

Surujdin v Zaman

2019 NY Slip Op 35192(U)

September 30, 2019

Supreme Court, Queens County

Docket Number: Index No. 716738/17

Judge: Frederick D.R. Sampson

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

Short Form Order

NEW YORK STATE SUPREME COURT - QUEENS COUNTY
Present: HONORABLE FREDERICK D.R. SAMPSON IAS TERM, PART 31
Justice

-----X
ABIGALE SURUJDIN,

Plaintiff,

-against-

SHAFIQ ZAMAN and JAC CAR SERVICES, INC.,

Defendants.

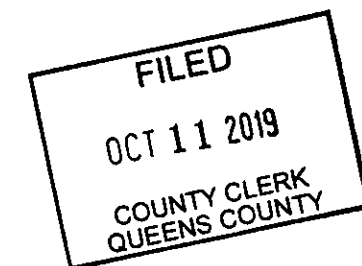
-----X
SHAFIQ ZAMAN and JAC CAR SERVICES, INC.,

Third-Party Plaintiffs,

-against-

GORDON RODRIGUEZ,

Third-Party Defendant.
-----X



The following papers numbered E 18 to E 90 read on Defendants / Third-Party Plaintiff JAC Car Services, Inc., and Shafiq Zaman's motion for an order pursuant to CPLR §3212 granting defendants summary judgment and dismissing the complaint of plaintiff, Jose Rodriguez, in as much as plaintiff fails to meet the serious injury threshold requirement mandated by Insurance Law §5102; and further on plaintiff's cross-motion for an Order, pursuant to CPLR §3212, granting summary judgment as to liability for plaintiff, since no triable issue of fact exists.

Table with 2 columns: Description of papers and PAPER NUMBERED. Includes entries for Notice of Motion-Affidavits-Exhibits, Answering Affidavits-Exhibits, Reply, Cross Motion- Affidavits- Exhibits, Answering Affidavit-Exhibits, and Reply.

Upon the foregoing papers, it is hereby ordered that the motion is disposed of as follows:

Plaintiff commenced this action to recover for injuries sustained in a motor vehicle accident which occurred on August 11, 2017 in Queens County, New York. Defendants, JAC Car Services, Inc., and Shafiq Zaman, ("Defendants") move *inter alia* for summary judgment and dismissal of plaintiff's Complaint, arguing that plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102(d).

Defendants present the pleadings, plaintiff's Bill of Particulars, and defendant doctors' reports in support of the motion. Plaintiff's Bill of Particulars states that plaintiff sustained two tears in the right wrist, two tears in the right shoulder, disc herniations at L5-S, C2 through C7, disc bulges at L3 through L5, strains and other injuries which confined plaintiff to bed for three days and home for three weeks following the accident. Dr. Chirugi compared plaintiff's bill of particulars and plaintiff's emergency room records and based upon the comparison opines that "the Bill of Particulars alleges injuries unsupported by the patient's own claims to the ER staff, and unsupported by their findings and examination." Dr. Nipper reviewed plaintiff's MRI reports and acknowledges two tears in plaintiff's wrist and a tear in plaintiff's right shoulder, but fails to address the MRI reports with respect to plaintiff's spine. Dr. Nipper, upon examination, found plaintiff to have a decreased range of motion in the lumbar spine but opines that the restrictive range is subjective rather than objective and further opines that the plaintiff did not sustain any significant or permanent injury as a result of the subject motor vehicle accident. Dr. Springer reviewed the MRI films of plaintiff's cervical spine, lumbar spine, right shoulder and right wrist. Dr. Springer acknowledges the disc herniations and bulges in plaintiff's spine but opines that the injuries are degenerative in nature. Upon review of the MRI films of plaintiff's right wrist and shoulder Dr. Springer again states the injuries are degenerative and not acute in nature. Plaintiff's deposition testimony states that plaintiff received injections in the right shoulder and wrist due to pain and did not have any prior accidents or injuries of her neck, back or shoulder prior to the subject accident. Plaintiff testified that she wears a back brace due to pain in her back and can no longer stand, sit or walk for long periods of time. Plaintiff further stated that she has trouble getting out of bed, playing with her children, cleaning, cooking climbing steps and feels pins, needles and shooting pain in her back and legs. Based upon the above evidence, defendant argues that plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102(d).

Plaintiff opposes defendant's motion, arguing that there are issues of fact as to plaintiff's injuries that preclude summary judgment. In opposition to defendant's motion, plaintiff presents the pleadings, plaintiff's deposition testimony and medical reports from Dr. Katzman and Dr. Lefcort. Dr. Katzman has examined plaintiff regularly since the accident and upon recent examination found plaintiff to have a decreased range of motion in the right wrist and right shoulder. Dr. Katzman opines that based upon his examination, and the MRI films, plaintiff has sustained a right shoulder intrasubstance tear and a probable scapholunate tear in the right wrist which are both causally related to the subject accident and permanent in nature. Dr. Lefcort has been providing plaintiff with chiropractic care since the accident and upon a recent examination found plaintiff to have a

decreased range of motion in her spine and opines that plaintiff sustained a 25% whole body impairment which is permanent in nature and causally related to the subject accident.

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 NY2d 230 [1982].) In moving for summary judgment, the proponent must tender sufficient evidence to show the absence of any material issue of fact and the right to judgment as a matter of law. (*Alvarez v. Prospect Hospital*, 68 NY2d 320 [1986]; *Winegrad v. New York Univ. v. Medical Center*, 64 NY2d 851 [1985].) In the present matter, the movants have the burden of proving, by submitting competent evidence in admissible form, that plaintiff has not suffered a "serious injury." (*Lowe v. Bennett*, 122 AD2d 728 [1st Dept. 1986], *affirmed*, 69 NY2d 701 [1986].) If the movant's papers are sufficient to raise the issue of whether a "serious injury" has been sustained, the burden shifts and it is then 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 NY2d 1017 [1985].)

Defendant presented a prima facie case of entitlement to summary judgment under Insurance Law § 5102(d), through review of plaintiff's Bill of Particulars and defendant's medical evidence. (*See Ceglian v. Chan*, 283 AD2d 536 [2nd Dept. 2001].) Further, Dr. Springer reviewed plaintiff's MRI films and opines that the injuries shown therein are degenerative in nature and not causally related to the accident.

However, plaintiff submitted sufficient evidence to rebut defendant's prima facie case. (*See Woods v. Yates*, 201 AD2d 724 [2nd Dept. 1994].) Dr. Katzman reviewed plaintiff's medical records, and examined plaintiff, and opined that the decreased range of motion and injuries in plaintiff's right shoulder and wrist are permanent in nature and directly related to the subject accident. Dr. Lefcourt also opined that the disc bulges and herniations in plaintiff's spine are permanent in nature and causally related to the accident. Further, plaintiff's deposition testimony specifies the limitations in daily activities both at work and home, which began only after the accident, and plaintiff testified to having no preexisting injuries to her neck, back, wrist and right shoulder. (*See Toure v. Avis Rent-A-Car Systems*, 98 NY2d 345 [2002].) As such, in as much as plaintiff sufficiently presented objective evidence that her injuries are permanent and serious, summary judgment is not warranted. (*See Gaddy v. Eyler*, 79 NY2d 955 [1992].)


Accordingly, defendant JAC Car Services, Inc., and Shafiq Zaman's motion for summary judgment pursuant to Insurance law 5102 (d) is denied.

Plaintiff's motion for summary judgment on the issue of liability is granted. Movant established a prima facie entitlement to summary judgment by demonstrating that on August 11, 2017 the stopped vehicle plaintiff was a passenger, was struck in the rear by defendants' vehicle. (*See Comiskey v. Pisano*, 10 AD3d 441 [2nd Dept. 2004]; *Martin v. Pullafico*, 272 AD2d 305 [2nd Dept. 2000].) Defendants' have failed to present a non-negligent excuse for the accident. (*See Vlachos v. Saueracker*, 10 AD3d 683 [2nd Dept. 2004].) Rather, defendants' speculate that there are issues of fact, without presenting an affidavit of merit or other objective evidence to support their

argument. (See *Marietta v. Scelzo*, 2006 WL 1174066 [2nd Dept. 5/2/2006].)

Accordingly, plaintiff's cross motion for summary judgment as against defendants on the issue of liability is granted. Upon the completion of discovery on the issue of damages, filing a Note of Issue, the payment of any appropriate fee's, and compliance with all the rules of the Court, this action shall be placed on the trial calendar of the Court for a trial on damages.

Dated: September 30, 2019



J.S.C.

FILED
OCT 11 2019
COUNTY CLERK
QUEENS COUNTY