Curran v Hribar
2019 NY Slip Op 31247(U)
May 3, 2019
Supreme Court, New York County
Docket Number: 154038/2017
Judge: Adam Silvera

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART IAS MOTION 22

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MAUREEN CURRAN,

Plaintiff,

- v -

CARL HRIBAR, CAROLINE HRIBAR

Defendant.

INDEX NO. 154038/2017

MOTION DATE 11/27/2018

MOTION SEQ. NO. 001

DECISION AND ORDER

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HON. ADAM SILVERA:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13, 14, 15, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32
were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, it is ORDERED that defendants' motion for summary judgment and to dismiss plaintiff's complaint is denied. Before the court is defendant Carl R. Hribar and defendant Caroline H. Hribar's motion for an Order pursuant to CPLR §3212 granting summary judgment in favor of defendants to dismiss the Complaint of plaintiff Maureen Curran for failure demonstrate that plaintiff has suffered a "serious injury" as defined under Section 5102(d) of the Insurance Law.

The suit at bar stems from a motor vehicle collision which occurred on July 8, 2016, on Interstate 495 in the Town of Islip, County of Suffolk, and State of New York when a vehicle owned by defendant Carl R. Hribar and operated by defendant Caroline H. Hribar struck a vehicle operated by plaintiff Maureen Curran which allegedly resulted in the serious injury of plaintiff.

"The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case" (*Winegrad v New York University Medical Center*, 64 NY2d 851, 853 [1985]). Once such entitlement has been demonstrated by the moving party, the burden shifts to the party opposing the motion to "demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action or tender an acceptable excuse for his failure … to do [so]" (*Zuckerman v City of New York*, 49 NY2d 557, 560 [1980]).

In order to satisfy their burden under Insurance Law § 5102(d), a plaintiff must meet the "serious injury" threshold (*Toure v Avis Rent a Car Systems, Inc.*, 98 NY2d 345, 352 [2002] [finding that in order establish a prima facie case that a plaintiff in a negligence action arising from a motor vehicle accident did sustain a serious injury, plaintiff must establish the existence of either a "permanent consequential limitation of use of a body organ or member [or a] significant limitation of use of a body function or system"]).

The Court notes that summary judgment is a drastic remedy and should only be granted if the moving party has sufficiently established that it is warranted as a matter of law (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). "In determining whether summary judgment is appropriate, the motion court should draw all reasonable inferences in favor of the nonmoving party and should not pass on issues of credibility" (*Garcia v J.C. Duggan, Inc.*, 180 AD2d 579, 580 [1st Dep't 1992], citing *Dauman Displays, Inc. v Masturzo*, 168 AD2d 204 [1st Dep't 1990]). As such, summary judgment is rarely granted in negligence actions unless there is no conflict at all in the evidence (*See Ugarriza v Schmieder*, 46 NY2d 471, 475-476 [1979]).

Here, defendant alleges that plaintiff did not sustain a serious injury. In support of their motion defendants attach the deposition of plaintiff and the independent medical report of Dr.

Stuart J. Herson (Mot, Exh C &D). Defendants note that plaintiff testified that she did not receive medical attention at the scene of the accident, drove herself home, and was confined to bed for only two days following the accident (*id.*, Exh C at 27-28 & 48). Dr. Herson's July 19, 2018 independent medical examination recorded that plaintiff had a normal range of motion and suffered from no current disabilities in regard to her daily living or occupation (*id.*, Exh D). Defendants have made a prima facie showing of entitlement to summary judgment and the burden shifts to plaintiff to raise an issue of fact.

In opposition, plaintiff states that the affirmed medical reports of Dr Raj Tolat, East End Urgent and Primary Care, Wading River Physical Therapy, Zwanger-Pesiri Radiology and Orthopedic Associates of Long Island raise a question of fact as to whether plaintiff has sustained a serious injury (Aff in Op, Exh F, G, H, I, & J). Dr. Tolat examined plaintiff on December 20, 2018 and found a decrease in range of motion to plaintiff's cervical flexion, cervical extension and bilateral rotation which he opined is related to the motor vehicle accident on July 8, 2016, and permanent in nature (*id.*, Exh F). Plaintiff avers that she received medical treatment for several months following the accident, continues to suffer from range of motion restrictions and has not yet been able to restore herself to her pre-accident level of health. Accordingly, plaintiff has raised an issue of fact precluding defendants' motion for summary judgment on the issue of serious injury.

Accordingly, it is

ORDERED that defendants' motion for summary judgment to dismiss plaintiff's Complaint on the grounds that plaintiff allegedly has not sustained a "serious injury" as defined in 5102 of the Insurance Law is denied; and it is further

ORDERED that within 30 days of entry, plaintiff shall serve a copy of this decision/order upon defendants with notice of entry.

This constitutes the Decision/Order of the Court.

5/3/19
DATE

ADAM SILVERA, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED	X	DENIED		GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE