

Hernandez v Singh

2025 NY Slip Op 34883(U)

December 15, 2025

Supreme Court, Kings County

Docket Number: Index No. 511364/2023

Judge: Kerry J. Ward

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 3 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 15th day of December, 2025.

P R E S E N T:

HON. KERRY J. WARD, A.J.S.C.

HERNANDEZ, KAYLA MARIE,

Plaintiff,

-against-

SINGH, LAKHWINDER,

Defendant.

DECISION/ORDER

Index No.: 511364/2023
Mot. Seq. 3

Defendant Lakhwinder Singh (“Defendant”) moves for summary judgment and dismissal of Plaintiff Kayla Marie Hernandez’s (“Plaintiff”) Complaint pursuant to CPLR §3212 and Insurance Law §5102(d). Plaintiff opposes the motion.

The motion is hereby denied, as Defendant failed to establish a *prima facie* entitlement to summary judgment (*see Salvemini v. Twinco Supply Corp.*, 140 A.D.3d 941 [2d Dept. 2016]).

Background and Procedural History

Plaintiff commenced this action for personal injuries sustained in a motor vehicle accident on January 5, 2022, at or near the intersection of Cozine Avenue and Forbell Street in Brooklyn, New York. At the time of the accident, Defendant was operating the motor vehicle within the scope of his employment when he came in contact with Plaintiff-pedestrian. Plaintiff Hernandez filed the Summons and Complaint on April 17, 2023, and on May 12, 2023, Defendant interposed an Answer.

Defendant’s Medical Experts

In support of his motion, Defendant submits the medical reports of Dr. Michael Setton (“Dr. Setton”), an independent medical examiner, who performed an MRI of Plaintiff’s cervical and lumbar spine on February 15, 2022 (Exhibit E, NYSCEF Doc. 46). Dr. Setton’s report revealed no evidence of osseous or soft tissue injury which may have resulted from the accident, which was six weeks prior (*Id.*).

Regarding the cervical spine, Dr. Setton stated that there is desiccation of the C2-3 intervertebral disc, reflecting degenerative loss of disc hydration, which indicated a chronic degenerative process that predates and is unrelated to the accident (*Id.* at p. 4). Dr. Setton also stated that although there is straightening of the normal lordotic curvature of the cervical spine which could be secondary to muscle spasm, it is more commonly the result of positioning (*Id.*). Regarding the lumbar spine, Dr. Setton stated that there is no evidence of any traumatic spinal malalignment or paraspinal ligament injury, no evidence of any lower spinal cord or lumbar nerve root injury, and no evidence of any traumatic facet joint injury (*Id.* at p. 6).

Defendant further submits the medical reports of Dr. Thomas P. Nipper (“Dr. Nipper”), an independent medical examiner, who performed an orthopedic evaluation of Plaintiff’s injuries (Exhibit D, NYSCEF Doc. 45). Dr. Nipper’s report revealed that Plaintiff’s injuries to the cervical spine, lumbar spine, lower back, and knees alleged in the Bill of Particulars have fully resolved, and Plaintiff is able to perform usual activities of daily living.

Plaintiff’s Medical Experts

In rebuttal, Plaintiff submits the medical report of Dr. David Shabitan, (“Dr. Shabitan”), a duly licensed physician who examined Plaintiff after the accident (Exhibit A, NYSCEF Doc. 55). Dr. Shabitan’s report stated that the “basis for the findings and opinions stated herein are examinations and treatment of the [Plaintiff], including but not limited to my personal examination and treatment of the [Plaintiff], review of the [Plaintiff’s] medical records, including the certified and affirmed copy of the medical records from Fine Spine Chiropractic P.C., Dr. Khaimov, and affirmed MRI review reports [by Dr. Ralph Dauito, M.D. of Star Imaging PC], as well as extensive experience treating patients with similar injuries, and general expertise as a physician in the fields of physical therapy and rehabilitation” (*Id.*). Dr. Shabitan stated that due to the accident that occurred on January 5, 2022, Plaintiff is diagnosed with L2/L3, L3/L4, L4/L5 disc bulges with bilateral foraminal narrowing, lumbar radiculopathy, lumbago with sciatica on the right and left side, C5-C6 disc bulge, and cervical radiculopathy, all of which continue to cause Plaintiff to suffer from pain and loss of motion (*Id.* at 5).

Law and Analysis

Pursuant to CPLR §3212, “[a] motion [for summary judgment] shall be granted if . . . the cause of action . . . [is] established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party” (CPLR 3212 [b]; *see Rodriguez v. City of New York*, 31 N.Y.3d 312 [2018]). The motion for summary judgment must also “show that there is no defense to the cause of action” (*Id.*). The party

moving for summary judgment must make a *prima facie* showing that it is entitled to summary judgment by offering admissible evidence demonstrating the absence of any material issues of fact and it can be decided as a matter of law (CPLR § 3212 [b]; see *Jacobsen v New York City Health and Hosps. Corp.*, 22 N.Y.3d 824 [2014]; see also *Brill v City of New York*, 2 N.Y.3d 648 [2004]). In deciding a summary judgment motion, the court does not make credibility determinations or findings of fact. Its function is to identify issues of fact, not to decide them (see *Vega v. Restani Constr. Corp.*, 18 N.Y.3d 499, 505 [2012]). Once a *prima facie* showing has been made, however, the burden shifts to the non-moving party to prove that material issues of fact exist that must be resolved at trial (see *Zuckerman v. City of New York*, 49 N.Y.2d 557 [1980]).

Under the No Fault law, to maintain an action for personal injury, a plaintiff must establish that a serious injury has been sustained (see *Licari v. Elliot*, 57 NY2d 230 [1982]). In moving for summary judgment, the proponent must tender sufficient evidence to show the absence of any material issue of fact and the right to judgment as a matter of law (see *Alvarez v. Prospect Hospital*, 68 NY2d 320 [1986]; see also *Winegrad v. New York Univ. v. Medical Center*, 64 NY2d 851 [1985]). In addition, a defendant has the burden of proving, by submitting competent evidence in admissible form, that plaintiff has not suffered a serious injury (see *Lowe v. Bennett*, 122 AD2d 728 [1st Dept. 1986], *affirmed*, 69 NY2d 701 [1986]). If a defendant's motion is sufficient to raise the issue of whether a serious injury has been sustained, the burden shifts and it is then incumbent upon the plaintiff to produce *prima facie* evidence in admissible form to support the claim of serious injury (see *Licari, supra*; *Lopez v. Senatore*, 65 NY2d 1017 [1985]).

In the present case, Dr. Setton concluded that no abnormality exists in Plaintiff's paraspinal soft tissues to suggest any type of recent traumatic injury to the lumbar spine, and no evidence of osseous or soft tissue injury which is causally related to the accident (Exhibit E, NYSCEF Doc. 46). In addition, Dr. Nipper stated there is no disability or permanency, nor is there any indication that Plaintiff requires further orthopedic treatment, including physical therapy (Exhibit D, NYSCEF Doc. 45). Dr. Nipper concluded that the medical records provided by Plaintiff have zero objective evidence that the injuries sustained are causally related to the motor vehicle accident (*Id.*).

Based upon the evidence presented, Defendant sufficiently demonstrated a *prima facie* showing that he is entitled to summary judgment as Plaintiff did not sustain a serious injury under Insurance Law §5102(d) (see *Castillo v. MTA Bus Co.*, 163 AD3d 620 [2d Dept. 2018]; see also *Byrd v. J.R.R. Limo*, 61 AD3d 801 [2d Dept. 2009]).

However, in rebuttal, Plaintiff has raised a triable issue of fact as to whether he sustained a serious

injury, successfully refuting Defendant's motion for summary judgment (*see Donadio v. Doukhnych*, 55 AD3d 532 [2d Dept. 2008]). Dr. Shabitan's report and affidavit indicated that there is no evidence that Plaintiff experienced any problems with her cervical and lumbar spine prior to the date of the accident, and that Plaintiff's injuries are causally related to the subject motor vehicle accident (Exhibit A, NYSCEF Doc. 55). Dr. Shabitan further stated that Plaintiff's pain and loss of motion is permanent in nature and Plaintiff will not be able to achieve her pre-accident medical status, as the loss of motion she sustained is permanent in nature (*Id.*). Thus, Dr. Shabitan's report is sufficient to defeat summary judgment (*see Wadford v. Gruz*, 35 AD3d 258 [1st Dept 2006]).

Accordingly, Defendant's motion for summary judgment pursuant to Insurance Law §5102(d) is denied, as Plaintiff has raised a triable issue of fact as to whether she sustained a serious injury, successfully rebutting Defendant's motion for summary judgment.

This constitutes the Decision and Order of the Court.

ENTER

KW

Hon. Kerry J. Ward, A.J.S.C.
Hon. Kerry J. Ward, A.J.S.C.