

**Suriel v Ramsaroop**

2022 NY Slip Op 32332(U)

January 12, 2022

Supreme Court, Bronx County

Docket Number: Index No. 32718/2019e

Judge: Veronica G. Hummel

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This opinion is uncorrected and not selected for official publication.

To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX IAS PART 31**

-----X  
GINETT SURIEL

Plaintiff,

-against -

ANAND RAMSAROOP and DEVI RAMSAROOP,  
Defendant.

-----X  
**VERONICA G. HUMMEL, A.S.C.J.**

**Index No. 32718/2019e  
DECISION/ORDER  
Motion Seq. 2**

In accordance with CPLR 2219 (a), the decision herein is made upon consideration of all papers filed by the parties in NYSCEF, in support of and in opposition to the motion of defendants ANAND RAMSAROOP and DEVI RAMSAROOP (defendants) [Mot. Seq. 2], made pursuant to CPLR 3212, for an order dismissing the complaint on the ground that plaintiff GINSFF SURIEL (plaintiff) has not sustained a “serious injury” as defined by Insurance Law 5102(d).

Plaintiff commenced this action to recover damages for personal injuries plaintiff allegedly sustained as a result of an June 20, 2019, motor vehicle accident. Plaintiff claims to have suffered injuries to the cervical and lumbar aspects of his spine, and alleges that those injuries satisfy one or more of the following Insurance Law § 5102(d) threshold categories: permanent consequential limitation, significant limitation and 90/180 days. Plaintiff underwent spine surgery in February 2020.

Defendants seek summary judgment dismissing the complaint on the ground that plaintiff did not sustain a “serious injury” under Insurance Law 5102(d) as a result of the accident. Defendants argue that plaintiff’s claimed injuries are not “serious,” and that any injuries or conditions from which plaintiff suffers are not causally related to the accident. The

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underlying motion is supported by the affirmation of the medical report of Dr. Baynes, an orthopedist, and Dr. Golden, a neurologist.

Dr. Baynes examined plaintiff on October 6, 2020, approximately nineteen months after the accident. The expert reviewed the bill of particulars and plaintiff's medical records. The doctor took range-of-motion measurements of the cervical and lumbar aspects of plaintiff's spine, finding that plaintiff had full range of motion. Dr. Baynes states that the cervical spine and lumbar examination demonstrated that plaintiff was neurologically intact with no objective evidence of radiculopathy. The MRI revealed findings of a herniating in the cervical spine that could be pre-existing. The MRI of the lumbar spine showed a bulge, that was not caused by an acute event. There was a percutaneous discectomy, which is a minimal procedure and not alleged in the bill of particulars. The examination for the cervical and lumbar spine was normal, and he cannot state that the procedure on the lumbar spine was the result of the Accident. Plaintiff has no permanent sequelae, no objective evidence of disability or residuals and no objective evidence of limitations. Plaintiff is working and is able to work and preform the usual and customary activities without restrictions.

Dr. Golden, a neurologist, conducted an examine of plaintiff on June 20,2019. Dr. Golden found that plaintiff possessed a full range of motion. Objective tests were negative, and it was an unremarkable neurologic examination. Plaintiff has no deficits, disability or permanency and is able to perform all activities of daily living. As a diagnosis, the expert finds that the "status post cervical spine sprain/strain, resolved" and "status post lumbar spine surgery, healed".

Plaintiff opposes the motion, submitting an affidavit, medical records, and the reports/affirmations of Dr. Reddy (radiologist), Dr. Malik (who performed arthroscopic surgery on plaintiff's lumbar spine), Dr. Grigorian (treating physician) and Dr. Canty (pain management).

In total, plaintiff's evidence raises triable issues of fact as to plaintiff's claims of "serious injury" to the cervical and lumbar spines under the threshold categories of permanent consequential limitation and significant limitation. Plaintiff's evidence demonstrates that plaintiff received medical treatment for the claimed injuries shortly after the Accident, had surgery, and had substantial limitations in motion at recent examinations in 2021 (see *Perl v Meher*, 18 NY3d 208 [2011]). Moreover, plaintiff's experts opine that the plaintiff's spine injuries are the not the result of a degenerative condition, and were causally related to the accident. The MRI reports and other medical records support this conclusion and the experts state that the condition is permanent (see *Aquino v Alvarez*, 162 AD3d 451, 452 [1st Dept 2018]). Plaintiff underwent surgery in February 2020 that the experts causally relate to the Accident. Additionally, plaintiff's affidavit raises triable issues of fact as to whether plaintiff has a reasonable explanation for his gap in treatment (see *Ramkumar v Grand Style Transportation, Enterprises, Inc.*, 22 NY3d 905 [2013]). Of course, if a jury determines that plaintiff has met the threshold for serious injury, it may award damages for any injuries causally related to the accident, including those that do not meet the threshold (*Morales v Cabral, supra*; *Rubin v SMS Taxi Corp.*, 71 AD3d 548 [1st Dept 2010]).

In contrast, defendants establish *prima facie* that there was no 90/180 day injury by submitting plaintiff's own testimony and plaintiff's submissions fail to raise an issue of fact (*Morales v Cabral, supra*).

The court has considered the additional contentions of the parties not specifically addressed herein. To the extent any relief requested by either party was not addressed by the court, it is hereby denied. Accordingly, it is hereby

ORDERED that the motion of the motion of defendants ANAND RAMSAROOP and DEVI RAMSAROOP (defendants) [Mot. Seq. 2], made pursuant to CPLR 3212, for an order dismissing the complaint on the ground that plaintiff GINSFF SURIEL (plaintiff) has not sustained a "serious injury" as defined by Insurance Law 5102(d) is denied.

