

**Nicholson v Lama**

2023 NY Slip Op 33459(U)

October 6, 2023

Supreme Court, New York County

Docket Number: Index No. 152316/2022

Judge: James G. Clynes

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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. JAMES G. CLYNES PART 22M**

*Justice*

-----X  
LAWANDA DOMINIQUE NICHOLSON, INDEX NO. 152316/2022  
Plaintiff, MOTION DATE 04/10/2023  
MOTION SEQ. NO. 002

- v -

SONAM GHISING LAMA, CHARLES E. WELLS  
Defendant.

**DECISION + ORDER ON  
MOTION**

-----X  
The following e-filed documents, listed by NYSCEF document number (Motion 002) 32, 33, 34, 35, 36, 37, 38, 39,  
40, 41, 42, 43, 44, 45, 52, 53, 54, 55, 56, 57, 58  
were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents, the motion by Plaintiff for summary judgment on the issue of liability and on the grounds that Plaintiff sustained a "serious injury" under Insurance Law 5102 (d) is decided as follows:

Plaintiff seeks recovery for injuries allegedly sustained as a result of a December 12, 2021 motor vehicle accident between a vehicle owned and operated by Defendant Lama, within which Plaintiff was a passenger, and a vehicle owned and operated by Defendant Wells. Plaintiff's Bill of Particulars alleges a fracture of Plaintiff's pelvis/right hip, among other injuries.

Summary Judgment Liability

The branch of Plaintiff's motion for summary judgment on the issue of liability is granted.

In support of her motion, Plaintiff relies on her examination before trial (EBT) testimony, in which she testifies that on December 12, 2021 she was the backseat middle passenger in a motor vehicle, wearing her seatbelt, driving on a highway, when the front of the vehicle within which she was a passenger struck the back of an SUV in front of them. Plaintiff also relies on her affidavit, in which she avers that she was a passenger in a vehicle owned and operated by Sonam Ghising Lama that was travelling northbound on the Taconic State Parkway, while travelling on

the Taconic State Parkway, a vehicle owned and operated by Charles E. Wells was directly ahead of the Ghising Lama vehicle, when the Ghising Lama vehicle struck the rear bumper of the Wells vehicle. Plaintiff has made out a prima facie case of negligence and the burden shifts to Defendants to raise a triable issue of fact *see Winegrad v New York University Medical Center*, 64 NY2d 851, 853 (1985). A plaintiff who establishes that he was an innocent passenger is entitled to summary judgment on the issue of liability. *See Mello v Narco Cab Corp.*, 105 AD3d 634, 635 (1<sup>st</sup> Dep't 2013).

In opposition to this branch of Plaintiff's motion, Defendant Lama avers that he was driving northbound on the Taconic State Parkway with three passengers, he asked them to put their seat belts on, and had a posted sign in the vehicle to "buckle up" but they did not comply, he was in the right lane traveling about 45-50 mph, when suddenly the vehicle in front of him made a sudden stop due to debris (a trash can, a tire, and the front bumper of a vehicle) on the road from an unrelated accident, he immediately pressed on his brake but his vehicle skidded on the road and he made contact with the vehicle in front of him, his airbag deployed, causing him to lose consciousness for about two seconds.

There is no dispute that Plaintiff is free from liability as an innocent passenger and is therefore entitled to partial summary judgment on the issue of liability (*see Garcia v Tri-County Ambulette Service, Inc.*, 282 A.D.2d 206 [1st Dept. 2001]). "It is well settled that the right of an innocent passenger to summary judgment is not in any way restricted by potential issues of comparative negligence as between the drivers of the ... vehicles" (*Garcia, supra*).

However, Defendant Lama has demonstrated an issue of fact, specifically the alleged condition of the debris on the road which caused his car to skid and strike Defendant Wells' vehicle. Thus, issues of fact remain as to the liability of Defendants. Plaintiff's motion for summary judgment on liability is granted only to the extent that Plaintiff as an innocent passenger is free from liability for the accident

### Summary Judgment Serious Injury

The branch of Plaintiff's motion for summary judgment on the grounds that she sustained a serious injury under Insurance Law 5102 (d) is granted.

In support of her motion, Plaintiff relies on the affirmations and records of Dr. Joyce Goldenberg, orthopedic doctor, and Dr. Andrzej Jedynek, radiologist, and the certified Westchester Medical Center Hospital Records.

Dr. Goldberg first examined Plaintiff on December 29, 2021. Based on this initial examination and her review of the certified hospital records from Westchester Medical Center, Dr. Goldberg diagnosed Plaintiff with a closed nondisplaced fracture of right acetabulum, unspecified portion of acetabulum, fracture of bone of hip, joint disorders to the right hip, and sprain of unspecified parts of pelvis. Dr. Goldberg examined Plaintiff again on February 2, 2022, March 16, 2022, May 16, 2022, July 11, 2022, and September 12, 2022. In each examination, Dr. Goldberg measured the range of motion of Plaintiff's right hip with a goniometer, and found limitations, and positive right Fabere test. Based upon her examination of Plaintiff and review of relevant medical records and reports, Dr. Goldberg concluded that the right acetabular wall fracture to Plaintiff's right hip is directly causally related to the subject motor vehicle accident, and that the subject accident was the direct producing cause of Plaintiff's right hip fracture, pain, limitations, and injuries.

Dr. Jedynek affirmed that he reviewed Plaintiff's radiological films of Plaintiff's pelvis and diagnosed her with an acute posterior right acetabular wall fracture.

The certified hospital records indicate that Plaintiff underwent a manipulation of the right hip under anesthesia on December 13, 2021 as a result of a right posterior wall acetabular fracture.

Plaintiff has met her burden that she suffered a serious injury within the meaning of Insurance Law 5102 (d). Evidence of a fracture, by itself, is sufficient to support a finding of serious injury (*Travelers Ins. Co. v Job*, 239 AD2d 289 [1st Dept 1997]). The burden therefore shifts to Defendants to raise a triable issue of fact.

Defendant Lama's opposition papers fail to address the serious injury branch of Plaintiff's motion. Defendant Wells has not filed papers in response to the motion. Thus, the branch of Plaintiff's motion for summary judgment on the issue of serious injury is granted.

Accordingly, it is

**ORDERED** that the branch of Plaintiff's motion for summary judgment on liability is granted only to the extent that Plaintiff as an innocent passenger is free from liability for the accident; and it is further

**ORDERED** that the branch of Plaintiff's motion for summary judgment on the grounds that she suffered a serious injury as defined in Insurance Law 5102 (d) is granted; and it is further

**ORDERED** that within 30 days of entry, counsel for the moving party shall serve a copy of this order with Notice of Entry upon both Defendants.

This constitutes the Decision and Order of the Court.

10/6/2023

DATE

JAMES G. CLYNES, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE