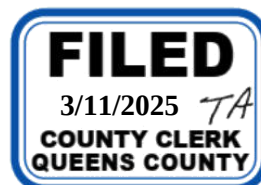


Ahmad v Mirzavaliev
2025 NY Slip Op 35471(U)
March 7, 2025
Supreme Court, Queens County
Docket Number: Index No. 724029/23
Judge: Carmen R. Velasquez
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SHORT FORM ORDER

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE CARMEN R. VELASQUEZ IAS PART 38
Justice-----X
FARHAT AHMAD,

Index No. 724029/23

Plaintiff,

Motion

Date: January 6, 2025

-against-

M# 1

AKHROR MIRZAVALLIEV, ET AL.,

Defendants.
-----X

The following papers numbered EF 15-23, 37-44 read on this motion by defendants Akhror Mirzavaliev and Abror Mirzavaliev for summary judgment dismissing the complaint on the ground that plaintiff has not sustained a serious injury pursuant to Insurance Law § 5102(d).

PAPERS
NUMBERED

Notice of Motion - Affidavits - Exhibits.....	EF 15-23
Affirmation in Opposition - Exhibits.....	EF 37-44

Upon the foregoing papers it is ordered that this motion by defendants Akhror Mirzavaliev and Abror Mirzavaliev for summary judgment is decided as follows:

Plaintiff allegedly sustained serious injuries as the result of a motor vehicle accident on the Gowanus Expressway in Kings County on October 27, 2022. Plaintiff commenced the instant action to recover damages for negligence. Defendants Akhror Mirzavaliev and Abror Mirzavaliev now move for summary judgment dismissing the complaint on the ground that plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102(d).

The issue of whether plaintiff has made a prima facie showing of serious injury is a matter of law, to be determined in the first instance by the court. (*Licari v Elliott*, 57 NY2d 230, 237 [1982]; *Charles v U.S. Fleet Leasing*, 140 AD2d 481, 481 [2d Dept 1988].) 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. (see *Grossman v Wright*, 268 AD2d 79, 84 [2d Dept 2000]; *Turchuk v Town of Wallkill*, 255 AD2d 576, 576 [2d Dept 1998].) With this established, the burden shifts to the plaintiff to come forward with evidence to overcome the defendant's submissions by demonstrating a triable issue of fact as to whether a serious injury was sustained within the meaning of the Insurance Law. (see *Gaddy v Eyler*, 79 NY2d 955, 957 [1992].) A plaintiff's subjective claim of pain and limitation of motion must be sustained by verified objective medical findings. (see *Carroll v Jennings*, 264 AD2d 494, 495 [2d Dept 1999]; *Kauderer v Penta*, 261 AD2d 365, 366 [2d Dept 1999].)

Defendants made a prima facie showing that plaintiff failed to sustain a serious injury within the meaning of Insurance Law § 5102(d). (*Toure v Avis Rent-A-Car Sys., Inc.*, 98 NY2d 345, 350 [2002].) Defendants submit, *inter alia*, the affirmed medical report of Dr. Hugh Selznick, who performed an independent orthopedic examination of the plaintiff on June 21, 2024. Dr. Selznick found that the plaintiff had full range of motion of the cervical spine, thoracic spine, lumbosacral spine, left shoulder, right hand/wrist, left hand/wrist, right knee, left knee and left ankle/foot. (*Ranford v Tim's Tree and Lawn Serv., Inc.*, 71 AD3d 973, 974 [2d Dept 2010]; *George v Suarez*, 71 AD3d 727, 728 [2d Dept 2010]; *McIntosh v O'Brien*, 69 AD3d 585, 587 [2d Dept 2010].) Dr. Selznick compared his range of motion findings to the normal range of motion. (cf. *Resek v Morreale*, 74 AD3d 1043, 1045 [2d Dept 2010]; *Morris v Edmond*, 48 AD3d 432, 433 [2d Dept 2008].) He also noted that a goniometer was used to measure the range of motion. (cf. *Sapienza v Ruggiero*, 57 AD3d 643, 644 [2d Dept 2008]; *Piperis v Wan*, 49 AD3d 840, 841 [2d Dept 2008]; *Tobiolo v Friedman*, 283 AD2d 483, 484 [2d Dept 2001].)

Plaintiff, in opposition, submits sufficient evidence in admissible form raising a triable issue of fact as to whether he sustained a serious injury pursuant to Insurance Law § 5102(d). (*Orgel v Kathleen Cab Corp.*, 94 AD3d 837, 838 [2d Dept 2012].) Plaintiff submits the affirmed report of Dr. Mark S. Snyder, who examined the plaintiff shortly after the subject accident and performed a qualitative and quantitative examination of the plaintiff. (see *Perl v Meher*, 18 NY3d 208, 218 [2011].) At the initial examination Dr. Snyder found that plaintiff had difficulty performing normal daily activities including bending, stooping, picking up an object from the floor and shifting to and from a seated position. He also had difficulty and pain when sitting up from a supine position and when sitting or standing

for a prolonged period. Dr. Snyder also found that plaintiff had restrictions in the range of motion of his thoraco-lumbar spine and cervical spine. He noted that dual inclinometer was used to perform the range of motion testing. Dr. Snyder avers that he recommended chiropractic manipulation for the plaintiff. Dr. Snyder also states that the subject accident aggravated plaintiff's prior neck and back pain and caused new spinal injuries. (see *Williams v Clark*, 54 AD3d 942, 943 [2d Dept 2008]; *Lim v Tiburzi*, 36 AD3d 671, 672 [2d Dept 2007].) Moreover, Dr. Snyder performed a recent examination of the plaintiff, which also revealed objectively measured limitations in the plaintiff's range of motion. (see *Johnson v Cristino*, 91 AD3d 604, 605 [2d Dept 2012]; *Williams v Fava Cab Corp.*, 90 AD3d 912, 914 [2d Dept 2011]; *Dixon v Fuller*, 79 AD3d 1094, 1094 [2d Dept 2010].)

The court notes that Dr. Snyder acknowledges that the plaintiff was in a prior motor vehicle accident, but he avers that plaintiff's condition was made worse by the subject accident. He explains that plaintiff sustained several bulging discs and herniated discs of the cervical spine and lumbar spine that were not present prior to the subject accident. Dr. Snyder submits a comparison of range of motion results after the prior accident and after the subject accident. A review of the results shows a worsened range of motion following the subject accident.

Plaintiff also submits the affirmed report of Dr. Peter Tomasello, who initially examined the plaintiff on March 24, 2023. Dr. Tomasello found limitations in the range of motion of plaintiff's left knee, left shoulder and left ankle and compared his findings to the normal range of motion. Similar to Dr. Snyder, Dr. Tomasello found a causal relationship between the plaintiff's injuries and the subject accident. He further opined that plaintiff's injuries were of a "permanent nature" and "do not lend themselves to resolution absent surgical intervention..." Furthermore, Dr. Tomasello examined the plaintiff recently and continued to find restrictions in his range of motion.

Finally, the court notes that plaintiff provides an adequate explanation for the gap in his treatment. Plaintiff avers in his affirmation that he continued his treatment until March 2024 when his insurance carrier stopped paying for the treatment, and he could not afford to pay for it out of his own pocket. (*Pacannuayan v New York City Tr. Auth.*, 231 AD3d 1164, 1165 [2d Dept 2024]; *Jules v Barbecho*, 55 AD3d 548, 549 [2d Dept 2008]; *Francovig v Senekis Cab Corp.*, 41 AD3d 643, 644 [2d Dept 2007].)

Accordingly, this motion by defendants Akhror Mirzavaliev and Abror Mirzavaliev for summary judgment is denied.

Dated: March 7, 2025


CARMEN R. VELASQUEZ, J.S.C.

