclusion reached by defendant's examining physicians, present factual issues which must be determined at trial.

Accordingly, defendant's motion is denied.

Dated: March 13 , 2007

J.S.C.