

Espada v New York City Tr. Auth.
2024 NY Slip Op 35255(U)
June 25, 2024
Supreme Court, Richmond County
Docket Number: Index No. 150910/2021
Judge: Orlando Marrazzo, Jr.
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

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JORGE L. ESPADA,

Plaintiff,

- against -

NEW YORK CITY TRANSIT AUTHORITY,
METROPOLITAN TRANSPORTATION AUTHORITY,
MTA BUS COMPANY, KYLE CAVE, MOHAMED
HADY AHMED AND MOHAMED AHMED AISAA,

Defendants.
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PART 26

Present:

Hon. Orlando Marrazzo, Jr.

DECISION and ORDER

Index 150910/2021
Motion No. 001

The papers numbered NYSCEF Documents “44” through “62” were marked fully submitted on the 8th day of May, 2024.

Upon the foregoing papers, the motion (Seq. No. 001) of defendants Mohamed Hady Ahmed and Mohamed Ahmed Aissa for summary judgment dismissing the complaint and all cross claims asserted against them is denied in accordance with the following.

Plaintiff Jorge L. Espada, Jr. commenced this action to recover damages for personal injuries he sustained in a motor vehicle accident on April 15, 2020, at the intersection of Richmond Road and Locust Avenue in Staten Island, New York. At the time, plaintiff was a passenger on a Metropolitan Transportation Authority Bus operated by defendant Kyle Cave. Mr. Espada alleges that the bus stopped abruptly at a red light and was “rear-ended” by a motor vehicle owned and operated by defendants Mohamed Hady Ahmed and Mohamed Ahmed Aissa. The “heavy impact” from the collision caused plaintiff’s “body to be thrust forward”; his right knee struck the seat in front of him. He allegedly sustained the injuries set forth in the bill of particulars, including, desiccated bulging discs at L1-5; degeneration with osteophyte formation and disc herniation at L5-S1; L5/C5, radiculopathy; lumbar and cervical

sprain/strain; right shoulder tendonitis; and right knee meniscal tear with fraying. Plaintiff testified at his deposition on June 27, 2023, that as a result of his injuries, he has extreme difficulty carrying his groceries, sleeping, boarding and exiting the bus, dressing and undressing. Notably, Mr. Espada testified that the April 2020 incident at issue aggravated a pre-existing lower back condition arising from a scaffolding accident in 2013, whereby plaintiff received ongoing medical treatment and was awarded Workers' Compensation benefits.

Mr. Espada maintains that he sustained the following injuries which, by statute, are deemed to be "serious" and, therefore, compensable: significant disfigurement; 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; and/or a medically determined injury or impairment of a non-permanent nature which prevented plaintiff from performing substantially all of the material acts which constituted his usual and customary daily activities for not less than 90 days during the 180 days immediately following the accident (*see* Insurance Law §5102[d]).

DISCUSSION

Defendants Ahmed and Aisaa move for summary judgment dismissing the complaint. They bear the initial burden of establishing, *prima facie*, that Mr. Espada did not sustain a "serious injury" as delineated in New York State Insurance Law §5102[d]. The burden may be met through the submission of evidentiary proof such as affirmations of medical experts who examined the plaintiff and conclude that no objective medical findings support the claimed serious injuries (*see Gaddy v. Eyler*, 79 NY2d 955, 956-957 [1992]). If that is accomplished, plaintiff must submit evidence raising a triable issue of fact as to the seriousness of the injury. However, movants' failure to make such a showing in the first instance requires denial of the motion, regardless of the sufficiency of the opposing papers" (*Winegrad v. New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]).

In support of the moving defendants' allegation that plaintiff fails to meet the threshold requirements of New York State Insurance Law §5102(d), they rely on the affirmed report of Dr. Dana Mannor, a board-certified orthopedic surgeon who performed an independent physical and orthopedic examination of Mr. Espada on August 9, 2023. Dr. Mannor affirms that her opinions and conclusions are based on plaintiff's prior medical records, and the results of her examination. Specifically, she reviewed pre-accident and post-accident reports of , *inter alia*, electrodiagnostic tests; a lumbar median nerve block procedure on January 30, 2023; an MRI revealing lumbar and cervical spine disc herniations and disc bulging; and the medical records of plaintiff's treating physicians, *i.e.*, Kenneth Chapman M.D. (pain management); Denny Julewicz M.D. (chiropractor); Dr. Ayman Farag (physical therapist); Glen Babus, D.O.; and the report of Mr. Estrada's lumbar median nerve block procedure on January 30, 2023.

Dr. Mannor performed specified objective tests using a hand-held goniometer in accordance with AMA guidelines to obtain quantified measurements of plaintiff's ranges of motion, as set forth in her report. The tests revealed full range of motion of plaintiff's cervical, thoracic and lumbar spine, left and right shoulders, and both knees. Dr. Mannor concluded that the foregoing areas of concern are within normal limits, and the injuries plaintiff complains of have fully resolved; "there is no disability related to the accident of record."

It is important to note that the results of defendants' independent medical examination of Mr. Espada on August 9, 2023, solely address his orthopedic condition at the time of Dr. Mannor's evaluation, *i.e.*, three years after the accident. As such, her report lacks probative value as to the injuries plaintiff sustained within the first 180 days immediately following the incident (*see* Insurance Law §5102[d]). In any event, plaintiff' provided more than sufficient testimony to raise a triable issue of fact as to the foregoing category of compensable injuries. Furthermore, there is a clear disparity between the opinions of defendant's IME orthopedist, and the treating physicians who reported findings and conclusions,

supported by objective medical evidence showing that plaintiff suffers from significant and permanent consequential limitations of use of a body organ or member; and/or significant limitation of use of a body function or system which is causally related to the April 15, 2020, accident.

“On a motion for summary judgment, the court is not to determine [as in this case] matters of credibility but is to determine whether there exists a factual issue, or if arguably, there is a genuine issue of fact” (*S.J. Capelin Assoc., Inc. v. Globe Mfg. Corp.*, 34 NY2d 338, 341 [1974]).

Since movants have failed to meet their *prima facie* burden, it is unnecessary to consider whether plaintiff’s opposition papers were sufficient to defeat summary judgment.

Accordingly, it is:

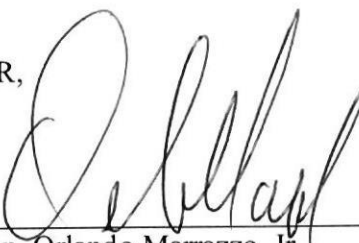
ORDERED, the motion of defendants Mohamed Hady Ahmed and Mohamed Ahmed Aissa for summary judgment dismissing the complaint and all cross claims asserted against them is denied; and it is further,

ORDERED, the Clerk shall mark his or her records accordingly.

Dated:

6/25/2024

ENTER,



Hon. Orlando Marrazzo, Jr.

Hon. Orlando Marrazzo, Jr.
Supreme Court Justice