

Thompson v Singh
2020 NY Slip Op 34614(U)
May 15, 2020
Supreme Court, Queens County
Docket Number: Index No. 712174/17E
Judge: Frederick D.R. Sampson
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Short Form Order

COUNTY CLERK
QUEENS COUNTY

NEW YORK STATE SUPREME COURT - QUEENS COUNTY

Present: HONORABLE FREDERICK D.R. SAMPSON IAS TERM, PART 31

Justice

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ALYSSA THOMPSON,

Index No: 712174/17E
Motion Date: 1/9/2020
Motion Cal. No: 60
Motion Seq. No: 3

Plaintiff,

-against-

HARSURJIT SINGH, EDWARD ESPINOZA
and GLORIA VILLALOBOS,

Defendants.

-----X

The following papers numbered E 51 to E 95 read on defendant Harsurjit Singh's this motion for an order pursuant to CPLR §3212 granting defendants summary judgment and dismissing the Complaint plaintiff fails to meet the serious injury threshold requirement mandated by Insurance Law § 5102(d).

	PAPERS NUMBERED
Notice of Motion-Affidavits-Exhibits.....	E 51 - E 61
Answering Affidavits-Exhibits.....	E 71 - E 79
Reply.....	E 95
Cross Motion-Affidavits.....	E 62- E 64

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

In as much as the Court previously dismissed plaintiff's complaint as to defendants' Edward Espinoza and Gloria Villalobos on the issue of liability, said defendants' cross motion is denied as moot. As such, the Court need only consider defendant Harsurjit Singh's motion for summary judgement pursuant to Insurance Law 5102 (d).

Plaintiff commenced this action to recover for injuries sustained in a motor vehicle accident which occurred on July 31, 2016. Defendant Harsurjit Singh moves *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).

Defendant presents the pleadings, plaintiff's Bill of Particulars, plaintiff's deposition testimony and doctors' reports in support of the motion. Plaintiff's Bill of Particulars states that plaintiff sustained disc herniations at C3/4, L3/4, L4/5, L5/S1, disc bulges at C4/5, C6/7 and bursitis with internal derangement of the right shoulder, sprains, strains and other injuries.

Dr. Springer reviewed plaintiff's MRI films and found no disc bulges or herniations in plaintiff's cervical spine. Dr. Springer acknowledges disc bulges at L3/4 and L4/5 but opines that they are not post traumatic. Dr. Speinger also found no post traumatic injuries to plaintiff's right shoulder. Dr. Katz examined plaintiff and found plaintiff to have a decreased range of motion in the cervical spine, lumbar spine and right shoulder but opines that plaintiff's injuries are resolved and not permanent in nature. Dr. Cohen performed a neurologic exam of plaintiff and found plaintiff to have a full range of motion but opines that the clinical examination reveals some positive objective findings which demonstrate a minor impairment of neurologic function. Plaintiff's deposition testimony indicates that she sustained injures to her neck back and let knee in a prior accident in 2012. Plaintiff also testified that following subject accident of July 31, 2016 she did not return to work until December 2017 and that she feels pain daily, has trouble performing house work, lifting, sleeping, standing, sitting and received injections for pain in her right shoulder and lower spine. Based upon the 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, defendant has 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 a defendant's motion is 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].)

Here, based upon the foregoing, defendant failed to prove as a matter of law that the plaintiff did not sustain a serious injury pursuant to Insurance Law § 5102(d). Specifically, upon examination Dr. Katz found plaintiff to have a decreased rage of motion in the spine and right shoulder and Dr. Cohen found plaintiff to have minor impairment of neurologic function. Further, plaintiff's deposition testimony details the restrictions in her daily life, at work and at home, which began immediately following the accident. As defendants did not present a prima facie entitlement to summary judgment, it is unnecessary to review plaintiff's opposition papers. (*See Vialva v. McMillan*, 817 NYS2d 519 [2nd Dept. 7/11/2006].)

Accordingly, defendant Harsurjit Singh's motion for summary judgment pursuant to Insurance Law § 5102 (d) is denied.

Dated: May 15, 2020



J.S.C.

FILED

**5/18/2020
12:06 PM**

**COUNTY CLERK
QUEENS COUNTY**