

**Country-Wide Ins. Co. v New York Med. & Diagnostic
Care, P.C.**

2022 NY Slip Op 33981(U)

November 23, 2022

Supreme Court, New York County

Docket Number: Index No. 653687/2022

Judge: Laurence L. Love

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LAURENCE L. LOVE PART 63M

Justice

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INDEX NO. 653687/2022

COUNTRY-WIDE INSURANCE COMPANY

MOTION DATE 11/22/2022

Petitioner,

MOTION SEQ. NO. 001

- v -

NEW YORK MEDICAL & DIAGNOSTIC CARE, P.C.,

**DECISION + ORDER ON
MOTION**

Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 9, 10 were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

Upon the foregoing documents, the instant Petition is decided as follows:

Petitioner moves the Court pursuant to CPLR 7511(b)(1)(i), CPLR 7511(b)(1)(iii), and CPLR 7511(b)(1)(iv) to vacate a No-Fault Master Arbitrator’s decision, dated July 17, 2022, in AAA Case Number 99-20-1176-1135, arising out of Arbitrator Josh Youngman’s arbitration award dated April 1, 2022, on the basis that the lower Arbitrator exceeded his powers or that the decision was irrational and not supported by the evidence, and further, that the Master Arbitrator erred in affirming the decision.

Pursuant to CPLR §7511(b)(1)(iii), An arbitration award shall be vacated on the application of a party who either participated in the arbitration or was served with a notice of intention to arbitrate if the court finds that the rights of that party were prejudiced when an arbitrator exceeded his power or so imperfectly executed it that a final and definite award upon the subject matter submitted was not made. To be upheld, an award in compulsory arbitration must have evidentiary support and cannot be arbitrary and capricious, See, *Matter of Motor Veh. Acc. Indemnity Corp. V. Aetna Cas. And Surety Co.*, 89 N.Y2d 214 (1996). The determination must be in accord with

due process and supported by adequate evidence; it must also be rational and satisfy the arbitrary capricious standards of CPLR Art. 78, See, *Lakow v. Dept. of Education of the City of New York*, 53 A.D.3d 563 (1st Dept. 2008).

As described in the Petition, on August 21, 2020, an accident occurred between a vehicle insured by Petitioner and Nathaniel Shalamov, an operator of an e-bike. Following the accident, Nathaniel Shalamov allegedly received healthcare services from Respondent, New York Medical & Diagnostic Care, P.C. New York Medical submitted medical bills for reimbursement for alleged healthcare services provided to Nathaniel Shalamov. CWI denied payment of said bills pursuant to Regulation 68 of NYS no-fault law, which excludes motorcycles from no-fault benefits. Arbitrator Youngman found that Petitioner had not set forth sufficient evidence to establish that the Assignor was driving a motorcycle at the time of the accident. Specifically, the arbitrator found that

In the instant matter, the police report states the IP was on an "E-BIKE" at the time of the accident. The respondent, however, does not submit any evidence to show that an E-Bike is the same as a motorcycle or is more similar to a motorcycle than a bicycle.

The respondent further does not submit any evidence to show they conducted an investigation into the type of E-Bike the IP was riding at the time of the accident. Instead, the respondent relies exclusively on the police report.

I find the police report, which does not contain any of the information that one would expect if the IP was riding a motorcycle, is insufficient to prove the IP was riding on a motorcycle at the time of the accident.

Said finding was upheld upon Master Arbitration review. Petitioner argues that as pursuant to Regulation 68 of the NYS No-Fault law, there is no PIP coverage available for operators/passengers on a motorcycle. Petitioner further cites Article 48-A of the VTL entitled, "Registration of Limited Use Vehicles", which is comprised of Sections 2260 through 2270 of the

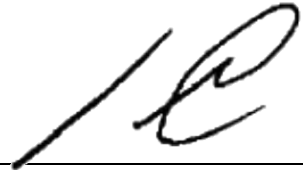
VTL which concerns registration requirements for difference classes of limited use motorcycle. A class C limited use motorcycle is defined as having a maximum performance speed of not more than twenty miles per hour. A Class A motorcycle has a maximum speed of 30-40 miles per hour; a Class B motorcycle has a maximum speed of 20-30 miles per hour. Id. Class A and Class B limited use motorcycles are excluded from first-party nofault benefits, however a Class C limited use motorcycle is entitled to no-fault benefits. Petitioner's sole argument that Respondent's assignor was operating either a Class A or Class B motorcycle at the time of the accident is that said assignor testified at his EUO that he was travelling approximately twenty five miles per hour at the time of the accident.

"The test applicable for review of a compulsory no-fault arbitration award, where error of law is in issue, is whether any reasonable hypothesis can be found to support the questioned interpretation." *Carty v Nationwide Ins. Co.*, 212 AD2d 462, 462 [1st Dept 1995]. Contrary to Petitioner's argument, founded only upon a subjective guess of speed, the arbitrator's decision is also based upon the fact that Petitioner utterly failed to sustain its burden, that the IP was riding an e-bike at the time of the accident and that if the IP was riding a motorcycle of any class, the police report would have contained registration information. Petitioner failed to even establish that the e-bike in question was not a "Motor-assisted vehicle" as defined by VTL Section 2268. As such, there is a reasonable hypothesis that the arbitrator was correct.

ADJUDGED that the petition is DENIED and the award rendered in favor of Respondent and against Petitioner is confirmed; and it is further

ADJUDGED that Respondent, do recover from Petitioner the amount of \$1,687.95, plus interest at the rate of 2% per month, calculated on a pro rata basis using a 30 day month, from the

date of November 16, 2021 as computed by the Clerk, together with costs and disbursements attorney's fees pursuant to 11 NYCRR 65-4, and that the respondent have execution therefor.

<u>11/23/2022</u> DATE			 LAURENCE L. LOVE, J.S.C.
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/> DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>
			<input type="checkbox"/> NON-FINAL DISPOSITION
			<input type="checkbox"/> GRANTED IN PART
			<input type="checkbox"/> SUBMIT ORDER
			<input type="checkbox"/> FIDUCIARY APPOINTMENT
			<input type="checkbox"/> OTHER
			<input type="checkbox"/> REFERENCE