

Williams v Singh

2023 NY Slip Op 34648(U)

June 30, 2023

Supreme Court, Queens County

Docket Number: Index No. 714155/2018

Judge: Tracy Catapano-Fox

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----X
BRENDA DEJANA WILLIAMS,

Plaintiff,

-against-

JUGDEEP SINGH, PREMEAJ SINGH, CITY OF
NEW YORK,

Defendants.

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Index No. 714155/2018

Part 6

Motion Date: June 12, 2023

Calendar No. 44

Sequence No. 4



The following papers numbered 1 to 16 read on this motion by defendant JUGDEEP SINGH for summary judgment and dismissal of plaintiff’s Complaint pursuant to CPLR §3212 and Insurance Law §5102(d), this cross-motion by plaintiff for summary judgment, and this cross-motion by defendant CITY OF NEW YORK to convert the cross-claim against co-defendant Jugdeep Singh to a third-party action.

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Upon the foregoing papers, it is ordered that these motions are determined as follows:

Defendant Jugdeep Singh’s motion for summary judgment and dismissal of plaintiff’s Complaint pursuant to CPLR §3212 and Insurance Law §5102(d) is granted. Plaintiff’s cross-motion for summary judgment is denied as moot. Defendant City of New York’s cross-motion to convert the cross-claim against co-defendant Jugdeep Singh is granted.

Plaintiff commenced this action for personal injuries sustained in a motor vehicle accident

on June 16, 2017 at the intersection of 164th Place and 109th Avenue, Queens, New York when she was a passenger in defendant Jugdeep Singh's vehicle. Plaintiff filed the Summons and Complaint on September 14, 2018, and issue was joined by defendant Singh on January 25, 2019.

Defendant Singh argues that summary judgment is warranted as plaintiff did not sustain a serious injury as defined in Insurance Law §5102(d). He presents the pleadings, the parties' deposition transcripts and IME report of Dr. Joseph Y. Margulies in support of his motion. Plaintiff's Verified Bill of Particulars states that she sustained blunt force trauma to her back, right shoulder and right hand. Dr. Margulies examined plaintiff and determined that she did not sustain a serious injury, in that she had a resolved right shoulder contusion, no loss of range of motion and no permanent injury based upon objective testing. Plaintiff testified at her deposition that she did not go to the hospital until the next day, where she was treated and released. She further testified that she did not undergo surgery and stopped receiving treatment in September 2017, a few months after the accident. Based upon the above, defendant Singh argues that plaintiff did not sustain a serious injury and her Complaint should be dismissed.

Plaintiff opposes defendant Singh's motion, and cross-moves for summary judgment and for a referral of the matter to the New York State Department of Motor Vehicles for suspension of defendant Singh's license. Plaintiff argues that as a backseat passenger, she is not liable for the motor vehicle accident. She presents defendant Singh's deposition testimony, in which he recalled very few details regarding the accident or the number of passengers he had in his vehicle. Plaintiff also argues that defendant Singh's motion should be denied, as there are issues of fact with regard to her serious injury. She argues that Dr. Margulies' report should be disregarded as untimely, and that plaintiff's deposition testimony raises issues of fact as to whether she sustained a serious injury. Plaintiff further argues that should the Court find she did not sustain a serious injury, the Court should refer defendant Singh's alleged reckless driving to the New York State Department of Motor Vehicles.

Defendant City of New York takes no position as to co-defendant Singh and plaintiff's motion and cross-motion, but cross-moves to convert its cross-claim against co-defendant Singh into a third-party action should the Court grant defendant Singh's motion.

Pursuant to CPLR 3212, "[a] motion [for summary judgment] shall be granted if . . . the cause of action . . . [is] established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party." (CPLR 3212 [b]; *Rodriguez v. City of New York*, 31 N.Y.3d 312 [2018].) The motion for summary judgment must also "show that there is no defense to the cause

of action.” (*Id.*). The party moving for summary judgment must make a *prima facie* showing that it is entitled to summary judgment by offering admissible evidence demonstrating the absence of any material issues of fact and it can be decided as a matter of law. (CPLR § 3212 [b]; *see Jacobsen v New York City Health and Hosps. Corp.*, 22 N.Y.3d 824 [2014]; *Brill v City of New York*, 2 N.Y.3d 648 [2004].) In deciding a summary judgment motion, the court does not make credibility determinations or findings of fact. Its function is to identify issues of fact, not to decide them. (*Vega v. Restani Constr. Corp.*, 18 N.Y.3d 499, 505 [2012].) Once a *prima facie* showing has been made, however, the burden shifts to the non-moving party to prove that material issues of fact exist that must be resolved at trial. (*Zuckerman v. City of New York*, 49 N.Y.2d 557 [1980].)

Under the No Fault Law, in order to maintain an action for personal injury, a plaintiff must establish that a serious injury has been sustained. (*Licari v. Elliot*, 57 N.Y.2d 230 [1982].) In moving for summary judgment, the proponent must tender sufficient evidence to show the absence of any material issue of fact and the right to judgment as a matter of law. (*Alvarez v. Prospect Hospital*, 68 N.Y.2d 320 [1986]; *Winegrad v. New York Univ. v. Medical Center*, 64 N.Y.2d 851 [1985].) In the present matter, defendant has the burden of proving, by submitting competent evidence in admissible form, that plaintiff has not suffered a serious injury. (*Lowe v. Bennett*, 122 A.D.2d 728 [1st Dept. 1986], *affirmed*, 69 N.Y.2d 701 [1986].) If a defendant’s motion is sufficient to raise the issue of whether a serious injury has been sustained, the burden shifts and it is then incumbent upon the plaintiff to produce prima facie evidence in admissible form to support the claim of serious injury. (*Licari, supra*; *Lopez v. Senatore*, 65 N.Y.2d 1017 [1985].)

Defendant Singh sufficiently demonstrated a prima facie case that plaintiff did not sustain a serious injury under Insurance Law §5102(d), through review of plaintiff’s Bill of Particulars, deposition testimony and Dr. Margulies’ independent medical examination. (*See Castillo v. MTA Bus Co.*, 163 A.D.3d 620 [2d Dept. 2018]; *Byrd v. J.R.R. Limo*, 61 A.D.3d 801 [2d Dept. 2009].) Dr. Margulies detailed the specific objective tests he performed and the lack of a decrease in range of motion in plaintiff’s cervical and lumbar spines, as well as right shoulder and hand. Dr. Margulies found no orthopedic disabilities or restrictions causally related to the accident, and plaintiff’s Bill of Particulars and deposition testimony failed to demonstrate a significant limitation or permanent consequential limitation of a body part causally related to the motor vehicle accident. Based upon the evidence presented, defendant Singh presented competent medical evidence to establish prima facie that plaintiff did not sustain a serious injury under Insurance Law §5102(d). (*See Lambropoulos v. Gomez*, 166 A.D.3d 952 [2d Dept. 2018].)

Plaintiff failed to raise a triable issue of fact as to whether she sustained a serious injury to

her cervical and lumbar spine, right shoulder and hand. (*See Donadio v. Doukhnych*, 55 A.D.3d 532 [2d Dept. 2008].) Plaintiff did not present competent, admissible medical evidence to support her claim and therefore plaintiff failed to raise an issue of fact with regard to whether she sustained a serious injury. (*See Yakubov v. CG Trans Corp.*, 30 A.D.3d 509 [2d Dept. 2006].)

As plaintiff failed to demonstrate she sustained a serious injury, her cross-motion for summary judgment as to liability is denied as moot, and her request to have this action referred to the New York State Department of Motor Vehicles is denied.

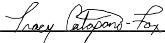
Defendant City of New York's cross-motion to convert its cross-claim against co-defendant Jugdeep Singh is granted without opposition.

Accordingly, defendant Jugdeep Singh's motion for summary judgment and dismissal of plaintiff's Complaint pursuant to CPLR §3212 and Insurance Law §5102(d) is granted, and plaintiff's Complaint is dismissed as to defendant Jugdeep Singh. Plaintiff's cross-motion for summary judgment as to liability is denied as moot. Defendant City of New York's cross-motion to convert the cross-claim against co-defendant Jugdeep Singh is granted.

This constitutes the decision and Order of the Court.

Dated: June 30, 2023





Hon. Tracy Catapano-Fox, J.S.C.