

Hackett v Uber Tech., Inc.
2023 NY Slip Op 31502(U)
May 3, 2023
Supreme Court, Kings County
Docket Number: Index No. 518969/2020
Judge: Debra Silber
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: PART 9**

_____X
ADRIANNA LOUISE HACKETT,

Plaintiff,

-against-

**UBER TECHNOLOGIES, INC. UBER U.S.A. LLC,
SECHS-NY, YASSER R. SAYED, and "JOHN DOE",**

Defendants.
_____X

DECISION / ORDER

**Index No. 518969/2020
Motion Seq. No. 3
Date Submitted: 3/9/23**

Recitation, as required by CPLR 2219(a), of the papers considered in the review of defendant Yasser R. Sayed's motion for summary judgment.

Papers	NYSCEF Doc.
Notice of Motion, Affirmation and Exhibits Annexed.....	<u>46-53</u>
Affirmation in Opposition and Exhibits Annexed.....	<u>55-61</u>
Reply Affirmation.....	_____

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

This is a personal injury action which arises from a motor vehicle accident which took place on January 22, 2020. The plaintiff, who was riding her bicycle on Marcus Garvey Boulevard, was contacted by a vehicle owned by moving defendant Yasser R. Sayed (hereinafter "Sayed") and driven by unknown co-defendant "John Doe". Plaintiff testified that at the time of the accident there was no rain or snow, and the roads were dry. Plaintiff testified that, at the time of the accident, she was riding her bicycle on the right-hand side of Marcus Garvey Boulevard, between the parked cars on her right side and the traffic moving in the right lane on her left side [Doc 53, p. 22]. The accident occurred between Lafayette Avenue and Kosciuszko Street [Doc 53, p. 22]. Plaintiff testified that the defendant's vehicle, a taxi which was traveling in the same direction that

she was traveling, came to a stop ahead of her, but left enough room on the right side of the vehicle for her to continue riding. She proceeded forward when a passenger in defendant's car suddenly opened the door on the right side of the vehicle, striking the plaintiff and her bicycle [Doc 53, pp 26, 28 & 34]. The door of the defendant's vehicle came into contact with the plaintiff's left leg [Doc 53, pp 38-39]. The plaintiff is unsure if her body came into contact with any of the parked cars to her right, but her body did hit the ground [Doc 53, pp 39-40]. Plaintiff testified that she immediately felt pain in her left thigh and that she was bleeding from her left thigh, as well as from her knees and from one of her elbows [Doc 53, pp 41-43].

Plaintiff was transported by ambulance to Kings County Hospital where she was seen in the ER and made complaints about her left thigh, her neck, and her left arm [Doc 53, pp. 64-65]. She went to a doctor subsequently and had approximately eight months of treatment. At the time of the accident, plaintiff was 29 years of age. In her Bill of Particulars [Doc 51], plaintiff claims that as a result of the accident, she sustained a large laceration on her left thigh which required sutures; scarring to the left thigh/knee; sprain, strain and loss in the range of motion in her left knee; sprains, strains, loss in the range of motion and abrasions to her right knee and right elbow; and cervical and lumbar sprains, strains and loss in the range of motion, as well as radiculopathy, in her cervical and lumbar spine.

Defendant Yasser R. Sayed contends in his motion (Seq. #3) that he is entitled to summary judgment dismissing the complaint as plaintiff did not sustain a serious injury as a result of the accident, as defined by Insurance Law § 5102(d). The defendant supports his motion with an attorney's affirmation, copies of the pleadings, plaintiff's bill

of particulars, plaintiff's deposition transcript, and an affirmed IME report from an orthopedist, Dr. Jeffrey Guttman.

Dr. Jeffrey Guttman examined plaintiff on November 30, 2021, on behalf of the defendant. This was almost two years after the accident. Plaintiff told him that she injured her neck, low back, left elbow, right knee, left knee and left thigh. She told him that she was taken by ambulance to Kings County Hospital, where she received twelve to seventeen stitches in her left thigh, and was treated and discharged home. He tested plaintiff's range of motion with a goniometer and reports that plaintiff had normal ranges of motion in her cervical and lumbar spine, as well as in her left elbow and both knees, with no tenderness, swelling or spasm. Dr. Guttman reports that all related tests were negative.

Dr. Guttman concludes that plaintiff's "alleged cervical and lumbar spine sprains", "alleged left elbow sprain", "alleged right knee sprain/contusion", and "alleged left knee and left thigh contusions" have all "resolved". He reports that "[t]he Bill of Particulars alleges that as a result of the accident on January 22, 2020, the claimant sustained injuries to the neck, low back, right elbow, right knee, left knee and left thigh." He opines that the "examination indicates that the injured body parts alleged in the Bill of Particulars have resolved. The claimant did not sustain any significant or permanent injury as a result of the motor vehicle accident. There are no objective clinical findings indicative of a present disability, or functional impairment, which prevents the examinee from engaging in ADLs, including work, school, and hobbies."

Defendant contends that "[b]ased on the medical evidence submitted, defendant submits that plaintiff's allegations of injury were not caused in this minor accident, that no trauma was sustained, and/or the alleged injuries do not rise to the level of impairment

sufficient to qualify under any category of the statute. Specifically, defendants' showing includes objective evidence establishing an 'absence of trauma' (See, *Kester v Sendoya*, 123 AD3d 418 [1st Dept 2014], including radiological evidence confirming that no traumatic injury was sustained, which negates a claim of any causally related serious injury under the statute, and is sufficient to meet defendants' burden on this motion (see *Ikeda v Hussain*, 81 AD3d 496 [1st Dept 2011]; *Johnson v Guttman*, 82 AD3d 565 [1st Dept 2011]; *Arroyo v Morris*, 85 AD3d 679 [1st Dept 2011]; *Valentin v Pomilla*, 59 AD3d 184 [1st Dept 2009])." The defendant argues that "[i]n light of the affirmations submitted by defendant's doctor, it is clear that defendants have made a prima facie showing that plaintiff's allegations of injury were either not caused in this accident, and/or have not resulted in impairments which would qualify as serious injury in this accident." The defendant further argues that "[s]ince the medical proofs plainly establish that plaintiff did not sustain a complete loss of use of a body organ or member, he/she also cannot satisfy that category of the statute" and that "[b]y finding no current limitations, and also normal results on a variety of objective clinical tests, defendants' doctors also ruled out any basis for a permanent consequential limitation."

With regard to the 90/180 day category of injury, the defendant simply states that his "proof ruled out the 90/180-day category of the statute." Despite the defendant's lack of any more specific argument regarding the 90/180 day category, the court notes that the plaintiff testified at her EBT that she only missed one week of work from her job as a teacher as a result of the accident [Doc 53, p. 102].

The court finds that Dr. Guttman's affirmed report is the only evidence submitted other than plaintiff's EBT, and that defendant has not made a *prima facie* showing of his entitlement to summary judgment (see *Toure v Avis Rent A Car Sys.*, 98 NY2d 345

[2002]; *Gaddy v Eyler*, 79 NY2d 955, 956-957 [1992]). While plaintiff's testimony that she missed only one week of work after the accident makes a prima facie showing on the 90/180-day category of injury (see *Dacosta v Gibbs*, 139 AD3d 487, 488 [1st Dept 2016] ["Plaintiff's testimony indicating that she missed less than 90 days of work in the 180 days immediately following the accident and otherwise worked "light duty" is fatal to her 90/180-day claim"], and Dr. Guttman's report makes a prima facie showing on the significant limitation and permanent consequential limitation categories of injury, the defendant has not made a prima facie case with regard to the plaintiff's claim of a disfiguring scar (see *Garcia v County of Suffolk*, 149 AD3d 812 [2017]; *Matula v Clement*, 132 AD2d 739 [1987])).

To be clear, there is nothing in the defendant's motion papers regarding the plaintiff's claim of a laceration to her left thigh that required sutures [Doc 53, pp. 66, 69-70], which resulted in a disfiguring scar, and which may require plastic surgery. Plaintiff was given morphine in the hospital for the pain, her leg was wrapped, and she was given crutches [Doc 52, p. 67]. Plaintiff testified that the scar is raised and differently pigmented than her normal skin color [Doc 53, pp. 81-82]. She also testified that the scar is jagged and that the area around the scar is sensitive to touch [Doc 53, p. 82]. Dr. Guttman's report is silent regarding this claim. There is no mention in his report that he examined the plaintiff's thigh or the scar at all. Despite the plaintiff's bill of particulars alleging scarring to the left thigh/knee, a category of serious injury listed in Ins. Law § 5102(d), Dr. Guttman claims that the "examination indicates that the injured body parts alleged in the Bill of Particulars have resolved."

Finally, the court notes that although the defendant argues that "defendants' showing includes objective evidence establishing an 'absence of trauma' (See, *Kester v*

Sendoya, 123 AD3d 418 [1st Dept 2014]), including radiological evidence confirming that no traumatic injury was sustained, which negates a claim of any causally related serious injury under the statute, and is sufficient to meet defendants' burden on this motion," no radiological evidence was provided by the defendant.

Since the movant has not sustained his prima facie burden, it is unnecessary to determine whether the papers submitted by the plaintiff in opposition are sufficient to raise a triable issue of fact (*Hodge v St. Eloi*, 168 AD3d 690, 691 [2d Dept 2019]). Further, as Dr. Guttman does not mention plaintiff's scar, he does not dispute that it qualifies as a disfiguring scar, nor that it was caused by the accident. As such, the burden of proof never shifted to the plaintiff to raise a triable issue of fact regarding causation vis a vis this claimed injury (see *Novembre v Punnoose*, 211 AD3d 961 [2d Dept 2022]).

Accordingly, it is

ORDERED that, as defendant "John Doe" has never been identified or substituted as the driver, this action is dismissed as against "John Doe." Further, as plaintiff has discontinued the action against defendants Uber Technologies, Inc., Uber U.S.A., LLC and Sechs-NY, LLC [Doc 12], the caption is hereby amended to reflect the dismissal of John Doe and the discontinuance of this action as to the other defendants, leaving defendant Yasser R. Sayed as the sole remaining defendant; and it is further

ORDERED that the defendant's motion is denied.

This constitutes the decision and order of the court.

Dated: May 3, 2023

ENTER:



Hon. Debra Silber, J.S.C.