

<b>Abdullah v Chowdhury</b>
2024 NY Slip Op 35029(U)
October 29, 2024
Supreme Court, Queens County
Docket Number: Index No, 701523/2021
Judge: Chereé A. Buggs
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Short Form Order

NEW YORK SUPREME COURT-QUEENS COUNTY

Present: **HONORABLE CHEREÉ A. BUGGS**  
**Justice**

IAS PART 30

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BUSHRA ABDULLAH,

Index No.: 701523/2021

Plaintiff,

Motion

Date: September 9, 2024

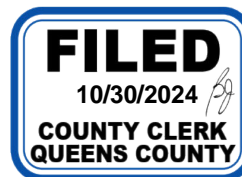
-against-

Motion Cal. No.: 1

Motion Sequence No.: 1

NAZIA CHOWDHURY, PETER ARATO and  
THE CITY OF NEW YORK,

Defendants.



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The following efile papers numbered 22-30, 32-43 submitted and considered on this motion by defendant Nazia Chowdhury (hereinafter “Chowdhury”) seeking an Order pursuant to Civil Practice Law and Rules (CPLR) 3212 granting moving defendant summary judgment and dismissing Plaintiff’s complaint on the grounds that Plaintiff did not incur a “serious injury” as defined under New York Insurance Law §5102(d) and as such, has no cause of action under New York State Insurance Law §5104(a). The motion is **denied**.

Papers  
Numbered

- Notice of Motion -Affidavits-Exhibits..... EF 22-30
- Affirmation in Opposition-Affidavits-Exhibits..... EF 32-42
- Reply Affirmation-Affidavits-Exhibits..... EF 43

Plaintiff commenced this action to recover damages she alleged that she sustained in a motor vehicle accident on July 14, 2020. Plaintiff filed a summons and verified complaint on January 21, 2021, alleging that Chowdhury and co-defendants Peter Arato and City of New York (hereinafter “City”) were negligent and that due to the negligence of Chowdhury and co-defendants Peter Arato and City, and that as a result of the accident she sustained a serious injury to her person as defined under New York State Insurance Law § 5102(d).

Chowdhury makes this application for an Order pursuant to CPLR 3212 granting moving defendant summary judgment and dismissing Plaintiff's complaint on the grounds that Plaintiff did not incur a "serious injury" as defined under New York State Insurance Law §5102(d) and as such, has no cause of action under New York State Insurance Law §5104(a). Plaintiff filed a Note of Issue on March 27, 2024 and this motion was made on June 7, 2024, making it timely (*see Brill v City of New York*, 2 NY3d 648 [2004]).

### **Plaintiff's Verified Bill of Particulars**

Plaintiff claimed in her verified bill of particulars that the accident occurred on July 14, 2020 at the intersection of Junction Boulevard and Horace Harding Expressway, County of Queens, City and State of New York. She claimed that the accident occurred due to Defendants' negligence and that she sustained serious injuries to her back, neck, left shoulder, and head. She claimed that she was confined to bed for a few days following the accident and to home intermittently since the accident. Plaintiff claimed that as a result of the accident, she sustained a fracture; a permanent loss or loss of use of a body member, function, and/or system; a significant limitation of a body member; function and/or system; a permanent consequential limitation of use of a body organ or member; a disfiguring scar; and, a medically determined injury or impairment which prevented plaintiffs from performing substantially all of the material acts which constituted said plaintiffs usual and customary daily activities for not less than 90 days during the 180 days immediately following the occurrence of the injury or impairment as defined under New York Insurance Law section 5102(d) under the New York State Insurance Law.

### **Plaintiff's Deposition Testimony**

At Plaintiff's deposition held on March 13, 2023, Plaintiff testified that the accident occurred on July 14, 2020. She was a passenger in her mother's vehicle and was wearing her seatbelt. She had been taking medication for migraine headaches which she stated she did not have to take prior to the accident. Following the accident, she was taken to the hospital in an ambulance and later released. She claimed injuries to her head, neck, back, and left shoulder. She underwent physical therapy, acupuncture and chiropractic treatment. Plaintiff had ceased therapy sometime at the end of 2022. She testified that none of her doctors had told her that she had reached maximum medical improvement, or advised her that her No-Fault insurance was cut off. She testified that she received treatment from her neurologist for trauma to her head. She was still treating with the neurologist and had an upcoming appointment, and she stated she was also going to resume physical therapy. Plaintiff testified that she was confined to her home following the accident from July 2020 to December 2020 due to the accident and not the COVID19 pandemic.

### **IME Report of Dr. Steven L. Goodman**

Dr. Steven L. Goodman performed an independent orthopedic examination of Plaintiff on June 19, 2023. Plaintiff advised Dr. Goodman that she was in a car accident on July 14, 2020, and that she sustained injuries to her head, neck, back, right shoulder and right knee. At the time of the occurrence, Plaintiff was unemployed. The doctor reviewed various medical records and performed an examination. Range of motion measurements were taken with the aid of a goniometer, and normal values were based on the New York State and AMA guidelines.

**Cervical Spine**- extension 50 degrees (60 degrees normal); right and left flexion 45 degrees (45 degrees); bilateral rotation 70 degrees (80 degrees normal); extension 50 degrees (60 degrees);

**Thoracic Spine**-flexion 45 degrees (45 degrees normal); extension 0 degrees (0 degrees normal); bilateral rotation 25 degrees (30 degrees normal); right and left lateral bending to 40 degrees (45 degrees normal);

**Lumbar Spine**- flexion 50 degrees (60 degrees normal); extension 20 degrees (25 degrees normal); right lateral bending 25 degrees (25 degrees normal); left lateral bending 25 degrees (25 degrees normal); Straight leg raise was negative;

**Right Shoulder**- abduction 180 degrees (180 degrees normal); forward flexion 180 degrees (180 degrees); extension 60 degrees (60 degrees normal); internal rotation 80 degrees (80 degrees); external rotation 90 degrees (90 degrees);

**Left Shoulder**-forward flexion 180 degrees (180 degrees); extension 60 degrees (60 degrees); abduction 180 degrees (180 degrees normal); internal rotation 80 degrees (80 degrees); external rotation 80 degrees (80 degrees);

**Right Knee**- flexion 140 degrees (150 degrees normal); extension 0 degrees (0 degrees normal).

**Left Knee**- flexion 150 degrees (150 degrees normal); extension 0 degrees (0 degrees normal).

Dr. Goodman deferred comment on Plaintiff's head to the appropriate specialty. In Dr. Goodman's opinion, Plaintiff sustained cervical, thoracic, and lumbar sprains, right shoulder sprain and left knee sprain, all resolved.

### **IME Report of Dr. Louis Cornacchia**

Dr. Louis Cornacchia, M.D. performed an independent neurosurgical examination of Plaintiff on June 2, 2023. Plaintiff complained of neck pain, headaches, back pain and tingling in her fingers. The doctor reviewed medical records and performed an examination. Range of motion was performed with a goniometer and was as follows:

**Cervical Spine-** extension 35 degrees (50 degrees normal); right lateral flexion 40 degrees (65 degrees); bilateral rotation 65 degrees (80 degrees normal); extension 50 degrees (60 degrees);

**Lumbar Spine-** flexion 50 degrees (60 degrees normal); extension 20 degrees (25 degrees normal); left and right rotation 30 degrees (40 degrees normal); right lateral bending 20 degrees (25 degrees normal); left lateral bending 25 degrees (25 degrees normal).

Sensory and Mental Status was normal as well as cranial nerve examination. Straight leg raise was limited by low back pain. In Dr. Conracchia's opinion, Plaintiff's diagnoses was cervicgia and lumbalgia. No permanency was noted, and Plaintiff was able to work full-time.

### **Discussion**

The proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering admissible evidence to eliminate any material issues of fact from the case. (*See Alvarez v Prospect Hospital*, 68 NY2d 320 [1986]; *Winegrad v New York University Medical Center*, 64 NY2d 851 [1985].) Here, Chowdhury has the burden of establishing, *prima facie*, that Plaintiff did not sustain a "serious injury" within the meaning of the Insurance Law (*see Pommels v Perez*, 4 NY3d 566 [2005]; *Gaddy v Eyler*, 79 NY2d 955 [1992]; *Licari v Elliott*, 57 NY2d 230, 235 [1982]; *Grossman v Wright*, 268 AD2d 79, 83-84 [2d Dept 2000]). A "serious injury" is defined under New York State Insurance Law §5102(d) as "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 finds that Chowdhury failed to demonstrate entitlement to judgment as a matter of law. Dr. Goodman and Dr. Cornacchia both failed to state what Plaintiff's range of motion was on straight leg raising in comparison to normal (*see Shirman v Lawal*, 69 AD3d 838 [2d Dept 2010]; *Walker v Public Admin. of Suffolk County*, 60 AD3d 757 [2d Dept 2009]; *Malave v Basikov*, 45 AD3d 539 [2d Dept 2007]). More importantly, Defendants' neurologist, Dr. Cornacchia found range of motion deficits in Plaintiff's cervical spine, and did not state range of motion in Plaintiff's cervical spine on left lateral flexion, failing to show that Plaintiff did not sustain a serious injury under the permanent consequential limitation of use or significant limitation of use categories of Insurance Law 5102(d) as a result of the accident. (*See Detoma v Dobson*, 214 AD3d 949 [2d Dept 2023]; *Menjivar v Capers*, 214 AD3d 640 [2d Dept 2023].) Also Dr. Goodman did not state Plaintiff's range of motion on adduction in her shoulders (*see American Medical Association "Guidelines to the Evaluation of Permanent Impairment" Fifth Edition. March 2002.*) Additionally, Defendants failed to address Plaintiff's claims of serious injury under the 90/180 day category (*see Toure v Avis Rent A Car Sys., Inc.*, 98 NY2d 345 [2002]; *Gaddy v Eyler*, 79 NY2d 955 [1992]; *Licari v Elliott*, 57 NY2d 230 [1982]; *Pickering v Basar*, 217 AD3d 694 [2d Dept 2023]; *Fernandez*

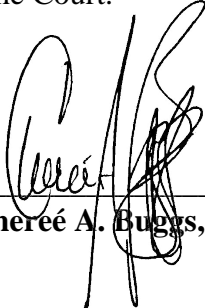
*v Xie Jian Gao*, 114 AD3d 637 [2d Dept 2014]; *Che Hong Kim v Kossoff*, 90 AD3d 969 [2d Dept 2011]).

Since Chowdhury failed to establish that Plaintiff did not sustain a serious injury under the New York State Insurance Law, the sufficiency of the opposition papers need not be addressed (*see Reddick v Hickey*, 197 AD3d 581 [2d Dept 2021]; *Tudy v Sandoval*, 97 AD3d 739 [2d Dept 2012]; *Coscia v 938 Trading Corp.*, 283 AD3d 538 [2d Dept 2001]).

Therefore, defendant Nazia Chowdhury's motion seeking an Order pursuant to CPLR 3212 granting her summary judgment is **denied**.

The foregoing constitutes the decision and Order of the Court.

Dated: October 29, 2024

  
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Hon. Chereé A. Buggs, JSC

