

Yosef v Hayat

2026 NY Slip Op 31258(U)

March 26, 2026

Supreme Court, Kings County

Docket Number: Index No. 514029/2024

Judge: Reginald A. Boddie

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 Part 95 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at 360 Adams Street, Borough of Brooklyn, City and State of New York on the 26th day of March 2026.

P R E S E N T:
Honorable Reginald A. Boddie
Justice, Supreme Court

-----X

YAKOV YOSEF and RACHEL STEINMETZ,

Index No. 514029/2024

Plaintiffs,

-against-

Cal. No. 6 MS 1

GHULAM HAYAT,

Decision and Order

Defendant.

-----X

The following e-filed papers read herein:

NYSCEF Doc Nos.

MS 1

11-41

Defendant’s motion for summary judgment dismissing the complaint is decided as follows:

This action arises out of an alleged motor vehicle accident on June 25, 2023, in which plaintiffs, as passengers in defendant’s vehicle, claim they were injured when the defendant negligently operated the vehicle and collided with a parked and unoccupied car. Plaintiffs allege that the accident and their resulting serious injuries were caused solely by the defendant’s negligent ownership, operation, management, maintenance, supervision, inspection, and control of his vehicle.

Defendant now moves pursuant to CPLR 3212 for summary judgment dismissing the complaint on the ground that plaintiffs did not sustain a “serious injury” under Insurance Law §

5102(d), relying on plaintiffs' deposition testimony and affirmed medical reports showing normal findings, no disability or permanency, minimal treatment, and no significant curtailment of daily activities. In opposition, plaintiffs contend that triable issues of fact exist as to serious injury, submitting affirmed reports from their treating physician, objective medical evidence including MRIs and EMG studies, and quantified range-of-motion limitations, and argue that defendant's IME reports are conclusory and that any gap in treatment is reasonably explained.

It is well established that summary judgment is a drastic remedy and should not be granted where there is any doubt as to the existence of a material and triable issue of fact (*T. Mina Supply v Clemente Bros. Contr. Corp.*, 194 AD3d 879, 881 [2d Dept 2021]). Once the proponent has made a prima facie showing, the burden then shifts to the motion's opponent to present evidentiary facts in admissible form sufficient to raise a genuine, triable issue of fact (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). If there is any doubt as to the existence of a triable fact, the motion for summary judgment must be denied (*Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 [1978]). Upon a motion for summary judgment, the court's function is one of issue finding rather than issue determination (*id. citing Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]). "It is not the function of a court . . . to make credibility determinations or findings of fact, but rather to identify material triable issues of fact (or point to the lack thereof)" (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 505[2012] [citation omitted]).

Insurance Law § 5102(d) provides:

"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 eighty days immediately following the occurrence of the injury or impairment."

Here, defendant met his prima facie burden by submitting, inter alia, the affirmed medical reports of its examining orthopedist and neurologist, both of whom found normal ranges of motion, no objective orthopedic or neurological disability, and no permanency with respect to plaintiffs' alleged injuries. Defendant also submitted plaintiffs' deposition testimony, which reflects limited treatment, cessation of care, and little to no curtailment from their usual employment and daily activities.

In opposition, plaintiffs submitted affirmed medical reports from their treating physician and radiologist, together with MRIs and EMG/NCV testing reports, demonstrating disc herniations, radiculopathy, and a rotator cuff tear, as well as quantified limitations in range of motion. Plaintiffs' physician further opines that the subject injuries are causally related to the accident and constitute permanent and significant limitations. The record also reflects that plaintiffs sought treatment shortly after the accident and underwent a course of physical therapy, and continue to report functional limitations.

Upon consideration of the foregoing, the Court finds that plaintiffs raised triable issues of fact as to whether they sustained a serious injury under the "significant limitation of use" and "permanent consequential limitation of use" categories of Insurance Law § 5102(d). Plaintiffs' submissions contain objectively measured limitations in range of motion, documented over time, and corroborated by diagnostic imaging studies. To the extent defendant's examining physicians reached contrary conclusions, such conflicting medical opinions present issues of credibility which cannot be resolved on a motion for summary judgment.

Notwithstanding the foregoing, defendant is entitled to summary judgment with respect to plaintiffs' claims under the 90/180-day category of serious injury. To satisfy this category, a plaintiff must demonstrate "a medically determined injury or impairment of a non-permanent

nature which prevented him from performing substantially all of the material acts constituting his usual and customary daily activities for not less than 90 days during the 180 days immediately following the accident” (*Bacon v Bostany*, 104 AD3d 625, 627 [2d Dept 2013]).

Here, plaintiffs’ own deposition testimony establishes that they were not so curtailed. Defendant alleges, and plaintiffs do not meaningfully dispute, that plaintiff Yosef testified that he missed no time from work following the accident, and plaintiff Steinmetz likewise continued working and did not demonstrate that she was prevented from performing substantially all of her customary activities for the requisite statutory period. Moreover, plaintiffs failed to submit competent medical evidence demonstrating that they were medically restricted from their usual activities during the relevant time period. Accordingly, plaintiffs failed to raise a triable issue of fact under the 90/180-day category in opposition to defendant’s prima facie showing.

Based on the foregoing, defendant’s motion for summary judgment is granted to the extent that plaintiffs’ claims premised upon the 90/180-day category of Insurance Law § 5102(d) are hereby dismissed. The remainder of defendant’s motion is denied.

Any arguments not expressly addressed herein were considered and deemed to be without merit or unnecessary to address given the court’s determination.

ENTER:



Honorable Reginald A. Boddie
Justice, Supreme Court

HON. REGINALD A. BODDIE
J.S.C.