Jones v MTA Bus Co.

2026 NY Slip Op 31945(U)

February 3, 2026

Supreme Court, Queens County

Docket Number: Index No. 704879/2021

Judge: Mojgan C. Lancman

Short Form Order

NEW YORK SUPREME COURT- QUEENS COUNTY

PRESENT: HON. MOJGAN C. LANCMAN

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CHARLES JONES and CURTIS DANCY,

Plaintiffs,

-against-

MTA BUS COMPANY, METROPOLITAN TRANSPORTATION AUTHORITY, NEW YORK CITY TRANSIT AUTHORITY and "JOHN DOE", name being fictitious,

Defendants.

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IAS PART 20

Index No.: 704879/2021

Motion Seq. No.: 2

Motion Date: 4.2.2025

Motion Cal. No.: 16

The papers bearing NYSCEF Doc. Nos. 48-93 were read on: (1) the motion filed by the defendants Metropolitan Transportation Authority ("MTA"), MTA Bus Company ("MTA Bus") and New York City Transit Authority ("NYCTA") (collectively, the "Defendants") for summary judgment; and (2) the cross-motion filed by the plaintiffs, Charles Jones ("Jones") and Curtis Dancy ("Dancy") (collectively, the "Plaintiffs"), for summary judgment.

The Plaintiffs commenced this cause seeking to recover damages for personal injuries allegedly sustained in a motor vehicle accident that occurred on October 3, 2020 in Queens, New York (the "Accident").

Presently before the Court are two motions. The Defendants move for summary judgment dismissing the complaint, contending that the Plaintiffs did not sustain a serious injury within the meaning of Insurance Law § 5102 [d]. The Plaintiffs cross-move for summary judgment, arguing that they suffered a serious injury within the meaning of the subject statutory provision. For the following reasons, the Defendants' motion is granted in part and denied in part, and the Plaintiffs' cross-motion is denied.

I. Background

In the bill of particulars, Jones alleges injuries to the lumbar spine; the cervical spine; the left shoulder; and the right wrist.

Dancy alleges in the bill of particulars injuries to the left shoulder, which was operated on arthroscopically on March 16, 2021; the cervical spine; the lumbar spine; and the right knee.

The bill of particulars asserts that each Plaintiff sustained a serious injury within the meaning of the following categories: permanent consequential limitation of a use of a body organ or member; significant limitation of use of a body function or system; and 90/180-day. In addition, Dancy asserts the fracture category, contending that he sustained fractures in the left shoulder.

II. Discussion

The Court shall now address and rule on the categories of serious injury that are alleged.

Dancy's claim under the fracture category is dismissed because there is no evidence that he sustained a fracture as the result of the Accident (*see Friscia v Mak Auto, Inc.*, 59 AD3d 492 [2d Dept 2009]).

The 90/180-day category claim asserted by Jones is dismissed. Here, Jones testified at his deposition that he did not miss any time from work because of his alleged injuries (*see Valera v Singh,* 89 AD3d 929 [2d Dept 2011]).

The 90/180-day category claim asserted by Dancy is dismissed for two reasons. Dancy alleges in his bill of particulars that he "was not working as of the day of this accident as he had been laid off from the United States Postal Service. He was asked to return to work on or about December 12, 2020, however, Plaintiff was unable to do so as a result of the restrictions in his ability to use his left arm" (*see* NYSCEF Doc. No. 54). Dancy fails, however, to submit any objective medical evidence to sustain the subject claim (*see Rosa-Diaz v Maria Auto Corp.*, 79 AD3d 463 [1st Dept 2010]; *Blake v Portexit Corp.*, 69 AD3d 426 [1st Dept 2010]). Furthermore, Dancy fails to set forth the usual and customary daily activities he was unable to perform as a result of his injuries (*Cantave v Gelle*, 60 AD3d 988 [2d Dept 2009]).

The Court now turns to the permanent consequential limitation and the significant limitation of use categories.

The permanent consequential limitation of use category is dismissed as to the injuries Jones claims to his cervical spine; the left shoulder; and the right wrist, and to the injuries Dancy claims to the left shoulder; the cervical spine; and the right knee because neither Plaintiff "offer[ed] any objective medical findings from a recent examination of those … [body parts]" (*Schilling v Labrador*, 136 AD3d 884, 885 [2d Dept 2016] [citations omitted]; *see also Vasquez v Almanzar*, 107 AD3d 538 [1st Dept 2013]).

The left shoulder and right wrist injury claims advanced by Jones and the right knee injury claims advanced by Dancy under *both* the permanent consequential limitation and the significant limitation of use categories are also dismissed on a separate and independent ground. Here, through the affirmed reports of Drs. Semple and Cohen, the Defendants establish, *prima facie*, entitlement to dismissal of the subject claims. Specifically, both physicians found normal range of motion with respect to said body parts. In opposition, Jones and Dancy fail to raise an issue of fact.

The branch of the Defendants' motion to dismiss the lumbar injury claims advanced by Jones and Dancy under both the permanent consequential limitation and the significant limitation

of use categories is denied. Dr. Warren Cohen ("Dr. Cohen"), a neurologist, conducted the independent medical examination of Jones and noted, *inter alia*, that "[t]he straight-leg raising maneuver evokes no radicular pain at 70 degrees hip flexion bilaterally." Dr. Cohen also conducted the neurological independent medical examination of Dancy and noted, *inter alia*, that "[t]he straight-leg raising maneuver evokes no radicular pain at 70 degrees hip flexion bilaterally." The Defendants are not entitled to summary judgment dismissing the lumbar injury claims asserted by each Plaintiff because Dr. Cohen failed to compare his findings on the straight leg maneuver to what is normal (*see Shirman v Lawal*, 69 AD3d 838 [2d Dept 2010]).

The branch of the Defendants' motion to dismiss the significant limitation of use category is also denied as to the injuries Jones claims to the cervical spine and to the injuries Dancy claims to the left shoulder for three reasons.

First, although the Plaintiffs did not submit to a recent examination, this is not fatal to a claim under the significant limitation of use category (*see Estrella v Geico Ins. Co.*, 102 AD3d 730 [2d Dept 2013]).

Second, the record reflects that triable issues of fact exist with respect to said injury category. The Court's function on a summary judgment motion "is not to resolve issues of fact or determine matters of credibility, but merely to determine if such issues exist" (*114 Woodbury Realty, LLC v 10 Bethpage Rd.*, LCC, 178 AD3d 757, 759 [2d Dept 2019] [citations omitted]). The facts must be viewed in the light most favorable to the non-moving party (*see Sosa v 46th Street Development LLC*, 101 AD3d 490 [1st Dept 2012]). If there is any doubt as to the existence of a triable issue of fact, the motion must be denied (*see Rotuba Extruders v Ceppos*, 46 NY2d 223 [1978]). The parties' competing evidence relative to losses in range of motion in the cervical spine of Jones and the left shoulder of Dancy "constitute[s] the classic battle of the experts" (*Sason v Dykes Lumbar Company, Inc.*, 221 AD 3d 491, 492 [1st Dept 2023], which "[is] properly left to a jury for resolution" (*Thomas v Eckhert*, 229 AD3d 1237, 1239 [4th Dept 2024] [internal quotation marks and citations omitted]).

Third, and in any event, the record is clear that sharply disputed issues of fact exist with respect to the significant limitation of use categories relative to the cervical spine of Jones and the left shoulder of Dancy, as evidenced, *inter alia*, by the reports of Drs. Semple and Cohen on one hand and the reports of Drs. Lazarev, Koffler and Levine on the other (*see Oputa v New York City Transit Authority,* 216 AD3d 461 [1st Dept 2023]; *Hobbs v MTA Bus Company*, 211 AD3d 471 [1st Dept 2022]).

The Plaintiffs' cross-motion for summary judgment is denied for two reasons.

First, to the extent that serious injury claims are dismissed on the Defendants' motion, the Plaintiffs' application for summary judgment on the subject claims is denied as academic.

Second, as to the serious injury claims that have not been dismissed, the Plaintiffs are not entitled to summary judgment relative thereto because of the parties' competing evidence and sharply disputed issues of fact (*see Sason v Dykes Lumbar Company, Inc.*, 221 AD 3d 491; *Oputa v New York City Transit Authority,* 216 AD3d 461; *Hobbs v MTA Bus Company*, 211 AD3d 471.

III. Conclusion

For the reasons stated above, it is hereby:

ORDERED, that the Defendants' motion is granted in part and denied in part; and it is further,

ORDERED, that Dancy's claim under the fracture category is dismissed; and it is further,

ORDERED, that the claim under the 90/180-day category presented by both Dancy and Jones is dismissed; and it is further,

ORDERED, that the permanent consequential limitation of use category is dismissed as to the injuries Jones claims to his cervical spine, the left shoulder, and the right wrist; and to the injuries Dancy claims to the left shoulder, the cervical spine and the right knee; and it is further,

ORDERED, that the left shoulder and right wrist injury claims advanced by Jones and the right knee injury claims advanced by Dancy under the significant limitation of use category are dismissed; and it is further,

ORDERED, that the branch of the Defendants' motion to dismiss the lumbar injury claims advanced by Jones and Dancy under both the permanent consequential limitation and the significant limitation of use categories is denied; and it is further,

ORDERED, that the branch of the Defendants' motion to dismiss the significant limitation of use category is also denied as to the injuries Jones claims to the cervical spine and to the injuries Dancy claims to the left shoulder; and it is further,

ORDERED, that the Plaintiff's cross-motion for summary judgment is denied; and it is further,

ORDERED, that the Defendants shall serve a copy of this Order with Notice of Entry on the Plaintiffs via NYSCEF by March 6, 2026.

This constitutes the Decision and Order of the Court.

Dated: Jamaica, New York
February 3, 2026

MOJGAN C. LANCMAN, J.S.C.

FILED
2/10/2026 TA
COUNTY CLERK
QUEENS COUNTY