

Armstrong v Motor Veh. Acc. Indem. Corp.

2010 NY Slip Op 32420(U)

August 31, 2010

Sup Ct, NY County

Docket Number: 107267/10

Judge: Eileen A. Rakower

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

HON. EILEEN A. RAKOWER

PRESENT:

PART 15

Index Number : 107267/2010

ARMSTRONG, DENISE

vs

M.V.A.I.C.

Sequence Number : 001

LEAVE TO SUE

INDEX NO. 107267/10

MOTION DATE _____

MOTION SEQ. NO. 001

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

FILED
SEP 03 2010
NEW YORK
COUNTY CLERK'S OFFICE

MOTION IS DECIDED IN ACCORDANCE WITH
THE ACCOMPANYING MEMORANDUM DECISION.

Dated: 8/31/10


HON. EILEEN A. RAKOWER

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUBMIT ORDER/JUDG.

SETTLE ORDER /JUDG.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: PART 15

-----X

DENISE ARMSTRONG,

Index No.
107267/10

Petitioner,
For an Order Granting Permission to Bring an
Action

-against-

THE MOTOR VEHICLE ACCIDENT
INDEMNIFICATION CORPORATION,

Respondent.

FILED
SEP 03 2010
NEW YORK
COUNTY CLERK'S OFFICE
Seq. No.:
001

DECISION
and ORDER

-----X

HON. EILEEN A. RAKOWER, J.S.C.

Petitioner makes this application for an Order permitting her to bring an action for personal injuries sustained as the result of being struck by a motor vehicle which left the scene of the accident on October 31, 2009. Petitioner was a pedestrian. Respondent Motor Vehicle Accident Indemnification Corporation ("MVAIC") does not oppose.

In support of her application, petitioner submits a copy of the police accident report, a copy of a Notice of Intention to Make Claim, dated November 11, 2009, and copy of a New York Motor Vehicle No-Fault Insurance Law Application for Motor Vehicle No-Fault Benefits.

Insurance Law §5218, Procedure for "hit and run" cases, states, in relevant part:

- (a) Any qualified person having a cause of action for . . . personal injury arising out of the ownership, maintenance or use of a motor vehicle in this state, when the identity of the motor vehicle and of the operator and

owner cannot be ascertained . . . may, upon notice to the corporation, apply to the court for an order permitting an action therefor against the corporation in court.

(b) The court may proceed upon the application in a summary manner and may make an order permitting the action when after a hearing it is satisfied that:

- (1) the applicant has complied with the requirements of section [5208] of this article;
- (2) the applicant is a qualified person;
- (3) the injured or deceased person was not at the time of the accident operating an uninsured motor vehicle or operating a motor vehicle in violation of an order of suspension or revocation;
- (4) the applicant has a cause of action against the operator or owner of the motor vehicle;
- (5) all reasonable efforts have been made to ascertain the identity of the motor vehicle and of the owner and operator and either the identity of the motor vehicle and the owner and operator cannot be established, or the identity of the operator, who was operating the motor vehicle without the owner's consent, cannot be established; and
- (6) the application is not made by or on behalf of an insurer or surety . . .

Insurance Law §5208 states, in relevant part:

(a) The protection provided by the corporation on account of motor vehicle accidents caused by financially irresponsible motorists shall be available to:

(2)(A) Any qualified person having cause of action because of death or bodily injury, arising out of a motor vehicle accident occurring within this state and reported within twenty-four hours after the occurrence to a police, peace or judicial officer in the vicinity or to the commissioner, and who files with the

corporation within ninety days of the accrual of the cause of action, as a condition precedent to the right to apply for payment from the corporation, an affidavit stating that:

- (i) the person has the cause of action for damages arising out of the accident and setting forth the supporting facts,
- (ii) the cause of action is against a person whose identity is unascertainable; and
- (iii) the person is making a claim for those damages.

Petitioner has shown that she obtained a police report within twenty-four hours of her accident, and that she filed a Notice of Intention to Make Claim within 90 days, as required by Section 5208 of the Insurance Law.

A qualified person is defined as a resident of this state other than the insured. (see Insurance Law Section 601 subd. b). On her police accident report, Notice of Intention to Make a Claim form, and No-Fault Benefits application, petitioner lists her address as 130-136 West 142nd Street in the County and State of New York. MVAIC does not come forward to dispute Petitioner’s residency claim, or to assert that petitioner was insured at the time of the accident.

Furthermore, Petitioner has established that the owner of the vehicle could not be identified. The police report states, in relevant part:

AT TPO PEDESTRIAN WAS STRUCK BY [illegible] VEH. 1 A POSSIBLE 4 PASS HONDA THAT WAS TRAVELING W/B ON 145 STREET. DRIVER DID NOT STOP. NO PLATE ON VEHICLE . . .

As the vehicle that struck petitioner left the scene and was missing a license plate, the Court is satisfied that petitioner cannot, with due diligence, ascertain the owner or operator of such vehicle. (see generally; *O’Rourke v. MVAIC*, 29 AD2d 938[1st Dept. 1968]). Petitioner states, in her Notice of Intention to Make a Claim, that she suffered “Multiple bodily injuries including but not limited to head, neck, back, Left leg and right knee.” Petitioner has complied with the applicable statutes, and MVAIC does not oppose.

Wherefore it is hereby

ORDERED that the petition is granted without opposition.

This constitutes the order and decision of the court. All other relief requested is denied.

Dated: August ³¹~~25~~, 2010


EILEEN A. RAKOWER, J. S.C.

FILED
SEP 03 2010
NEW YORK
COUNTY CLERK'S OFFICE