Jackson v Somra
2025 NY Slip Op 35291(U)
October 31, 2025
Supreme Court, Queens County
Docket Number: Index No. 700562/2021
Judge: Karen Lin

SUPREME COURT OF THE STATE OF NEW YORK
QUEENS COUNTY

PRESENT: HON. KAREN LIN PART 24
Justice

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VICKIE JACKSON,

Plaintiff,

- v -

RANDOLPH SOMRA and BIRBAL SOMRA,

Defendants.

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INDEX NO. 700562/2021

MOTION DATE

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, it is ordered this motion for summary judgment is determined as follows:

Plaintiff Vickie M. Jackson commenced this action against defendants Randolph Somra and Birbal Somra to recover damages for personal injuries she allegedly sustained in a motor vehicle accident that occurred on October 1, 2019, at approximately 12:15 p.m., on Jamaica Avenue near the premises located at 173-20 Jamaica Avenue in Queens County. Plaintiff avers that defendant Randolph Somra negligently operated a vehicle owned by defendant Birbal Somra when it struck plaintiff's vehicle in the rear while she was stopped at a red light. Plaintiff's bill of particulars avers that she sustained injuries to, among other things, her cervical spine, lumbar spine, right shoulder, left shoulder, and right wrist. She further avers that these injuries constitute a "serious injury" under Insurance Law § 5102 (d) under the categories of 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 preventing plaintiff from performing all of the material acts substantiating her usual and customary daily activity for not less than 90 days of the 180 days immediately following the accident (90/180 category).

Defendants now move for an order, pursuant to CPLR 3212, granting summary judgment in their favor on the issue of damages and for any possible claim of economic loss, upon the

grounds that plaintiff did not sustain a "serious injury" as a result of the subject accident as defined by Insurance Law § 5102 (d), and as required by Insurance Law § 5104 (a).

"Insurance Law § 5104 provides that there shall be no right of recovery for personal injuries arising out of negligence in the use or operation of a motor vehicle in the state, except in the case of serious injury or for basic economic loss" (*Damas v Valdes*, 84 AD3d 87, 91 [2d Dept 2011]; *see* Insurance Law § 5104). Pursuant to Insurance Law § 5102 (d), " 'serious injury' means a personal injury which results in death; dismemberment; significant disfigurement; a fracture; loss of a fetus; 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; or a medically determined injury or impairment of a non-permanent nature which prevents the injured person from performing substantially all of the material acts which constitute such person's usual and customary daily activities for not less than ninety days during the one hundred and eighty days immediately following the occurrence of the injury or impairment."

The defendant has the burden of establishing prima facie that the plaintiff did not sustain a serious injury as defined by Insurance Law § 5102 (d) as a result of the subject accident (*see Toure v Avis Rent A Car Sys.*, 98 NY2d 345 [2002]; *Jong Cheol Yang v Grayline NY Tours*, 186 AD3d 1501 [2d Dept 2020]). "[A] defendant can establish that the plaintiff's injuries are not serious within the meaning of Insurance Law § 5102 (d) by submitting the affidavits or affirmations of medical experts who examined the plaintiff and conclude that no objective medical findings support the plaintiff's claim" (*Nunez v Teel*, 162 AD3d 1058, 1059 [2d Dept 2018], quoting *Grossman v Wright*, 268 AD2d 79, 83-84 [2d Dept 2000]). By submitting the affidavits or affirmations of medical experts, who, through objective medical testing, conclude that plaintiff's injuries are not serious within the meaning of Insurance Law § 5102 (d), a defendant can meet his or her prima facie burden (*see Fils-Aime v Hossan*, 208 AD3d 559, 560 [2d Dept 2022]). The burden then shifts to plaintiff to demonstrate, through sufficient admissible evidence, that there is a triable issue of fact (*see Licari v Elliot*, 57 NY2d 230, 235 [1982]).

In support of this motion, defendants submit, among other things, an uncertified police accident report, the summons and complaint, the verified answer, the verified bill of particulars, the EBT transcript of Vickie Jackson, the affirmed IME report by orthopedic surgeon Dr. Eric

Freeman (Dr. Freeman), and the affirmed IME report by neurologist Dr. Mariana Golden (Dr. Golden). Here, defendants have failed to demonstrate their prima facie entitlement to judgment as a matter of law. Defendants must address all of the injuries alleged in plaintiff's bill of particulars and all alleged threshold categories of serious injury (*see Cohn v Khan*, 89 AD3d 1052, 933 NYS2d 403 [2d Dept 2011]). Regarding the 90/180 category, defendants must demonstrate that plaintiff was not prevented from performing substantially all of her usual and customary daily activities for 90 of the first 180 days following the accident within the meaning of Insurance Law § 5102 (d) (*see Dembowski v Morris*, 184 AD3d 736, 124 NYS3d 202 [2d Dept 2020]; *Kaperleris v Riordan*, 89 AD3d 903, 933 NYS2d 92 [2d Dept 2011]). Upon review of the submitted reports, neither of defendants' experts related their findings to the 90/180 category or opined on plaintiff's ability to perform her usual and customary daily activities during the first 180 days following the accident. While defendants rely solely on plaintiff's deposition testimony, held on June 2, 2022, the testimony did not address plaintiff's usual and customary daily activities during the specific relevant timeframe, and did not compare plaintiff's pre-accident and post-accident activities during that timeframe (*see Hall v Stargot*, 187 AD3d 996, 996 [2d Dept 2020]). Accordingly, defendants failed to meet their initial burden showing that plaintiff did not sustain a serious injury under the 90/180 category and eliminate all triable issues of fact regarding plaintiff's claims (*see Delgado-Lara v Szozda*, 230 AD3d 1294 [2d Dept 2024]; *Scott v Ali*, 230 AD3d 1178, 1179 [2d Dept 2024]; *Baptiste v NY City Tr. Auth.*, 230 AD3d 629, 630 [2d Dept 2024]). Since defendants failed to establish, prima facie, that plaintiff did not sustain a serious injury under the 90/180 category, it is unnecessary to consider whether defendants established that plaintiff did not sustain a serious injury under the other categories as a result of the accident (*see Diaz v Nightingale Bakery & Beverage Distrib., Inc.*, ___AD3d___, 238 NYS3d 637, 638, 2025 NY Slip Op 04630, *2 [2d Dept 2025]; *Yoon Sik Moon v Ramirez*, 229 AD3d 481, 482 [2d Dept 2024]; *Curiale v Delfavero*, 211 AD3d 905, 906 [2d Dept 2022]).

Moreover, where, as here, there are conflicting opinions of experts, such conflicts may not be resolved on a motion for summary judgment (*see Macancela v Wyckoff Hgts. Med. Ctr.*, 176 AD3d 795, 798 [2d Dept 2019]; *Scully v Stephens*, 214 AD3d 834, 835 [2d Dept 2023]; *Tolpygina v Teper*, 44 AD3d 747, 747 [2d Dept 2007]).

For all the foregoing reasons, it is hereby

ORDERED that the defendants' motion for summary judgment dismissing plaintiff's complaint is denied; and it is further

ORDERED that any requested relief and/or remaining contentions not expressly addressed herein have nonetheless been considered and are hereby expressly rejected; and it is further

ORDERED that defendants shall serve a copy of this Decision and Order with Notice of Entry within twenty (20) days from the date of entry.

This constitutes the Decision and Order of the Court.

Dated: October 31 , 2025
Long Island City, New York

HON. KAREN LIN
Justice of the Supreme Court

FILED
BOH 11/3/2025
COUNTY CLERK
QUEENS COUNTY