

**Valentin v Santos**

2012 NY Slip Op 33886(U)

March 26, 2012

Supreme Court, Bronx County

Docket Number: 25278/03

Judge: Ben R. Barbato

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**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX**

**Present:** Honorable Ben R. Barbato

JUAN VALENTIN, GLORIA RAMOS, CARLOS  
ARAYA and JACQUELINE RAMOS,

Plaintiffs,

-against-

CARLOS R. SANTOS,

Defendant.

**DECISION/ORDER**

Index No.: 25278/03

The following papers numbered 1 to 6 read on this motion for summary judgment noticed on September 15, 2009 and duly transferred on March 26, 2012.

<u>Papers Submitted</u>	<u>Numbered</u>
Notice of Motion, Affirmation & Exhibits	1, 2, 3
Affirmation in Opposition & Exhibits	4, 5
Reply Affirmation	6

Upon the foregoing papers, and after restoration of this matter by Order of Justice Sharon A.M. Aarons dated October 6, 2011, Defendant, Carlos R. Santos, seeks an Order granting summary judgment and dismissing Plaintiffs' Complaint for failure to satisfy the serious injury threshold under Insurance Law §5102(d).

This is an action to recover for personal injuries allegedly sustained as a result of a motor vehicle accident which occurred on October 22, 2000, at the intersection of Jennings Street and Boone Avenue, in the County of Bronx, City and State of New York.

On February 11, 2009, the Plaintiff Juan Valentin appeared for an orthopedic examination conducted by Defendant's appointed physician Dr. Jay Nathan. Upon examination, Dr. Nathan determined that the Plaintiff suffered from sprain and or strain of the lumbar and cervical spines which, at the time of the examination, had resolved with no clinical residuals. Dr. Nathan also finds that Plaintiff is status post right knee arthroscopy. Dr. Nathan further opines that Plaintiff

is not disabled and may work and perform activities of daily living without restriction.

On February 11, 2009, the Plaintiff Juan Valentin appeared for a neurological examination conducted by Defendant's appointed physician Dr. Michael J. Carciente. Upon examination, Dr. Carciente determined that Plaintiff had a normal neurological examination with no objective findings. Dr. Carciente also finds that Plaintiff is capable of continuing to work.

Defendant offers the report of Dr. Peter A. Ross, a radiologist who reviewed the MRI of the Plaintiff Juan Valentin's lumbar spine which revealed the presence of vertebral spondylosis involving L5-S1 with desiccation and narrowing of the L5-S1 interspace and diffuse annular bulge with a parasagittal disc herniation extending to the epidural fat and adjacent to, and suspicious for compressing the S1 root, all of which Dr. Ross states preexist the accident of October 22, 2000.

On April 3, 2008, the Plaintiff Gloria Ramos appeared for an orthopedic examination conducted by Defendant's appointed physician Dr. Arnold T. Berman. Upon examination, Dr. Berman determined that the Plaintiff suffered from sprain and or strain of the lumbar and cervical spines which, at the time of the examination, had resolved. with no residuals. Dr. Berman further opines that Plaintiff can participate in all activities of daily living and may work at her regular employment full time without restriction.

On April 3, 2008, the Plaintiff Gloria Ramos appeared for an neurological examination conducted by Defendant's appointed physician Dr. Daniel Feuer. Upon examination, Dr. Feuer determined that the Plaintiff had a normal neurological examination with a finding of no objective neurological disabilities or neurological permanency related to the accident of October 22, 2000. Dr. Feuer also finds that Plaintiff is capable of engaging in all activities of daily living without restriction.

On April 3, 2008, the Plaintiff Carlos Araya appeared for an orthopedic examination conducted by Defendant's appointed physician Dr. Arnold T. Berman. Upon examination, Dr. Berman determined that the Plaintiff suffered from sprain and or strain of the lumbar and cervical spines which, at the time of the examination, had resolved. with no residuals. Dr. Berman further opines that Plaintiff can participate in all activities of daily living and may work at his regular employment full time without restriction.

On April 3, 2008, the Plaintiff Carlos Araya appeared for an neurological examination conducted by Defendant's appointed physician Dr. Daniel Feuer. Upon examination, Dr. Feuer determined that the Plaintiff had a normal neurological examination with a finding of no objective neurological disabilities or neurological permanency relating to the accident of October 22, 2000. Dr. Feuer also finds that Plaintiff is able to engage in full active employment and capable of engaging in all activities of daily living without restriction.

Defendant offer the report of Dr. Peter A. Ross, a radiologist who reviewed the MRI of the Plaintiff Carlos Araya's lumbar spine which revealed the presence of vertebral spondylosis involving L4 through S1 with L5-S1 with desiccation and vertebral spondylosis changes combined with discogenic material minimally deforming the ventral thecal sac, without focal herniation or diffuse annular bulge component, the L5-S1 level shows a broad based central disc herniation with extension to the epidural fat. Dr. Ross further opines that these findings preexist the accident of October 22, 2000 but does not exclude the possibility of causally relating the findings to the accident.

On April 3, 2008, the Plaintiff Jacqueline Ramos appeared for an orthopedic examination conducted by Defendant's appointed physician Dr. Arnold T. Berman. Upon examination, Dr. Berman determined that the Plaintiff suffered from sprain and or strain of the lumbar and cervical

spines which, at the time of the examination, had resolved. with no residuals. Dr. Berman further opines that Plaintiff does not require further treatment, can participate in all activities of daily living and may work at her regular employment full time without restriction.

On April 3, 2008, the Plaintiff Jacqueline Ramos appeared for an neurological examination conducted by Defendant's appointed physician Dr. Daniel Feuer. Upon examination, Dr. Feuer determined that the Plaintiff had a normal neurological examination with a finding of no objective neurological disabilities or neurological permanency relating to the accident of October 22, 2000. Dr. Feuer also finds that Plaintiff is able to engage in full active employment and capable of engaging in all activities of daily living without restriction.

The Plaintiffs have submitted unsworn medical reports and records which were not in proper form to be considered by this court.

Under the "no fault" law, in order to maintain an action for personal injury, a plaintiff must establish that a "serious injury" has been sustained. *Licari v. Elliot*, 57 N.Y.2d 230 (1982). The proponent of a motion for summary judgment must tender sufficient evidence to the absence of any material issue of fact and the right to judgment as a matter of law. *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320 (1986); *Winegrad v. New York University Medical Center*, 64 N.Y.2d 851 (1985). In the present action, the burden rests on Defendants to establish, by submission of evidentiary proof in admissible form, that Plaintiff has not suffered a "serious injury." *Lowe v. Bennett*, 122 A.D.2d 728 (1<sup>st</sup> Dept. 1986) *aff'd* 69 N.Y.2d 701 (1986). Where a defendant's motion is sufficient to raise the issue of whether a "serious injury" has been sustained, the burden then shifts and it is incumbent upon the plaintiff to produce *prima facie* evidence in admissible form to support the claim of serious injury. *Licari*, *supra*; *Lopez v. Senatore*, 65 N.Y.2d 1017 (1985). Further, it is the presentation of objective proof of the nature and degree of a plaintiff's

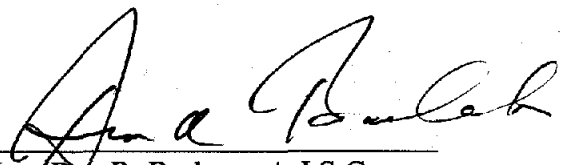
injury which is required to satisfy the statutory threshold for "serious injury". Therefore, disc bulges and herniated disc alone do not automatically fulfil the requirements of Insurance Law §5102(d). See: *Cortez v. Manhattan Bible Church*, 14 A.D.3d 466 (1<sup>st</sup> Dept. 2004). Plaintiff must still establish evidence of the extent of his purported physical limitations and its duration. *Arjona v. Calcano*, 7 A.D.3d 279 (1<sup>st</sup> Dept. 2004).

In the instant case Plaintiffs have not demonstrated by admissible evidence an objective and quantitative evaluation that they have suffered significant limitations to the normal function, purpose and use of a body organ, member, function or system sufficient to raise a material issue of fact for determination by a jury. Further, they have not demonstrated by admissible evidence the extent and duration of their physical limitations sufficient to allow this action to be presented to a trier of facts. The role of the court is to determine whether bona fide issues of fact exist, and not to resolve issues of credibility. *Knepka v. Tallman*, 278 A.D.2d 811 (4<sup>th</sup> Dept. 2000). The moving party must tender evidence sufficient to establish as a matter of law that there exist no triable issues of fact to present to a jury. *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320 (1986). Based upon the exhibits and deposition testimony submitted, the Court finds that the Defendant has met that burden.

Therefore it is

**ORDERED**, that Defendant, Carlos R. Santos' motion for an Order granting summary judgment dismissing Plaintiffs' Complaint for failure to satisfy the serious injury threshold under Insurance Law §5102(d) is **granted**.

Dated: March 26, 2012

  
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Hon Ben R. Barbato, A.J.S.C.