

Doty v Sylla

2025 NY Slip Op 31338(U)

April 11, 2025

Supreme Court, New York County

Docket Number: Index No. 450720/2023

Judge: James G. Clynes

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JAMES G. CLYNES PART 22

Justice

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INDEX NO. 450720/2023

KAREN DOTY,

MOTION DATE 05/19/2024

Plaintiff,

MOTION SEQ. NO. 001

- v -

LANCINE SYLLA, SEIDE VENORD

DECISION + ORDER ON MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52

were read on this motion to/for JUDGMENT - SUMMARY

In this action to recover for personal injuries allegedly sustained by Plaintiff as a result of a motor vehicle accident which occurred on March 13, 2019, Defendants Lacine Sylla and Seide Venord seek summary judgment and dismissal of Plaintiff's Complaint on the grounds that Plaintiff's injuries fail to meet the serious injury threshold requirement under Insurance Law 5102 (d). Plaintiff's Bill of Particulars alleges injuries to Plaintiff's cervical spine, thoracic spine, and lumbar spine.

In support of their motion, Defendants rely on the independent medical reports of Dr. Howard A. Kiernan and Dr. Darren Fitzpatrick, as well as Plaintiff's examination before trial testimony.

Dr. Kiernan examined Plaintiff on August 8, 2022 and reported that Plaintiff's cervical spine sprain/strain, thoracic spine sprain/strain, and lumbar spine sprain/strain were all resolved and that he found no evidence of a disability. Dr. Kiernan measured Plaintiff's range of motion with a hand-held goniometer and compared the measurements to AMA Guidelines. As to Plaintiff's cervical spine, thoracic spine, and lumbar spine, Dr. Kiernan noted normal range of

motion and negative orthopedic tests. Dr. Kiernan concluded that there is no evidence of permanency or residuals, and that Plaintiff is able to seek gainful employment and perform normal activities without limitations.

Dr. Fitzpatrick conducted an independent radiology evaluation. As to Plaintiff's cervical spine, Dr. Fitzpatrick reported normal marrow signal and normal alignment, with minimal disc bulges and overall multilevel cervical degenerative disc disease. He concluded that as to Plaintiff's cervical spine, he found no traumatic injury and that any intervertebral disc degeneration is age-related disc desiccation and is not causally related to acute traumatic cervical spine injury.

As to Plaintiff's lumbar spine, Dr. Fitzpatrick reported a loss of disc height and disc signal at L5-S1, which he attributed to degenerative disc disease and noted no canal stenosis or neural foraminal narrowing. He concluded that there was no traumatic injury and that the lumbar intervertebral disc degeneration is age-related and is not causally related to acute traumatic lumbar spine injury.

Plaintiff testified that she cannot go to the gym, she cannot speed walk, and she can no longer sleep on her back. She further testified that it is difficult for her to get into the tub, to walk on stairs, and to sit for long periods of time. Plaintiff testified that she was confined to her bed for "a couple of weeks" but could not remember how much time, and that she was confined to her house for "quite a while" but did not remember exactly. She indicated that she had letters from her doctors instructing her not to return to work, but she could not remember how many times she was sent to the doctor for that purpose.

Defendants have met their initial burden of establishing that Plaintiff did not sustain serious injuries as a result of the accident under Insurance Law 5102 (d) (*Perez v Rodriguez*, 25 AD3d 506

[1st Dept 2006]). The burden therefore shifts to Plaintiff to produce prima facie evidence to support her claim of serious injury.

In opposition, Plaintiff submits certified hospital records from Lenox Hill Hospital Northwell Health, the affirmed initial evaluation report and treatment records of Dr. Matthew Clarke¹, chiropractic records of Dr. David M. Funlop, affirmed MRI reports of Plaintiff's lumbar spine and cervical spine by Dr. Michael Reichel, and independent medical examination reports by Dr. Mitchell Goldstein.

The cervical spine MRI report indicates that Plaintiff suffered a new herniation with new mild flattening of the ventral aspect of the right spinal cord as well as mild narrowing of the right lateral recess and right neural foramen, when compared to the previous examination in 2017.

Dr. Goldstein examined Plaintiff on April 12, 2019, May 25, 2019, and July 16, 2019. At each examination, Dr. Goldstein measured Plaintiff's range of motion with a goniometer and reported limitation in Plaintiff's range of motion. Dr. Goldstein also reported tenderness and pain at the limits of Plaintiff's range of motion as well as difficulty with changing position from sitting to standing and standing to sitting. She also restricted Plaintiff in lifting more than 10-15 pounds and at the July 16, 2019 exam, reported that Plaintiff should not sit for more than 4 hours continuously. Dr. Goldstein further reported that Plaintiff's medication impacts her functional abilities. Dr. Goldstein concluded that Plaintiff has a temporary moderate disability and that there

¹The Court finds that the portions of the evaluation report and treatment records of Dr. Matthew Clarke relating to range of motion are without probative value as they fail to indicate how the doctor measured Plaintiff's range of motion and fail to provide a baseline norm to compare the ranges, eroding the reliability of the assessments, "leaving the court to speculate" as to their ultimate meaning (*Bray v Rosas*, 29 AD3d 422 [1st Dept 2006]). In addition to setting forth measurements for range of motion, a physician must identify the objective tests performed in ascertaining those measurements (*Taylor v Terrigno*, 27 AD3d 316 [1st Dept 2006]).

is a direct causal relationship between Plaintiff's neck and back complaints and the subject accident.

During his treatment of Plaintiff, Dr. Clarke restricted Plaintiff's abilities including no heavy lifting, no prolonged sitting or standing, no stooping or kneeling, and no operating heavy machinery. He related Plaintiff's complaints and diagnoses with the subject accident. Dr. Clarke cleared Plaintiff to return to work on July 25, 2019, as he changed her medication to ibuprofen 800 mg up to 3 times per day as needed for pain.

Plaintiff has raised sufficient issues of material fact as to whether the injuries she sustained in the March 13, 2019 accident meet the threshold for serious injury under Insurance Law 5102 (d) to preclude summary judgment in Defendants' favor. Issues of fact exist based on the conflicting expert opinions submitted by the parties (*Perl v Meher*, 18 NY3d 208 [2011]). As such, Defendants' motion for summary judgment is denied. Accordingly, it is

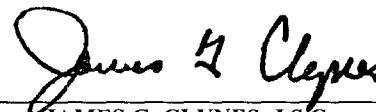
ORDERD that the motion by Defendants for summary judgment and dismissal of Plaintiff's Complaint on the grounds that Plaintiff's injuries fail to meet the serious injury threshold under Insurance Law 5102 (d) is denied; and it is further

ORDERED that within 30 days of entry, Plaintiff shall serve a copy of this Decision and Order upon Defendant with Notice of Entry.

This constitutes the Decision and Order of the Court.

4/11/2025

DATE



JAMES G. CLYNES, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	REFERENCE