

Hiralall v Lyft, Inc.

2024 NY Slip Op 34788(U)

October 9, 2024

Supreme Court, Queens County

Docket Number: Index No. 707599/2020

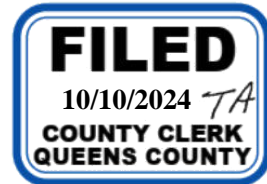
Judge: Maurice E. Muir

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Short Form Order

NEW YORK SUPREME COURT – QUEENS COUNTY



Present: HONORABLE MAURICE E. MUIR
Justice

SADHANA HIRALALL,

IAS Part - 42

Plaintiff,

Index No.: 707599/2020

-against-

Motion Date: 9/5/24

LYFT, INC., H E AUTO TRANSPORTATION,
SAQIB A. MAJID and AMANPREET SINGH,

Motion Cal. No. 18

Defendants.

Motion Seq. No. 2

The following electronically filed (“EF”) documents read on this motion by Amanpreet Singh (“Mr. Singh” or “movant”) for an order pursuant to CPLR § 3212, granting summary judgment and dismissing the complaint of plaintiff, Sadhana Hiralall , in as much as plaintiff fails to meet the serious injury threshold requirement mandated by Insurance Law Section 5102(d); and granting such other further relief as the Court deems just and proper.

	Papers <u>Numbered</u>
Notice of Motion-Affirmation in Support-Exhibits.....	EF 44 - 56
Affirmations in Opposition-Exhibits.....	EF 59 - 65
Reply Affirmation.....	EF 66

Upon the foregoing papers, it is ordered that this motion is determined as follows:

This is an action to recover damages for personal injuries Sadhana Hiralall (“Ms. Hiralall” or “plaintiff”) allegedly sustained in a motor vehicle collision. Specifically, the plaintiff alleges that on January 1, 2020, she was a passenger in the motor vehicle owned and operated by Saqib A. Majid (“Mr. Majid”), who came into contact with a motor vehicle operated by Amanpreet Singh (“Mr. Singh”) -- at or near the intersection at Grand Central Parkway and 166th Street, in the County of Queens, State of New York (“subject accident”). As a result of the

subject accident, Ms. Hiralall sustained injuries to her left ankle, cervical spine, left shoulder, lumbar spine, left knee, etc. Furthermore, Ms. Hiralall underwent left ankle surgery on June 6, 2020, left shoulder surgery in September 2020 and left knee arthroscopy in December 2020. As a result, on October 20, 2021, she commenced the instant action; and on or about December 21, 2021, issue was joined. Now, the defendants seek summary judgment on the ground that the plaintiff did not sustain a "serious injury" as defined by § 5102(d) of the New York's Insurance Law.

It has long been established that the "legislative intent underlying the Comprehensive Motor Vehicle Insurance Reparation Act of 1974 (i.e., Insurance Law § 5101, *et seq.* – commonly known as New York's "No-Fault" Insurance Law) was to weed out frivolous claims and limit recovery to significant injuries (*Licari v. Elliot*, 57 NY2d 230 [1982]; *see also Toure v. Avis Rent A Car Sys.*, 98 NY2d 345 [2002] quoting *Duel v. Green*, 84 NY2d 795 [1995]). New York's No-Fault Insurance Law § 5102 (d) defines "serious injury" as follows:

... a personal injury which results in death; dismemberment; significant disfigurement; a fracture; loss of a fetus; permanent loss of use of a body organ, member, function or system; permanent consequential limitation of use of a body organ or member; significant limitation of use of a body function or system; or a medically determined injury or impairment of a non-permanent nature which prevents the injured person from performing substantially all of the material acts which constitute such person's usual and customary daily activities for not less than ninety days during the one hundred eighty days immediately following the occurrence of the injury or impairment.

The Court of Appeals has held that the issue of whether a claimed injury falls within the statutory definition of a "serious injury" is a question of law for the courts in the first instance, which may properly be decided on a motion for summary judgment. (*see Licari v. Elliott*, 57 NY2d 230 [1982]; *see also Charley v. Goss*, 54 AD3d 569 [1st Dept 2008] *aff'd* 12 NY3d 750 [2009]; *Porcano v. Lelzman*, 255 AD2d 430 [2d Dept 1998]; *Nolan v. Ford*, 100 AD2d 579 [2d Dept 1984], *aff'd* 64 NYS2d 681 [1984]). On a motion for summary judgment, the defendant has the initial burden of making a *prima facie* showing, through the submission of evidence in admissible form, that the injured plaintiff did not sustain a "serious injury" within the meaning of New York's No-Fault Insurance Law § 5102(d). (*see Toure v. Avis Rent A Car Sys.*, 98 NY2d 345 [2002]; *Gaddy v. Eycler*, 79 NY2d 955 [1992]; *Akhtar v. Santos*, 57 AD3d 593 [2d Dept 2008]). The defendant may satisfy this burden by submitting the plaintiff's deposition testimony and the affirmed medical report of the defendant's own examining physician. (*Moore v. Edison*,

25 AD3d 672 [2d Dept 2006]; *Farozes v. Kamran*, 22 AD3d 458 [2d Dept 2005]). When a defendant seeking summary judgment based on the lack of serious injury relies on the findings of the defendant's own witnesses, "those findings must be in admissible form, such as affidavits and affirmations, and not unsworn reports" to demonstrate entitlement to judgment as a matter of law. (*Pagano v. Kingsbury*, 182 AD2d 268, 270 [2d Dept 1992]). A defendant may also establish entitlement to summary judgment by using medical reports and records prepared by the plaintiff's own physicians. (*see Fragale v. Geiger*, 288 AD2d 431 [2d Dept 2001]; *Grossman v. Wright*, 268 AD2d 79 [2d Dept 2000]; *Vignola v. Varrichio*, 243 AD2d 464 [2d Dept 1997]; *Torres v. Micheletti*, 208 AD2d 519 [2d Dept 1994]). The failure to make such a *prima facie* showing requires the denial of the motion regardless of the sufficiency of the opposing papers. (*see Xin Fang Xin v. Saft*, 177 AD3d 823 [2d Dept 2019]; *Rosenblum v. Schloss*, 175 AD3d 1339 [2d Dept 2019]; *Burns v. Stranger*, 31 AD3d 360 [2d Dept 2006]). However, if the defendant has met this burden, plaintiff must then submit objective and admissible proof of the nature and degree of the alleged injury in order to meet the threshold of the statutory standard for "serious injury" under New York's No-Fault Insurance Law. (*see Duel v. Green*, 84 NY2d 795 [1995]; *Pagano v. Kingsbury*, 182 AD2d 268 [2d Dept 1992]). The mere parroting of language tailored to meet statutory requirements is insufficient (*see Grossman v. Wright*, 268 AD2d at 84).

Here the court finds that summary judgment is not appropriate in this action. It is well settled law that a motion for summary judgment should not be granted where the facts are in dispute, where conflicting inferences may be drawn from the evidence, or where there are issues of credibility (*Walker v. Ryder Truck Rental & Leasing*, 206 AD3d 1036 [2d Dept 2022] citing *Ruiz v. Griffin*, 71 AD3d 1112, 1115 [2d Dept 2010] [internal quotation marks omitted]). "The function of the court on a motion for summary judgment is not to resolve issues of fact or determine matters of credibility, but merely to determine whether such issues exist." (*Charlery v. Allied Tr. Corp.*, 163 AD3d 914, 915 [2d Dept 2018] [internal quotation marks omitted]; *see Chimbo v. Bolivar*, 142 AD3d 944, 945 [2d Dept 2016]). Moreover, issues of fact and credibility are presented, which cannot be resolved on a motion for summary judgment. Here, there is a "battle of the experts," between the parties' medical doctors, which should be resolved by the jury. (*see generally, Mason v. Adhikam*, 159 AD3d 1438 [4th Dept 2018]; *Peevey v. Unity Health System*, 196 AD3d 1139 [4th Dept 2021]).

Accordingly, it is hereby

ORDERED that Defendants' motion for summary judgment, pursuant to CPLR § 3212, is denied, in its entirety; and it is further,

ORDERED that plaintiff shall serve a copy of this decision and order with notice of entry upon defendants, via certified mail and NYSCEF, on or before October 30, 2024.

The foregoing constitutes the decision and order of the court.

Dated: October 9, 2024

Long Island City, NY


MAURICE E. MUIR, J.S.C.

