

Jadoonauth v Senaten-Gil
2019 NY Slip Op 31717(U)
June 13, 2019
Supreme Court, New York County
Docket Number: 453160/2017
Judge: Adam Silvera
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART IAS MOTION 22

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PRIYA JADOONAUTH, MICHELLE ROBINSON

Plaintiff,

- v -

JUNIOR SENATEN-GIL, VIOLETA GIL-PAUL,

Defendant.

INDEX NO. 453160/2017

MOTION DATE 12/03/2018

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) 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34

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 defendants Junior Senaten-Gil and Violeta Gil-Paul's motion for an Order pursuant to CPLR §3212 granting summary judgment in favor of defendants to dismiss the Complaint of plaintiff Michelle H. Robinson 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 April 14, 2016, when a vehicle owned by defendant Junior Senaten-Gil and operated by defendant Violeta Gil-Paul struck a vehicle carrying passenger plaintiff Michelle H. Robinson 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, defendants allege that plaintiff did not sustain a serious injury as a result of the underlying accident. In support of their motion defendants attach the deposition of plaintiff and the Independent Medical Examination (IME) reports of Dr. Gary Kelman dated June 21, 2018 and October 10, 2018 (Mot, Exh F, G, & H). Defendants note that plaintiff testified at deposition

that she suffers from pre-existing conditions including rheumatoid arthritis and fibromyalgia (*id.*, Exh F at 51-52 and 57).

Plaintiff further testified that she was involved in a prior slip and fall accident in 1997 in which she injured her back and neck (*id.*, at 21, 36-37). Dr. Kelman examined plaintiff on June 13, 2018 and recorded in his June 21, 2018 report that plaintiff suffered from spondylolisthesis in the lumbar spine in addition to degeneration in the lumbar spine, cervical spine, and right hip (*id.*, Exh G at 2-3). Dr. Kelman further recorded that plaintiff has a normal range of motion in the cervical spine, thoracic spine, lumbar spine, right shoulder, left shoulder, both knees, and both hips (*id.*, at 5-7).

The IME report concluded that plaintiff's injuries were resolved, however, the report stated that "it appears that the above-diagnosed injuries are causally related to the accident on April 14, 2016" (*id.*, at 8). Defendants' motion contains evidence of a serious injury as a result of the accident at issue. "A defendant moving for summary judgment on the issue of whether the plaintiff sustained a serious injury has the initial burden of presenting competent evidence establishing that the injuries do not meet the threshold" (*Linton v Nawaz*, 62 AD3d 434, 439 [1st Dept 2009] citing *Wadford v Gruz*, 35 AD3d 258 [1st Dept 2006]). Defendants have failed to satisfy their burden as defendants' doctor opines that the injuries at issue are causally related to the underlying accident. Thus, defendants have failed to meet their burden precluding summary judgment.

Accordingly, it is

ORDERED that defendants' motion for summary judgment to dismiss plaintiff Michelle H. Robinson'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.

6/13/2019
DATE

CHECK ONE:

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CASE DISPOSED

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GRANTED

☒

DENIED

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SETTLE ORDER

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INCLUDES TRANSFER/REASSIGN

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NON-FINAL DISPOSITION

☐

GRANTED IN PART

☐

SUBMIT ORDER

☐

FIDUCIARY APPOINTMENT

☐

OTHER

☐

REFERENCE

ADAM SILVERA, J.S.C.

HON. ADAM SILVERA
J.S.C.