

Soares v Veerasami

2007 NY Slip Op 30214(U)

March 8, 2007

Supreme Court, Queens County

Docket Number: 0009077

Judge: Patricia P. Satterfield

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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE PATRICIA P. SATTERFIELD IA Part 19
Justice

	X	
RYAN SOARES,		Index
		Number <u>9077</u> 2004
Plaintiff,		Motion
- against -		Date <u>November 29,</u> 2004
		Motion
RONALD VEERASAMI and CHELLESA PERSAUD,		Cal. Number <u>43</u>
Defendants.		
	X	

The following papers numbered 1 to 17 read on this motion by defendant Veerasami and cross-motion by defendant Persaud for summary judgment dismissing the complaint.

	<u>Papers Numbered</u>
Notice of Motion - Affidavits - Exhibits.....	1-7
Notice of Cross Motion - Affidavits - Exhibits...	8-10
Answering Affidavits - Exhibits.....	11-13
Reply Affidavits.....	14-17

Upon the foregoing papers it is ordered that the motion and cross-motion are determined as follows:

Plaintiff Ryan Soares ("plaintiff") commenced this action to recover damages for serious personal injuries he allegedly sustained, on November 24, 2001, as a result of a two-car motor vehicle collision. At the time of the accident, plaintiff was a passenger in a vehicle owned and operated by defendant Chellea Persaud ("Persaud"). Defendant Ronald Veerasami ("Veerasami") owned and operated the other vehicle involved in the accident. Plaintiff claims, inter alia, that, as a result of the accident, he sustained a cervical disc herniation at C5-6 with compression on the anterior thecal sac, as well as left and right knee tears of the posterior horn of the medial meniscus which resulted in a permanent partial disability.

Defendants seek summary judgment dismissing the claims

against them on the ground that plaintiff did not sustain a serious injury as that term is defined by Insurance Law § 5102(d). In support of their respective summary judgment motions, defendants present proof in admissible form, including the affirmed medical reports of Dr. Ravi Tikoo, an neurologist, and Dr. Carl Austin Weiss, an orthopedist, who conducted independent medical examinations of the plaintiff on April 19, 2006, and May 4, 2006, respectively. Defendants also submit a copy of the report of Dr. Richard A. Heidel, a radiologist, who reviewed the MRI studies performed on plaintiff approximately one month after the accident. These reports demonstrate the absence of any condition that meets the serious injury threshold requirement of Insurance Law § 5102(d), and satisfies the defendants' burden of proof on the issue of serious injury. The burden then shifted to plaintiff to establish the existence of a triable issue of fact (see, Gaddy v Tyler, 79 NY2d 955 [1992].)

In opposition to the summary judgment motions, plaintiff submitted the sworn affirmation of Dr. Sujit Bhattacharya, a neurologist, dated November 10, 2006, who first examined the plaintiff, a few days after the accident, on November 27, 2001, who was plaintiff's treating neurologist following a prior motor vehicle accident on March 31, 2001, in which plaintiff sustained injuries to his lumbar spine and left knee. Dr. Bhattacharya averred that he reviewed MRI films and corresponding studies of plaintiff's cervical spine, and left and right knees, which were conducted on December 13, 2001, December 20, 2001 and December 27, 2001. Upon review of these studies, Dr. Bhattacharya determined that there were intra-meniscal horizontal tears involving the posterior horn of the medial meniscus of plaintiff's left and right knees and a moderate central herniated disc in his cervical spine with compression of the thecal sac at C5/C6. He opined that the MRI findings related to plaintiff's right knee and cervical spine represent new injuries that the plaintiff did not have prior to the subject accident of November 2001. According to Dr. Bhattacharya, he treated plaintiff for over one year after the November 2001 accident, and then released plaintiff from further medical treatment he had reached maximum effectiveness from the medical treatments already provided. At that time, Dr. Bhattacharya determined that plaintiff's injuries were permanent and, thus, further treatment would have been palliative in nature.

Upon his most recent examination of the plaintiff, on September 6, 2006, Dr. Bhattacharya performed range of motion diagnostic testing on plaintiff's right knee and found a limitation of motion of 11% on flexion and extension as a result of the subject accident. Range of motion testing performed on plaintiff's left knee revealed a 15% limitation in range of motion on flexion and an 11% limitation in range of motion on

extension which, according to Dr. Bhattacharya, represents an aggravation of plaintiff's prior left knee injuries sustained in the prior accident. Range of motion testing performed on plaintiff's cervical spine revealed limitations in range of motion on all planes in varying amounts between 22-33%. The lumbar spine was also restricted on all planes to the extent of 17-33%. According to Dr. Bhattacharya, the injuries to the lumbar spine also represented an aggravation of prior injuries sustained to plaintiff's lower back in the previous accident. Based upon these findings, Dr. Bhattacharya concluded that the injuries sustained in the subject accident resulted in a permanent and significant partial disability. In light of the foregoing, plaintiff has raised a triable issue of fact as to whether he sustained a "permanent consequential limitation of use of a body organ or member" or "a significant limitation of use of a body function or system" within the meaning of § 5102(d) of the Insurance law (see Pommells v Perez, 4 NY3d 566 [2005]; Tovere v Avis Rent A Car Systems, Inc., 98 NY2d 345 [1992]; Cenatus v Rosen, 3 AD3d 546 [2004].)

Accordingly, defendants' motion and cross-motion for summary judgment are denied. In light of the foregoing, it is unnecessary to address the plaintiff's remaining contentions.

Dated: March 8, 2007
J.S.C.
