

Emanuel v New York City Tr. Auth.
2018 NY Slip Op 32251(U)
September 12, 2018
Supreme Court, Kings County
Docket Number: 504712/16
Judge: Debra Silber
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : PART 9**

X

PEARL EMANUEL,

Plaintiff,

-against-

**THE NEW YORK CITY TRANSIT AUTHORITY d/b/a
ACCESS-A-RIDE, KREM 777 INC., KREM 777 INC. d/b/a
ACCESS-A-RIDE, ASHUR RUVINOV and
SAYOUBA A. PRIME,**

Defendants.

X

DECISION / ORDER

**Index No. 504712/16
Motion Seq. No. 6, 7
Date Submitted: 7/12/18
Cal No. 24, 26**

Recitation, as required by CPLR 2219(a), of the papers considered in the review of defendants' motion and cross motion for summary judgment.

Papers	NYSCEF Doc.
Notice of Motion, Affirmation and Exhibits Annexed.....	<u>51-62</u>
Notices of Cross Motion, Affirmation and Exhibits Annexed.....	<u>65-73</u>
Answering Affirmations	<u>77, 79-83</u>
Reply Affirmation.....	<u>84</u>

**Upon the foregoing cited papers, the Decision/Order on these motions is
as follows:**

This is a personal injury action arising out of a motor vehicle accident. On August 30, 2015, plaintiff Pearl Emanuel was the passenger in an Access-A-Ride van owned by defendant Krem 777 Inc. and operated by Ashur Ruvinov when, while traveling on Atlantic Avenue near the intersection of Bancroft Place in Brooklyn, it was hit in rear by

a vehicle owned and operated by defendant Sayouba A. Prime.¹ Plaintiff's bill of particulars alleges that she sustained a small broad-based central disc herniation resulting in mild narrowing of the ventral CSF space at C2-C3; a small to moderate broad-based central disc herniation resulting in moderate compression and impingement upon the ventral CSF space and mild narrowing of the neural foramina bilaterally at C3-C4; a moderate broad-based central disc herniation resulting in moderate compression and impingement upon the ventral CSF space with moderate narrowing of the neural foramina at C4-C5; a moderate broad-based central disc herniation resulting in moderate compression and impingement upon the ventral CSF space and mild narrowing of the neural foramina bilaterally at C5-C6; a small broad-based central disc herniation resulting in moderate compression and impingement upon the ventral CSF space and mild narrowing of the neural right foramina at C6-C7; all with resulting radiculopathy and restricted range of motion. In addition, the bill of particulars claims plaintiff also sustained sprains and strains and contusions to plaintiff's shoulders and knees.

Defendants move and cross move for summary judgment dismissing the plaintiff's complaint, pursuant to CPLR Rule 3212, on the ground that plaintiff did not sustain a "serious injury" as defined by Insurance Law § 5102(d). Defendants have made a prima facie showing of their entitlement to summary judgment with the affirmed medical reports of Darren Fitzpatrick, M.D., Chandra M. Sharma, M.D., Pierce J.

¹Defendant The New York City Transit Authority was granted summary judgment dismissing the complaint and all cross claims against it by separate decision and order dated July 12, 2018 inasmuch as it did not own the vehicle or employ the driver.

Ferriter, M.D., who aver that plaintiff's claimed injuries are degenerative and not causally related to the subject accident (see *White v Dangelo Corp.*, 147 AD3d 882 [2d Dept 2017]; *Young Chan Kim v Hook*, 142 AD3d 551, 552 [2d Dept 2016]).

Chandra M. Sharma, M.D., a board certified neurologist who examined plaintiff on November 14, 2017, found that plaintiff, who was 90 years old at the time of the exam, suffered from resolved lumbar sprains/strains and no permanent injury from the subject accident and that there were no objective findings to support the injuries claimed in the bill of particulars. Darren Fitzpatrick, M.D., a board certified radiologist who reviewed the MRI films of plaintiff's cervical spine taken about 6 weeks after the accident found normal marrow signal, no ligamentous edema, and describes multilevel degenerative disc disease of the cervical spine. He concludes that the MRI findings are indicative of degenerative disc disease and are not causally related to any traumatic cervical spine injury. Pierce J. Ferriter, M.D., a board certified orthopedic surgeon, who examined plaintiff on November 6, 2017, reports a normal orthopedic examination and states that plaintiff's subjective complaints do not correlate with the negative clinical tests results. While plaintiff demonstrated a minimal restriction in her range of motion, he found that it was compatible with her age. Dr. Ferriter found no orthopedic limitations and noted that plaintiff is capable of the normal activities of daily living.

Finally, plaintiff's own testimony indicates that she was not confined to her bed and was confined to her home for only three to four weeks as a result of the subject accident (Exhibit I at 58-59) and she did not hire anyone to help or assist her with her daily activities (Exhibit I at 75). Thus, plaintiff was not prevented from performing substantially all of her daily activities for 90 out of the first 180 days after the accident

(see *Strenk v Rodas*, 111 A.3d 920 [2d Dept 2013]; *Hamilton v Rouse*, 46 AD3d 514, 516 [2d Dept 2007]).

However, the court finds that plaintiff has overcome the motion and raised a triable issue of fact, based upon the affidavit of Dr. Karl LaTortue (Exhibit A) who last examined plaintiff on June 28, 2018. He found the injuries listed by plaintiff in the bill of particulars were caused by the trauma of the August 30, 2015 accident and that the plaintiff's injuries resulted in a significant limitation and restriction on plaintiff's ability to participate in her customary home and recreational activities for more than 3 months following the accident. In addition, he found restricted range of motion in her cervical and lumbar spine that constitute a significant loss of her normal and expected range of motion due to the accident.

Accordingly, it is

ORDERED that the motions are both denied.

This constitutes the decision and order of the court.

Dated: September 12, 2018

ENTER:



Hon. Debra Silber, J.S.C.

**Hon. Debra Silber
Justice Supreme Court**