

**Akorede v Uber Tech., Inc.**

2022 NY Slip Op 31646(U)

May 17, 2022

Supreme Court, Kings County

Docket Number: Index No. 512568/2019

Judge: Debra Silber

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS : PART 9**

X

**BASIT AKOREDE,**

**Plaintiff,**

**DECISION/ORDER**

**-against-**

**Index No. 512568/2019**

**UBER TECHNOLOGIES, INC.; TVR GROUP, INC.;**

**Motion Seq. No. 3**

**SHUHRAT KURBANOV; HABBERSTAD BMW;**

**Date Submitted: 2/04/2022**

**HABBERSTAD MOTORSPORT, INC.; AEON CLARK,**

**Defendants.**

X

*Recitation, as required by CPLR 2219(a), of the papers considered in the review of plaintiff's motion for summary judgment.*

<b>Papers</b>	<b>NYSCEF Doc.</b>
Notice of Motion, Affirmations, Affidavits, and Exhibits Annexed.....	<u>75-89</u>
Affirmations in Opposition and Exhibits Annexed.....	<u>92-95; 97-102;</u> <u>106-107; 108-109</u>
Reply Affirmation.....	<u>110-111</u>

**Upon the foregoing cited papers, the Decision/Order on this application is as follows:**

In this personal injury action arising from an automobile accident that occurred on July 29, 2018 in Brooklyn, New York, the plaintiff moves this court for an order granting him summary judgment on the issue of liability, as well as for an order finding that he has sustained a serious injury as defined in § 5102(d) of the Insurance Law.

Plaintiff Basit Akorede's motion for summary judgment on the issue of liability is granted to the extent that plaintiff Akorede, who was a passenger in the vehicle operated by defendant Shuhrat Kurbanov, has established that he bears no fault for the happening of this accident. Any affirmative defenses of comparative fault asserted against him are stricken. Although defendant Kurbanov offers an affidavit wherein he claims that he came

to a full stop at the stop sign before proceeding into the intersection where the subject accident occurred, the court notes that neither he, nor the driver of the other vehicle, nor any of the other defendants for that matter, have been deposed, and the driver of the other vehicle, defendant Clark, does not offer an affidavit. As such, questions of fact still exist regarding the actions of the two drivers and how the subject accident occurred.

Plaintiff Akorede also seeks an order determining that he sustained a “serious injury” pursuant to § 5102(d) of the Insurance Law. The plaintiff contends that he sustained a fracture to his mandible, arguing that a fracture is one of the nine categories listed in § 5102(d) of the Insurance Law, which defines a serious injury. In support of this portion of the motion, the plaintiff offers the certified hospital record from Kings County Hospital, which indicates that on August 1, 2018, the plaintiff was diagnosed as having sustained, among other injuries, a “nondisplaced fracture of the right mandible” which required him to undergo a surgical procedure to his jaw on August 3, 2018. The plaintiff also offers a narrative report from Evan Mondshine, DDS, who saw the plaintiff for the first time on August 23, 2018, and re-examined him again on November 19, 2020. In his affirmed report, Dr. Mondshine states that the radiographic examination and findings from the plaintiff’s initial visit on August 23, 2018 revealed “evidence of a fracture to the right mandible mesial to tooth #29, which is sensitive” and opines that the “radiographs have ruled out a history of pre-existing or co-existing causes for the patient's current condition.” Dr. Mondshine further opines that “the traumatic accident of 07/29/2018 caused permanent injuries to Basit Akorede's left and right temporomandibular joints and muscular symptoms complex. The prognosis for a full and total recovery and restoration of pre-injury function of the left and right TMJ joints is unlikely.”

Based upon the foregoing, the court finds that the plaintiff has made a prima facie showing of entitlement to summary judgment on the issue of serious injury, as plaintiff sustained a fracture in the subject motor vehicle accident.

In opposition to the motion, the defendants, in four separate affirmations, all argue that the plaintiff is not entitled to summary judgment on the issue of liability, contending that nothing has changed since the court denied the summary judgment motion made by plaintiff Austin, another passenger, in 503314/20, except that defendant Kurbanov now offers an affidavit, which does not, by itself, eliminate all questions of fact about the happening of the accident. As stated above, the court agrees.

In opposition to the portion of the plaintiff's motion seeking summary judgment on the issue of serious injury, the defendants offer absolutely nothing. They argue that the plaintiff's motion is premature and that the defendants still haven't conducted their independent medical exams of the plaintiff. The court notes that, according to the plaintiff's attorney's affirmation in reply, the plaintiff in fact attended independent medical exams conducted on behalf of defendants TVR Group, Inc. and Shuhrat Kurbanov on January 18, January 25, January 26, and January 27, 2022. However, defendants TVR and Kurbanov's opposition papers were e-filed on December 29, 2021, prior to the dates of the IME's. It is unclear why defendants TVR and Kurbanov did not conduct their IME's until January of 2022 and it is equally baffling why the other defendants had not conducted their exams of the plaintiff prior to preparing their opposition to plaintiff's motion. The court takes note of the order that was issued by the Final Conference Part in this case on November 17, 2020 [Doc. 46], which directed that the independent medical examinations of the plaintiff had to be noticed by February 15, 2021, that the exams had to be completed by March 30, 2021 and that the reports had to be exchanged by April 30, 2021. There is no indication that the


defendants ever sought an extension of time to conduct the independent medical exams. Nor did they seek an adjournment of the motion for this purpose. A fracture of the jaw is a “serious injury” (see *Newman v Datta*, 72 AD3d 537 [1st Dept 2010]; *Chatoorang v Navarrete-Duque*, 105 AD3d 518 [1st Dept 2013]; *Moffitt v Murray*, 2 AD3d 1110 [3d Dept 2003]). As such, the portion of the plaintiff’s motion which seeks summary judgment on the issue of “serious injury,” is granted.

Accordingly, it is **ORDERED** that the portion of the plaintiff’s motion seeking summary judgment on the issue of liability is granted to the extent that he has established that he bears no fault for the happening of the accident. Any affirmative defenses of comparative fault are stricken. The portion of the plaintiff’s motion seeking summary judgment on the issue of “serious injury,” as defined in § 5102(d) of the Insurance Law, is granted. The issue of serious injury shall not be presented to the jury. Plaintiff has demonstrated that he has sustained a serious injury.

This constitutes the decision and order of the court.

Dated: May 17, 2022

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Hon. Debra Silber, J.S.C.