

<b>Mohammed v Chang</b>
2022 NY Slip Op 31713(U)
May 25, 2022
Supreme Court, Kings County
Docket Number: Index No. 524623/2019
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 23<sup>rd</sup> day of MAY 2022.

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

-----X  
SHAJAHAN MOHAMMED,

Plaintiff,

-against-

DAVID CHANG,

Defendant.  
-----X

Index No: 524623/2019

**DECISION & ORDER**

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of the defendant's motion.

<u>Papers</u>	<u>NYSCEF Nos.</u>
Notice of Motion and	
Affidavits/Affirmations Annexed.....	26 – 31
Affirmation in Opposition Papers.....	33 – 44
Reply to Opposition Papers.....	46

Upon the foregoing papers, Defendant, David Chang (“Defendant”), moves (MS#2) pursuant to CPLR § 3212 for an order granting defendant summary judgment dismissing the complaint of Plaintiff, Shajahan Mohammed (“Plaintiff”) on the grounds that Plaintiff did not sustain a “serious injury” under Insurance Law § 5102(d).

Plaintiff commenced this action to recover damages for personal injuries he allegedly sustained from a motor vehicle accident that occurred on July 25, 2019 at or near the intersection of Berry Street and North 3rd Street in Brooklyn, New York.

In support of his motion, Defendant submitted the affirmed report of orthopedist, Dana A. Mannor, M.D. ("Dr. Mannor"), dated February 25, 2021. After conducting a physical examination of the plaintiff using a hand-held goniometer and reviewing the plaintiff's medical records, Dr. Mannor opined that the plaintiff exhibited full ranges of motion in his cervical spine, thoracic spine, lumbar spine, bilateral shoulders, bilateral elbows and bilateral knees. Dr. Mannor further opined that the sprains and strains at Plaintiff's cervical spine, thoracic spine, lumbar spine, bilateral shoulder, left elbow and bilateral knee have been resolved.

In opposition, Plaintiff submitted an affirmation by his treating physician, Shouhei Yamagami, D.O. ("Dr. Yamagami"). In Dr. Yamagami's affirmation, he opined that after performing a series of range of motion tests using a hand-held goniometer, he found that plaintiff had limitations in mobility, specifically limited ranges of motion in both his cervical and lumbar spine, his left shoulder and his left knee. Dr. Yamagami further opined that Plaintiff's injuries are permanent, that Plaintiff will likely never regain full ranges of motion of his cervical and lumbar spines and that Plaintiff's injuries are brought about by the subject accident. Additionally, Plaintiff submitted a sworn affirmation by the radiologist Narayan B. Paruchuri, M.D. ("Dr. Paruchuri"). In his affirmation, he stated that he was the physician who read and interpreted the MRI films of Plaintiff's lumbar and cervical spine, and subsequently prepared the MRI reports stating that Plaintiff has bulges and herniations in his lumbar and cervical spine.

As a threshold matter in personal injury actions involving an automobile accident, a plaintiff is "required to plead and prove that he or she sustained a 'serious injury' as defined in the No-Fault Law" (*Van Nostrand v. Froehlich*, 44 AD2d 54, 59 [2d Dept 2007]; *Zecca v. Riccardelli*, 293 AD2d 31, 33 [2d Dept 2002]; NYIL §5102(d)). Under NYIL §5102(d), a

“serious injury” is defined as one which results in significant disfigurement, permanent loss of use of a body organ, member, function or system, permanent consequential limitation of use of a body organ or member, significant limitation of use of a body function or system or a medically determined injury, or impairment of a non-permanent nature which prevents the injured person from performing substantially all of the material acts which constitute such person's usual and customary daily activities for not less than ninety days during the one hundred eighty days immediately following the occurrence of the injury or impairment (*Nesci v. Romanelli*, 74 AD3d 765, 767 [2d Dept 2010]; *Oberly v. Bangs Ambulance Inc.*, 96 NY2d 295, 298 [2d Dept 2001]).

“A defendant can establish that the plaintiff's injuries are not serious within the meaning of the Insurance Law §5102(d) by submitting the affidavits or affirmations of medical experts who examined the plaintiff and conclude that no objective medical findings support the plaintiff's claim” (*Nuñez v. Teel*, 162 AD3d 1058, 1059 [2d Dept 2018]; *Grossman v. Wright*, 268 AD2d 79, 83 [2d Dept 1999]). The threshold question in determining a summary judgment motion on the issue of serious injury focuses on the sufficiency of the moving papers. 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 show the absence of any material issue of fact and the right to judgment as a matter of law (*Trustees of Columbia Univ. in the City of N.Y. v. D'Agostino Supermarkets, Inc.*, 36 NY3d 69, 73 [2020]; *Xiang Fu He v. Troon Mgt., Inc.*, 34 NY3d 167, 175 [2019]; *Alvarez v. Prospect Hospital*, 68 NY2d 320 [1986]). 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 of the action (*Deutsche Bank Natl. Trust Co. v. Brewton*, 142

AD3d 683, 685 [2d Dept 2016]; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). A medical affirmation or affidavit which is based on a physician's personal examination and observations of the plaintiff, is an acceptable method to provide a doctor's opinion regarding the existence and extent of a plaintiff's serious injury (*O'Sullivan v. Atrium Bus Co.*, 246 AD2d 418 [1st Dept 1998]).

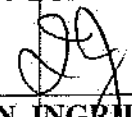
Here, the defendant has met his *prima facie* burden of showing that Plaintiff has not sustained a serious injury within the meaning of Insurance Law § 5102(d) as a result of the subject accident (*Vlachos v. New York City Tr. Auth.*, 139 AD3d 938, 939 [2d Dept 2016]; *Toure v. Avis Rent A Car Sys.*, 98 NY2d 345 [2002]). In opposition, however, the plaintiff raised a triable issue of fact as to whether he sustained a serious injury through the affirmed report of his treating physician.

Accordingly, after oral argument and a review of the submitted documents, the Court finds that the defendant's motion for summary judgment is denied as there are issues of fact present warranting a trial.

Issues not addressed are either moot or without merit.

This constitutes the Decision and Order of the Court.

ENTER

  
HON. INGRID JOSEPH, J.S.C.

Hon. Ingrid Joseph  
Supreme Court Justice