

Medina v Urbana Cab Corp.

2020 NY Slip Op 35433(U)

January 4, 2020

Supreme Court, Kings County

Docket Number: Index No. 501127/2018

Judge: Ingrid Joseph

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At an I.A.S Term, Part 83 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 4th day of January 2020.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS
PRESENT: HON. INGRID JOSEPH, J.S.C

-----X
Jesus Medina

Index No. 501127/2018

Plaintiff,

-against-

Urbana Cab Corp. and Mohammed Meah
Defendants,

-----X
Recitation, as required by CPLR '2219(a), of the papers considered in the review of Defendant's Motion:

Papers Numbered

- Notice of Motion and
- Affidavits/Affirmations Annexed..... 1, 4
- Affirmation in Opposition Papers..... 2, 5
- Reply to Opposition Papers..... 3, 6

This action was commenced by plaintiff, Jesus Medina ("Plaintiff") to recover damages for injuries that allegedly resulted from a motor vehicle accident that occurred on June 14, 2017. Defendants, Urbana Cab Corp. and Mohammed Meah ("Defendants"), move by Notice of Motion (MS # 2) pursuant to CPLR § 3212 for summary judgment for an order dismissing the summons and complaint on the ground that Plaintiff did not suffer serious injuries within contemplation of New York Insurance Law § 5102.

The proponent of a motion for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986] citing *Winegrad v New York Univ. Med. Center*, 64 NY2d 851, 853 [1985], *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980] and *Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]). Failure to make such a prima facie showing requires denial of the

motion, regardless of the sufficiency of the opposing papers (*Winegrad v New York Univ. Med. Center*, 64 NY2d at 853). However, once this showing has been made, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial in the action (*Zuckerman v City of New York*, 49 at 562).

Defendants submitted reports of their orthopedic and radiologist independent medical examination by Jeffrey N. Gutman, M.D. and Scott A. Springer D.O., who performed examinations of Plaintiff on September 18, 2019 and August 8, 2019, respectively.

Dr. Gutman measured Plaintiff's range of motion in the cervical spine, lumbar spine and left shoulder using a goniometer and found restrictions to all. Dr. Gutman concluded that these restrictions to Plaintiff's range of motion are due to and compatible with his age of fifty-one (51) years. Dr. Gutman's reported his impression as Plaintiff's cervical, lumbar, and left shoulder arthroscopy as being resolved. Ultimately, he opined with a reasonable degree of medical certainty that there is no objective findings or evidence of residuals or permanency.

Dr. Springer reviewed Plaintiff's magnetic resonance imaging scans of his lumbar spine that was done twenty-one days prior to the accident that occurred on June 14, 2017. He reported that there was straightening of the normal lumbar lordosis, diffuse disc desiccation most prominent in L1-L2, L2-L3, and L5-S1, moderate loss of disc space height of L5-S1. Dr. Springer concluded that these defects are unrelated to trauma and caused by degeneration. Dr. Springer revealed that on the L1-L2, L2-L3, L3-L4, L4-L5, L5-L6 levels it showed mild subligamentous disc herniation with mild mass effect on the anterior thecal sac. He opined that the MRI scans showed an extension into the bilateral recess with some degree of stenosis. He further concluded that the stenosis is degenerative and could not have occurred in the time interval between the accident and study date. Dr. Springer also reviewed Plaintiff's lumbar and cervical spine and left shoulder MRI scans that were taken on August 23, 2017, July 31, 2017, and July 11, 2017, respectively a few months following the accident that occurred on June 14, 2017. He reported new findings of defects revealed in Plaintiff's MRI scan of the lumbar spine. He found partial disc desiccation, disc space narrowing, disc bulging, mass effect on the anterior thecal sac, defects to the neuroforamen with some direct contact and some pinching of the exiting L3, L4, and L5 nerve roots, disc herniations, stenosis, extension into the bilateral lateral recess, and early posterior disc osteophyte complex. Dr. Springer concludes that the defects

revealed on Plaintiff's lumbar MRI scan was caused by degeneration and is not traumatic in nature. Dr. Springer found defects to the cervical spine but ultimately opined that these defects are degenerative in nature and could not have developed in the interval between the exam and incident. Dr. Springer stated that Plaintiff's left shoulder MRI scan revealed no positive findings of defects except some benign cysts that are degenerative in the humeral head.

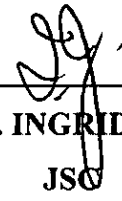
In opposition to Defendants motion, Plaintiff submitted his physician report by Yuri Koyen, M.D. who specializes in physical medicine and rehabilitation and first examined Plaintiff on June 19, 2017, five days after the accident. Dr. Koyen measured Plaintiff's range of motion of his left shoulder, cervical spine and lumbar spine with a goniometer. He reported findings of limitations to his flexion, abduction, internal rotation and external rotation of the left shoulder. He also reported findings of limitations to the range of motion of the cervical and lumbar spine. Dr. Koyen also reviewed the images of Plaintiff's MRI scans and found herniations and preexisting degenerative disc disease to the lumbar spine. He also found impingement in the left shoulder and herniations, bulging discs and preexisting degenerative disc diseases on the cervical spine. Dr. Koyen asserts that the accident exacerbated Plaintiff's preexisting degenerative disc disease. Dr. Koyen states that he recommended to Plaintiff to not to return to work and to limit his activities to avoid exacerbating his injuries. Plaintiff asserts that he was unable to perform work duties, or activities of daily living for the first 90 out of 180 days following the accident since he did not return to work until April 2018. Dr. Koyen most recent examination of Plaintiff conducted on March 20, 2020 with the use of a goniometer showed that plaintiff continues to have limited range of motion in his left shoulder, lumbar and cervical spine. Dr. Koyen opined that these restrictions are permanent and significant limitations to his range of motions. Dr. Koyen concluded with a reasonable degree of medical certainty that these defects and limitations are causally related to the subject motor vehicle accident. Plaintiff submitted additional physician reports by Adnan Qureshi, M.D. a physician who specializes in pain management, Howard I. Baum, M.D. a physician specializing in orthopedic surgery, Mark J. Lodespoto, M.D. a physician specializing in radiology, and Michael D. Green, a physician specializing in radiology. All of the treating physician reported findings of limitations to Plaintiff's range of motion.

After reviewing the papers, the Court finds that material issues of fact exist warranting a trial.

Accordingly, Defendants motion for summary judgment to dismiss the complaint is denied.

All other arguments and contentions are either moot or without merit.

This constituted the decision and order of the Court.



HON. INGRID JOSEPH

JSO

Hon. Ingrid Joseph
Supreme Court Justice

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