

**Alhassan v Vanliner Ins. Co.**

2025 NY Slip Op 31387(U)

January 13, 2025

Supreme Court, Bronx County

Docket Number: Index No. 802915/2024E

Judge: Myrna Socorro

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This opinion is uncorrected and not selected for official publication.

#1

Supreme Court of the State of New York  
County of Bronx

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Abdul Alhassan,  
Petitioner

Index No. 802915-2024E  
Motion seq #1

-against-

**DECISION & ORDER**  
**Hon. Myrna Socorro, J.S.C.**

Vanliner Insurance Company  
Respondent  
-----X

Recitation as required by CPLR §2219, of the papers filed by the parties in motion seq #1, marked submitted on April 15, 2024

Papers	NYSCEF Doc. No.
Petition, Order to Show cause, Affirmation in Support, Exhibits and Affidavit of Service	1-21
Affirmation in Opposition and Exhibits	22-37
Reply Affirmation	#38

After review of the papers, and after due deliberation the motion is decided as follows:

**Petitioner's Claims**

Petitioner is seeking an order granting Petitioner's application to compromise and settle Petitioner's third-party claim against Senora Gathers under Index No. 257373-2020E, *nunc pro tunc* and/or seeking an order vacating the Worker's Compensation law held by Respondent.

Petitioner claims that he was injured, when he was struck by a motor vehicle while he was a pedestrian working for Federal Express as a delivery person, that occurred on September 20, 2019 in White Plains, New York. Petitioner's treatment for the accident-related injuries were paid by Respondent herein, that is, the medical expenses are claimed to have totaled \$10,408.05; and lost wages totaled \$12,124.95, as it appears Plaintiff opted to have coverage through Workmens Compensation rather than No Fault.

In August of 2020, Petitioner and Respondent entered into a Workers Compensation Law §32 Waiver Agreement which was submitted to the Workers Compensation Board on October 28, 2020 and was approved on November 8, 2020. Pursuant to that waiver, Petitioner on accepting \$30,000.00 lump sum, waived his rights for additional medical benefits and lost earnings. Accordingly, petitioner received a total of \$52,533.00 for medical benefits and lost earnings.

Prior to the Workmens Compensation §32 Waiver Agreement, on June 15, 2020 Petitioner had commenced the action against the driver of the motor vehicle, Senor Gathers, under Index Number 25737-2020E for personal injuries and is still pending, subject to the proposed settlement of \$90,000.00.

Petitioner claims that on October 6, 2021, Respondent claimed a lien for \$52,533.00 but agreed to reduce their lien to \$35,022.00 in full satisfaction of its lien. Petitioner claims that Respondent only has a lien if Respondent paid more than \$50,000.00 in lost earnings and medical benefits, and therefore the lien would only be for the excess over the \$50,000.00, to wit: \$2,533.00.

Petitioner articulated again that pursuant to Workmens Compensation §29, Respondent does not have a lien on the proceeds of the settlement for the lost earnings and medical benefits paid by Respondent that were in lieu of first party benefits, and therefore Respondent only has a lien for the amount that they paid above \$50,000.00.

### **Respondent's Opposition**

Respondent is opposed to the relief being requested and that the carrier is requesting their reimbursement of \$19,638.00 under §29 of the Workers Compensation Law from the pending settlement of \$90,000.00. Respondent claims in their opposition that the Section 32 Waiver Agreement closed out both the medical and indemnity portions of the Workmens Compensation claim. Respondent further stated that §32 waiver agreement was not paid "in lieu of first party benefits" and therefore Respondent was entitled to reimbursement on the \$30,000.00 §32 settlement.

Respondent states that first party benefits are defined in Insurance Law §5102 as "basic economic loss" up to \$50,000.00 combined items of of necessary medical treatment, up to \$2,000 per month for up to 3 years in lost earnings; and reasonable and necessary expenses up to \$25.00 per day for 1 year.

Respondent states that Plaintiff cites to no statutory or legal authority for their position that §32 waiver agreement is in fact a payment "in lieu of first-party benefits",

The Court notes that in the Waiver Agreement, at Paragraph 8 it states:

#### Section 29:

The carrier reserves its right to assert a lien or seek recover pursuant to WCL §29 based on benefits paid to the claimant pursuant to Workers Compensation law, including the proceeds payable to the claimant pursuant to this agreement.

## Discussion

Plaintiff does not present any legal authority demonstrating that the Court has the ability to grant Plaintiff's request to summarily "vacate the worker's compensation lien held by Respondent, Vanliner Insurance Company in its entirety". Accordingly, this branch of the motion is **Denied**.

Worker's Compensation Law §29(1) purpose is to avoid an injured party from double recovery by giving the Workmen's Compensation carrier a lien against the proceeds obtained by the injured party against a third party. [*Comm'rs of the State Ins. Fund v Weir*, 2021 NY Misc Lexis 3668 (Supreme Ct. New York Co. 2021)]. In an action by an injured person in an accident caused by a non-covered person, the injured person is not entitled to recover twice for his economic loss, as the workers' compensation carrier paying first-party benefits has a lien against any recovery to the extent of the benefits paid to the covered person *Stedman v New York*, 107 AD 2d 600; 483 NYS 2d 1013 (1<sup>st</sup> Dept. 1985).

In *Rahman v Busby*, 62 Misc 3d 366; 86 NYS 3d 865 (Supreme Ct. Bronx Co. 2018), the Court there determined that as to the relief under Workers Compensation Law §29(1),

“. . . the court of appeals reviewed the operation of subdivision (1) in *Matter of Kelly v State Ins. Fund* (60 NY2d 131, 1336-137. . [1983]: . . . A claimant has the first right to bring a [tort] action, and while undertaking such an action, may continue to receive compensation benefits. In the event that a claimant recovers in a [tort] action, the compensation carrier is granted a lien on the amount of the recovery proceeds equal to the past compensation it has paid. . . The lien, however, is subordinate to a deduction for costs and attorney's fees. . .”

In this action it has been stated that Respondent as the Workmens' Compensation carrier, for past compensation, , paid Petitioner \$10,408.05 in medical expenses and \$12,124.95 in loss of earnings and a lump sum payment of \$30,000.00 to Petitioner in exchange for a release of any and all future medical expenses. Accordingly, the Workmens' Compensation carrier paid to Petitioner the sum of \$52,533.00.

However, Respondent herein has agreed to a gross lien of \$30,000.00. Therefore after reducing the gross lien by 34.45%, which represents Respondent's share in the legal fees and expenses to achieve the settlement, from the \$30,000.00, the amount of the lien due by Petitioner to Respondent is \$19,638.00.

Accordingly, as to the motion filed by Petitioner, it is hereby

**ORDERED**, that the relief requesting to vacate the Workmen's Compensation lien is **DENIED**; and it is further

**ORDERED**, that Petitioner's application to compromise and settle Petitioner's third-party claim against Senora Gathers under Index No. 257373-2020E, is **GRANTED TO THE EXTENT**; and

it is further

**ORDERED**, that the gross settlement of \$90,000.00 is approved and the lien amount to be repaid by Petitioner to Respondent is \$19,638.00 from the settlement proceeds of \$90,000.00; and it is further

**ORDERED**, that Respondent serve and file a Notice of Entry of this Decision and Order within twenty (20) days from the date hereof.

This constitutes the Decision and Order of the Court.

A handwritten signature in black ink, appearing to be 'Ms', enclosed within a hand-drawn circle.

Dated: January 13, 2025

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HON. MYRNA SOCORRO, J.S.C.