

<b>Johnson v Native Taxi Corp.</b>
2026 NY Slip Op 31349(U)
March 26, 2026
Supreme Court, Kings County
Docket Number: Index No. 503895/2024
Judge: Richard J. Montelione
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At IAS Part 99 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, Brooklyn, NY 11201, on the 26 day of March 2026.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS: PART 99

**DECISION  
and  
ORDER**

-----X  
AISHA JOHNSON,

Plaintiff,

-against-

NATIVE TAXI CORP. And TENZIN WOISER,

Defendants.  
-----X

Index No.: 503895/2024  
Mot. Seq. Nos.: 1 & 2

*EAL # 30, 31*

After oral argument, the following papers were read on this motion pursuant to CPLR 2219(a):

Papers	NYSCEF DOC. #
Summons & Complaint/Verified Answer .....	1, 3
(MS# 1) Defendants' Notice of Motion/Attorney Affirmation in Support/Statement of Material Facts/Exhibits A-F .....	18-26
(MS# 2) Plaintiff's Notice of Cross Motion/Attorney Affirmation in Opposition & in Support/Response to Statement of Material Facts, and Counter Statement Exhibits A-G ..	31-40
Defendants' Attorney Affirmation in Reply .....	41-42

MONTELIONE, RICHARD J., J.

On February 7, 2024, plaintiff Aisha Johnson, commenced the instant action by filing the Summons & Verified Complaint, alleging that she sustained serious injuries when, on December 31, 2023, a motor vehicle owned by defendant Native Taxi Corp. and operated by defendant Tenzin Woiser struck her while she was operating an e-scooter (NYSCEF Doc No. 1, Verified Complaint, and NYSCEF Doc. 9, Bill of Particulars). On March 20, 2024, defendants Native Taxi Corp. and Tenzin Woiser, appeared and answered (NYSCEF Doc. No. 2). Issue is joined.

In Motion Seq. #1, defendants move pursuant to CPLR 3212 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), including the 90/180-day category (NYSCEF Doc No. 18, at 1; NYSCEF Doc No. 19, at 2-4). In Motion Seq. #2, plaintiff cross-moves for summary judgment declaring that she sustained a serious injury under the 90/180-day category. (NYSCEF Doc No. 31, at 1-2; NYSCEF Doc No. 32, at 1-2). As set forth below, this decision and order need only address the 90/180-day category of the serious injury categories.

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## BACKGROUND

Plaintiff alleges that, as a result of the December 31, 2023 accident, she sustained cervical disc herniations and bulges, lumbar disc bulges, and a concussion, and that these injuries constitute, among other categories, a medically determined injury or impairment of a non-permanent nature which prevented her from performing substantially all of the material acts constituting her usual and customary daily activities for more than 90 of the first 180 days following the accident including but not limited to being confined to her home and remaining out of work. (NYSCEF Doc No. 34.)

At the time of the accident, plaintiff was employed as a patient ambassador at New York Presbyterian Hospital (*id.*, at ¶ 6). After treatment in the emergency room, she began a course of treatment under physiatrist Dr. Thomas Mathew approximately five days after the accident and continued with him for about eighteen months, including approximately eighty therapy sessions and referrals for MRIs, pain management, neurology, and orthopedic surgery (*id.* at ¶ 4).

Dr. Mathew affirms that, during the first several months after the accident, he diagnosed cervical and lumbar spine injuries, and right elbow sprain and scarring, and directed plaintiff not to work and to avoid activities that exacerbate her conditions, including most household chores and recreational activities (NYSCEF Doc No. 37, ¶¶ 17-20, 21, 30, 31). He issued contemporaneous disability certificates and indicated that plaintiff was medically disabled from employment at least through April 9, 2024 (*id.*, at pp. 18-20).

Plaintiff avers that she did not return to work as a patient ambassador for approximately 20 weeks, that she remained at home during that period based on Dr. Mathew's instructions, and that she relied on her son to perform household chores (NYSCEF Doc No. 36, at ¶ 6). She further states that she lost approximately \$47,500 in earnings due to an inability to work for about four months, that these lost wages were not compensated because no-fault benefits were exhausted, and that she continues to experience limitations in activities such as turning her head, bending, cleaning, doing laundry, and prolonged standing (*id.*, at ¶ 17).

Defendants' motion is supported by the affirmation of their counsel (NYSCEF Doc No. 19); the July 8, 2025 orthopedic report of Dr. Pierce J. Ferriter (NYSCEF Doc. No. 24); and the November 20, 2024 radiology reports of Dr. Scott A. Springer (NYSCEF Doc No. 25). Dr. Ferriter examined plaintiff more than eighteen months after the accident, measured cervical and lumbar range of motion, found negative orthopedic tests, and concluded that plaintiff's cervical spine and lumbar spine injuries were "healed", and right elbow sprain was "resolved," and that any decreased ranges of motion were subjective and not supported by objective tests, and that plaintiff was able to perform activities of work and daily living without accident-related limitation (NYSCEF Doc No. 24). Dr. Springer reviewed MRIs of plaintiff's brain, cervical spine, lumbar spine, right elbow, and left hand, and opined that the cervical and lumbar findings represented degenerative changes without post-traumatic abnormalities and that the elbow and brain studies were normal, and that "no post traumatic changes causally related to the 12/31/2023 incident" (NYSCEF Doc No. 25).

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## FACTUAL DISPUTES

The central factual dispute for purposes of the 90/180-day category is whether plaintiff was prevented, for at least 90 of the 180 days immediately following the accident, from performing substantially all of the material acts that constituted her usual and customary daily activities. Defendants contend that their medical submissions, together with plaintiff's testimony that she ultimately returned to work, demonstrate that she did not meet this threshold. Plaintiff maintains that Dr. Mathew's disability instructions and notes, her sworn affidavit, and her documented absence from work through April 9, 2024, show that she satisfies the 90/180-day category as a matter of law.

The parties also dispute whether defendants' experts analyzed plaintiff's condition during the 180-day period immediately following the accident in relation to this category. Plaintiff argues that neither Dr. Ferriter nor Dr. Springer addressed her functional abilities during that time frame or her claim of confinement to home and inability to work for more than ninety days. Defendants assert in conclusory fashion that their proof "ruled out" the 90/180-day category.

## DISCUSSION

The well-known standards to be applied by the trial courts regarding motions for summary judgment are found in *Ayers v City of Mount Vernon*, 176 AD3d 766 [2d Dept 2019]:

"[T]he proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact" (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]; see *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). "Failure to make such prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposing papers" (*Alvarez v Prospect Hosp.*, 68 NY2d at 324; see *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d at 853). "Once this showing is made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action" (*Alvarez v Prospect Hosp.*, 68 NY2d at 324; see *Zuckerman v City of New York*, 49 NY2d at 562).

The definition of "serious injury" is set out at N.Y. Ins. Law § 5102(d):

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

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Finally, in the event that defendants fail to meet their prima facie burden as to one category of serious injury, the court need not consider the remaining categories under N.Y. Ins. Law § 5102(d). In the case of *Diaz v. Nightingale Bakery & Beverage Distribution, Inc.*, 241 A.D.3d 642, 642–43 (2d Dept 2025), the Appellate Court stated as follows:

The defendants failed to establish, prima facie, that the plaintiff did not sustain a serious injury under the 90/180–day category of Insurance Law § 5102(d). The plaintiff asserted that he sustained “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” (Insurance Law § 5102[d]). The defendants’ experts did not specifically relate any of their findings to this category of serious injury for the relevant period of time following the accident (*see* \*643 *Marmer v. IF USA Express, Inc.*, 73 A.D.3d 868, 869, 899 N.Y.S.2d 884; *Scinto v. Hoyte*, 57 A.D.3d 646, 647, 870 N.Y.S.2d 61). Contrary to the defendants’ contention, the transcript of the plaintiff's deposition testimony, which was submitted in support of their motion, was insufficient to meet their burden of proving that the plaintiff had no injury under the 90/180–day category of Insurance Law § 5102(d) (*see Scinto v. Hoyte*, 57 A.D.3d at 647, 870 N.Y.S.2d 61). Since the defendants failed to establish, prima facie, that the plaintiff did not sustain a serious injury under the 90/180–day category of Insurance Law § 5102(d) as a result of the accident, it is unnecessary to consider whether the defendants established that the plaintiff did not sustain a serious injury under either the permanent consequential limitation of use or significant limitation of use categories of Insurance Law § 5102(d) as a result of the accident (*see Curiale v. Delfavero*, 211 A.D.3d 905, 906, 181 N.Y.S.3d 278).

**Defendants’ motion on the 90/180-day category:**

Defendants contend that, based on the affirmed reports of their examining doctors and plaintiff’s verified pleadings and testimony, they have made a prima facie showing that plaintiff’s allegations do not meet any serious injury category, including 90/180, and the burden shifts to plaintiff (NYSCEF Doc No. 19, ¶¶ 29-30).

The record shows, however, that neither of defendants’ medical experts specifically address plaintiff’s condition during the first 180 days following the accident. Dr. Ferriter examined plaintiff on July 8, 2025, more than eighteen months after the accident (NYSCEF Doc No. 24). His report evaluates plaintiff’s then-current range of motion and concludes that her injuries were resolved, but does not discuss her functional capacity or work status during the 180 days immediately after the accident, nor does he opine on whether a medically determined impairment prevented her from performing substantially all material acts during at least ninety of those days. Although plaintiff alleges having missed approximately four months of work due to the accident, Dr. Ferriter offers no opinion on that period.

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Dr. Springer's radiology reports concern the nature of MRI findings and whether they are degenerative or post-traumatic; they do not address whether plaintiff's injuries rendered her unable to work or perform daily activities for any specified time.

Thus, even assuming those reports are otherwise admissible, they do not bear on the 90/180 functional-limitation inquiry. In short, defendants' submissions do not contain a medical opinion relating their experts' findings to plaintiff's ability to perform substantially all of the material acts constituting her usual and customary daily activities during the first 180 days following the accident. The conclusory assertion in counsel's affirmation that defendants' proof "ruled out the 90/180-day category" is not a substitute for such a medical opinion (NYSCEF Doc No. 19, at 29). On this record, defendants have not met their prima facie burden on the 90/180-day category, and their motion for summary judgment must be denied as to that category, regardless of the sufficiency of plaintiff's opposition. (*See Ayers*, 176 AD3d at 769.)

**Plaintiff's cross-motion on the 90/180-day category:**

Plaintiff's proof on the 90/180-day category consists of Dr. Mathew's affirmation, plaintiff's own sworn statement, and the disability notes and records describing her treatment and restrictions during the relevant period. Dr. Mathew states that he began treating plaintiff on January 4, 2024, some four days after the accident, and based on his examinations and objective testing, he diagnosed cervical and lumbar injuries consistent with the mechanism of injury (NYSCEF Doc No. 37, ¶ 2). He further states that he directed plaintiff not to work and to avoid most household chores and recreational activities for approximately three and a half months, issued contemporaneous disability notes to that effect, and considered such restrictions medically necessary (NYSCEF Doc No. 37).

Plaintiff avers in her affirmation that, consistent with Dr. Mathew's instructions, she did not return to her regular employment as a patient ambassador until April 10, 2024, remained confined to her home, and relied on her son to perform house chores. She describes in detail her inability during that period to work, to perform household tasks, and to engage in her ordinary daily activities. She also attests to a total wage loss of approximately \$47,500 based on a period of about four months out of work, supported by no-fault denials reflecting policy exhaustion and unpaid earnings (NYSCEF Doc No. 36).

Defendants do not offer any medical opinion contradicting Dr. Mathew's disability certificates or plaintiff's claimed inability to work and perform most daily activities during the first 180 days after the accident. As noted, Dr. Ferriter's examination occurred well after that period and does not address the 90/180-day category, and Dr. Springer's reports are silent as to functional capacity. Defendants' reliance on plaintiff's eventual return to work, and on the fact that she remains employed, does not create a triable issue of fact regarding her alleged inability to work and perform most daily activities for more than ninety days immediately following the accident.

On this record, plaintiff has established, as a matter of law, that she sustained a medically determined injury or impairment of a non-permanent nature which prevented her from performing substantially all of the material acts constituting her usual and customary daily

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activities for at least 90 of the 180 days immediately following the accident, and defendants have failed to raise a triable issue of fact in opposition.

It is unnecessary to consider whether the defendants established that the plaintiff did not sustain a serious injury under either the permanent consequential limitation of use or the significant limitation of use categories as a result of the accident. (*See Diaz v Nightingale Bakery*, 241 AD3d 642, 643 [2d Dept 2025], [“Since the defendants failed to establish, prima facie, that the plaintiff did not sustain a serious injury under the 90/180 category of Insurance Law 5102(d) as a result of the accident, it is unnecessary to consider whether the defendants established that the plaintiff did not sustain a serious injury under either the permanent consequential limitation of use or significant limitation of use categories of Insurance Law 5102(d) as a result of the accident.”])

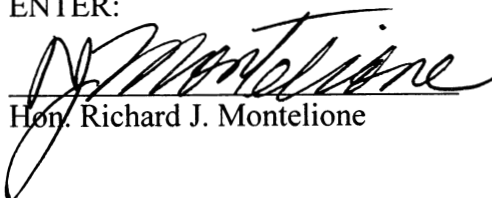
For the foregoing reasons, it is hereby

**ORDERED**, that Motion Seq. #1, in which defendants Native Taxi Corp. and Tenzin Woiser seek summary judgment dismissing the complaint on the ground that plaintiff Aisha Johnson did not sustain a serious injury within the meaning of Insurance Law § 5102(d), is **DENIED** to the extent it seeks dismissal under the 90/180-day category of serious injury; and it is further

**ORDERED**, that Motion Seq. #2, in which plaintiff Aisha Johnson seeks summary judgment declaring that she sustained a serious injury under the 90/180-day category of Insurance Law § 5102(d) as a result of the December 31, 2023 accident is **GRANTED**.

This constitutes the decision and order of the Court.

ENTER:

  
Hon. Richard J. Montelione

2026 APR - 3 A 11: 54  
KINGS COUNTY CLERK  
FILED