

Lewis-Lamont v New York City Tr. Auth.

2024 NY Slip Op 35066(U)

December 20, 2024

Supreme Court, Queens County

Docket Number: Index No. 720734/2021

Judge: Mojgan C. Lancman

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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

PRESENT: HON. MOJGAN C. LANCMAN

-----x IAS PART 20
MARLENE LEWIS-LAMONT and SHAUNETTE
ALLEN,

Index No.: 720734/2021

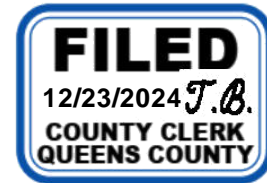
Plaintiffs, Motion Seq. Nos.: 1 and 2

-against- Motion Date: 7.10.2024

NEW YORK CITY TRANSIT AUTHORITY D/B/A MTA
NEW YORK CITY TRANSIT, MTA BUS COMPANY,
TARCIA HAYES AND MANPREET SINGH, Motion Cal. Nos.: 23 and 24

Defendants.

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Presently before the Court are two motions for summary judgment. Each seeks to dismiss the complaint on the ground that the plaintiffs have not sustained a serious injury within the meaning of Insurance Law § 5102 [d].

The first motion was filed by the defendants New York City Transit Authority (“NYCTA”), MTA Bus Company (“MTA Bus”) and Tarcia Hayes (“Hayes”) (collectively, the “Transit Defendants”) (see NYSCEF Doc. Nos. 35-47, 54, 56-64, 74 and 76-77).

The second motion was filed by the defendant Manpreet Singh (“Singh”) (see NYSCEF Doc. Nos. 48-53, 55, 65-73 and 75).

The motions are consolidated for disposition since they seek the same relief and are predicated upon the same assertion, that the plaintiffs, Marlene Lewis-Lamont (“Lewis-Lamont”) and Shaunette Allen (“Allen”) (collectively, the “Plaintiffs”), did not sustain a serious injury. For the following reasons, the motions are granted in part and denied in part.

I. Factual Background

The Plaintiffs commenced this cause seeking to recover damages for personal injuries allegedly sustained in a motor vehicle accident took place on October 29, 2020 in Queens, New York (the “Accident”). The Plaintiffs were passengers on a bus owned and operated by the Transit Defendants. The Accident occurred when the subject bus and a vehicle operated by Singh collided.

The bill of particulars alleges: (1) that Lewis-Lamont sustained injuries to the right shoulder, right knee, cervical spine, thoracic spine and the lumbar spine; (2) that Allen sustained injuries to the cervical spine and the lumbar spine; and (3) that the Plaintiffs sustained a serious injury under the permanent limitation, significant limitation and 90/180-day categories.

II. Discussion

The 90/180-day claim advanced by each plaintiff is dismissed because neither missed any time from work because of the Accident (*see Stokes v Brown*, 2 Ad3d 1373 [2d Dept 2003]).

The Court now turns to the serious injury claims under the permanent consequential limitation and the significant limitation of use categories. The Court's function on a summary judgment motion "is not to resolve issues of fact or determine matters of credibility, but merely to determine if such issues exist" (*114 Woodbury Realty, LLC v 10 Bethpage Rd., LCC*, 178 AD3d 757 [2d Dept 2019] [citations omitted]). The facts must be viewed in the light most favorable to the non-moving party (*see Sosa v 46th Street Development LLC*, 101 AD3d 490 [1st Dept 2012]). If there is any doubt as to the existence of a triable issue of fact, the motion must be denied (*see Rotuba Extruders v Ceppos*, 46 NY2d 223 [1978]).

In support of their respective motions, the Defendants rely, *inter alia*, on the findings of medical experts, which are summarized below.

Dr. Warren E. Cohen, a neurologist, found that ranges of motion relative to Lewis-Lamont's cervical, thoracic and lumbar spines was normal. The physician's diagnosis was: "[c]ervical sprain, resolved; [t]horaco-lumbosacral sprain, resolved; and [n]ormal neurologic examination with no objective clinical evidence of radiculopathy or of any deficit of neurologic function."

Dr. Stuart Hershon, an orthopedist, found, *inter alia*, that Lewis-Lamont had normal range of motion relative to the right shoulder, the right knee, the cervical spine, the thoracic spine and the lumbar spine. His "diagnosis/impression" was: "[c]ervical spine sprain/strain, resolved; [t]horacic spine sprain/strain, resolved; [l]umbar spine sprain/strain, resolved; [and] [r]ight shoulder sprain/strain, resolved; [r]ight knee sprain/strain, resolved."

Dr. Warren E. Cohen, a neurologist, found that range of motion relative to Allen's cervical and lumbosacral spines was normal. The physician's diagnosis was: "[c]ervical sprain, resolved; [t]horaco-lumbosacral sprain, resolved; and [n]ormal neurologic examination with no objective clinical evidence of radiculopathy or of any deficit of neurologic function."

Dr. Aruna M. Seneviratne, an orthopedist, found, *inter alia*, that range of motion testing relative to Allen's cervical and lumbar spines was normal. The physician's "diagnosis/impression" was: "[c]ervical spine sprain/strain, resolved; [and] [l]umbar spine sprain/strain, resolved."

In opposition, each plaintiff submits an affirmation from Dr. Joseph Weinstein.

Dr. Weinstein examined Lewis-Lamont on May 20, 2024. The physician found losses in range of motion relative to the cervical spine, the lumbar spine and the right knee. He opined that Lewis-Lamont has "a permanent significant restriction of motion of her cervical spine, right knee and lumbar spine, as evidenced during my recent examination on May 20, 2024, that will continue through the years." Dr. Weinstein also opined that the subject injuries are causally related to the Accident.

Dr. Weinstein examined Allen on May 15, 2024. The physician found losses in range of motion relative to the cervical and lumbar spines; that the injuries are permanent; and that they are causally related to the Accident.

Lewis-Lamont's right shoulder and thoracic spine injury claims are dismissed because the Defendants' experts concluded that range of motion testing relative thereto was normal and Dr. Weinstein's report does not indicate that he conducted range of motion testing relative thereto.

Lewis-Lamont's right knee injury claims are dismissed because the Defendants establish normal range of motion relative thereto. Dr. Weinstein's finding of an 11% loss of range of motion on testing of the right knee is "insignificant within the meaning of the no-fault statute" (*see McLoud v Reyes*, 82 AD3d 848, 849 [2d Dept 2011] [citations omitted]).

The Defendants' application for summary judgment dismissing the permanent consequential limitation and the significant limitation of use categories with respect to Lewis-Lamont's cervical and lumbar spines and Allen's cervical and lumbar spines is denied for two reasons.

First, the parties' competing evidence relative to causation and losses in range of motion relative to the lumbar and cervical spines of each plaintiff "constitute[s] the classic battle of the experts" (*Sason v Dykes Lumbar Company, Inc.*, 221 AD3d 491, 492 [1st Dept 2023], which "[is] properly left to a jury for resolution" (*Thomas v Eckhert*, 229 AD3d 1237, 1239 [4th Dept 2024] [internal quotation marks and citations omitted]).

Second, and in any event, the record is clear that sharply disputed issues of fact exist with respect to the permanent consequential limitation and the significant limitation of use categories as to the lumbar and cervical spines of each plaintiff (*see Oputa v New York City Transit Authority*, 216 AD3d 461 [1st Dept 2023]; *Hobbs v MTA Bus Company*, 211 AD3d 471 [1st Dept 2022]).

Lastly, the Defendants' contention that this cause should be dismissed because of a gap in treatment is without merit. Here, the Defendants bore the burden of proof of establishing that each plaintiff's cervical and lumbar spine injuries were not causally related to the Accident (*see Jeehyun Choi v Joel*, 181 AD3d 660 [2d Dept 2020]). However, none of the Defendants' experts, Drs. Cohen, Hirschhorn and Seneviratne, rendered an opinion as to causality. Since the Defendants' submissions fail to establish that the lumbar and cervical injuries claimed by the Plaintiffs were not caused by the Accident, it is unnecessary for the Plaintiffs to explain any gap in treatment or address causality (*see De Castillo v Reado*, 230 AD3d 565 [2d Dept 2024]).

III. Conclusion

For the reasons stated above, it is hereby:

ORDERED, that the Defendants' motion is granted in part and denied in part; and it is further,

ORDERED, that the motions are granted to the extent that Lewis-Lamont's 90/180-day, right shoulder, thoracic spine and right knee injury claims are dismissed; and it is further,

ORDERED, that Allen's 90/180-day claim is dismissed; and it is further,

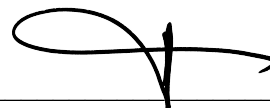
ORDERED, that the motions are denied as to each Plaintiff's cervical and lumbar spine claims; and it is further,

ORDERED, that the Transit Defendants shall serve a copy of this Order with Notice of Entry on all other parties via NYSCEF by January 31, 2025; and it is further,

ORDERED, that the Clerk of the Court shall close motion seq. nos. 1 and 2.

This constitutes the Decision and Order of the Court.

Dated: Jamaica, New York
December 20, 2024



MOJGAN C. LANCMAN, J.S.C.

