

Saduzy v Mazumder
2020 NY Slip Op 32836(U)
July 21, 2020
Supreme Court, Bronx County
Docket Number: 21769/18E
Judge: Ben R. Barbato
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**SUPREME COURT STATE OF NEW YORK
COUNTY OF BRONX TRIAL TERM- PART 14**

Present: Honorable Ben R. Barbato

SANNAH SADUZY,

Plaintiff,

-against-

FARHAD A. MAZUMDER,

Defendant.

DECISION/ORDER

Index No.: 21769/18E

Recitation, as required by CPLR 2219(a) of the papers considered in the review of this motion to dismiss:

Papers	Numbered
Notice of Motion, Affirmation and Exhibits Annexed	1
Affirmation in Opposition and Exhibit Annexed	2

The instant action sounds in personal injury arising from a motor vehicle accident occurring on August 16, 2016, at or near its intersection of 102nd Street and Northern Blvd., in the County of Queens, City and State of New York. The Defendant, Farhad A. Mazumder, moves this court for an Order pursuant to CPLR §3212 granting Summary Judgment dismissing Plaintiffs' Complaint claiming that the Plaintiff cannot meet the serious injury threshold requirement mandated by Insurance Law §§ 5102(d) and 5104(a).

Defendant submits the Affirmed report of Dr. Steven A. Renzoni, a Board Certified Orthopedic Surgeon, who examined the Plaintiff on December 9, 2019. Dr. Renzoni's examination of Plaintiff's cervical and thoracic spine reveal active range of motion in all planes with no limitations and all tests conducted were determined to be negative. Dr. Renzoni's examination of the Plaintiff's right and left shoulders revealed active range of motion in all planes with no limitations and all tests conducted rendered negative results. Dr. Renzoni's examination of the Plaintiff's right and left knees revealed active range of motion in all planes

with no limitations and all tests conducted were determined to be negative. Dr. Renzoni opines that as a result of the accident Plaintiff suffered cervical, thoracic, bilateral shoulder and bilateral knee strain and sprain which at the time of his examination of the Plaintiff had resolved. Dr. Renzoni opines that Plaintiff does not presently suffer from a orthopedic disability, permanency or residuals.

Defendant submits the Affirmed report of Dr. Mark J. Decker, a Board Certified Radiologist, regarding Dr. Decker's review of the MRI dated October 1, 2017 of Plaintiff's left shoulder from Precision Radiology finds that Plaintiff presented with infraspinatus tendinopathy and fraying, a 2mm cyst in the humeral head, supraspinatus tendinopathy, subscapularis tendinopathy, superior labral tear favored over sublabral foramen, anterior capsular thickening and joint effusion. Dr. Decker opines that the finding are of a longstanding condition unrelated to the subject accident. He further opines that the MRI presents no evidence of an acute traumatic injury.

Dr. Decker's review of the MRI dated October 4, 2017 of Plaintiff's right knee from Precision Radiology finds that Plaintiff presented with patella alta with lateral subluxation, thickened medial plica, and joint effusion. Hamstring and gastrocnemius tendinopathy with soft tissue edema. Dr. Decker opines that the finding are of a longstanding condition unrelated to the subject accident. He further opines that the MRI presents no evidence of an acute traumatic injury.

Dr. Decker's review of the MRI dated October 10, 2017 of Plaintiff's right shoulder from Precision Radiology finds that Plaintiff presented with superior labral abnormality with a tear favored over the sublabral foraman, joint effusion, rotator cuff tendinopathy and fraying with a 2mm cyst at the humeral head insertion of the infraspinatus, capsular thickening, which can be

seen with adhesive capsulitis. Dr. Decker opines that the finding are of a longstanding condition unrelated to the subject accident. He further opines that the MRI presents no evidence of an acute traumatic injury.

Dr. Decker's review of the MRI dated October 8, 2017 of Plaintiff's cervical spine from Precision Radiology finds that Plaintiff presented with minor degenerative changes with bulging and Luschka hypertrophy. Dr. Decker opines that the finding are of a longstanding condition unrelated to the subject accident. He further opines that the MRI presents no evidence of an acute traumatic injury.

Plaintiff submits the Affirmed report of Dr. David R. Payne, a Board Certified Radiologist, who performed the MRI of Plaintiff's cervical and thoracic spine. Dr. Payne determines that the cervical MRI reveals bulging disc at C4/5, shallow right paracentral herniation at C5/6 with thecal sac indentation and disc bulging at C6/7.

Plaintiff submits the Affirmation of Dr. Tamar Elbaz, a Board Certified in Pain Medicine and Anesthesiology, who states that he initially examined the Plaintiff on November 28, 2017. Dr. Elbaz' examination of Plaintiff's revealed painful limited range of motion of the cervical spine, with positive Spurling's test. On January 16 and February 15, 2018 Plaintiff was administered cervical epidural steroid injections at the C7/T1 level. On November 1, 2018 Plaintiff underwent an anterior cervical percutaneous discectomy at the C5/6 level.

Dr. Elbaz upon examination and treatment of the Plaintiff for two years following the subject accident states that Mr. Saduzy has limited ranges of motion in his cervical, lumbar, bilateral shoulders and right knee. He states that the Plaintiff has as a result of the motor vehicle accident suffered permanent injury and significant limitation to his neck, upper and lower back, bilateral shoulders and right knee.

Plaintiff also submits the Affirmation of Dr. Siddharth Prakash, a Board Certified Radiologist, who states that he reviewed the MRI of Plaintiff's right shoulder and states that the MRI report reveals a bursal side supraspinatus tendon tear, an anterior superior labral tear, articular side supraspinatous tendon tear and joint effusion. Dr. Prakash's review of the MRI of Plaintiff's left shoulder reveals a tear of the superior labrum, SLAP tear, articular side supraspinatous tendon tear and subcoracoid effusion. Dr. Prakash's review of the MRI of Plaintiff's right knee reveals a flap tear of the posterior of the lateral meniscus exiting the superior articular surface, tear of the free edge of the posterior horn of the lateral meniscus, tear of the superior surface and free edge of the posterior horn of the medial meniscus, and joint effusion.

Plaintiff also submits the Affirmation of Dr. Magda Fahmy, Board Certified in Physical Medicine, Rehabilitation and Spinal Cord Injury Medicine, who initially examined the Plaintiff on August 30, 2017. Dr. Fahmy states that she observed objective signs of trauma in Plaintiff's upper trapezius area, neck thoracic paraspinal muscles and supraspinatus muscles. Dr. Fahmy noted decreased sensation in the C5/6 dermatome and a positive Spurling Test on the right which Dr. Fahmy states is indicative of radiculopathy. Dr. Fahmy states that the injuries to Plaintiff's neck, upper back, right knee and right shoulder are acute and traumatic and causally related to the August 16, 2017 accident.

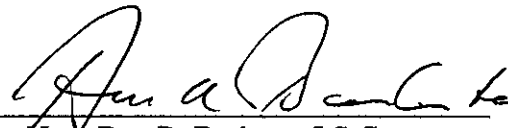
It is settled law that on a motion for summary judgment, the moving party has the initial burden of demonstrating, by admissible evidence, their right to judgment. The burden then shifts to the opposing party, who must proffer evidence in admissible form establishing that an issue of fact exists warranting a trial. CPLR §3112(b); *Zuckerman v. City of New York*, 49 N.Y.2d 557 (1980); *Singer v. Friedman*, 220 A.D.2d 574(2d Dept 1995). Further, issue finding rather than

issue determination is the function of the court on motions for summary judgment. *Esteve v. Abad*, 271 A.D. 725 (1st Dept. 1947); *Stillman v. Twentieth Century Fox F. Corp.*, 3 N.Y.2d 395 (1957); *Clearwater Realty Co. v. Hernandez*, 256 A.D.2d 100 (1st Dept. 1998). Additionally the role of the court is not to resolve issues of credibility. *Knepka v. Tallman*, 278 A.D.2d 811(4th Dept. 2000) Since summary judgment is a drastic remedy it should not be granted where there is any doubt as to the existence of a triable issue of fact. *Rotuba Extruders v. Ceppos*, 46 N.Y.2d 223(1978) Thus where the existence of an issue of fact is arguable summary judgment should not be granted. *Stone v. Goodson*, 8 N.Y.2d 8 (1960). In the instant case viewing the evidence in the light most favorable to the party opposing the motion for summary judgment, namely the Plaintiffs, there exists a triable issue of material fact for determination by a jury. See: *Bacon v. County of Westchester*, 149 A.D.2d 451 (2nd Dept. 1989); *Mutschnik v. Summit Brokerage Corp.*, 148 A.D.2d 427 (2nd Dept. 1989) However, with respect to Plaintiff's claim that he was unable to perform his usual and customary activities for 90 out of the 180 days immediately following the accident a reading of Plaintiffs' deposition transcript and medical records provided do not support such position. *Hayes v. Gaceur*, 162 A.D.3d 437 (1st Dept 2018); *Holloman v. American United Transportation Inc.*, 162 A.D.3d 423 (1st Dept 2018).

Therefore it is

ORDERED, that Defendant's, motion for an Order pursuant to CPLR §3212 granting summary judgment dismissing the Plaintiff's Complaint for failure to meet the serious injury threshold requirement mandated by Insurance Law §§ 5102(d) and 5104(a) is **denied**.

Dated: July 21, 2020


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