

Montgomery v Soued

2026 NY Slip Op 31958(U)

May 4, 2026

Supreme Court, Kings County

Docket Number: Index No. 527863/2022

Judge: Joy F. Campanelli

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SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF KINGS: IAS PART 6

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SHANE MONTGOMERY,

Plaintiff,

- against -

NADIA SOUED and WILLIAM SOUED,

Defendant.

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Index No.: 527863/2022

DECISION AND ORDER

Hon. Joy F. Campanelli, J.S.C.

The following e-filed papers read herein:

Papers Numbered:

Seq. No. 002

Notice of Motion/Order to Show Cause/ Petition, Affidavits (Affirmations and Exhibits) Annexed	1&2
Opposing Affidavits (Affirmations and Exhibits)	3
Affidavits/ Affirmations in Reply	_____
Other Papers (Proposed Order with Notice of Settlement):	_____

Defendant moves by notice of motion, sequence number 2, for an Order pursuant to CPLR §4404 setting aside the jury’s verdict rendered on October 20, 2025; modifying the judgment rendered in favor of the plaintiff and declaring a judgment in favor of the defendant; and a stay execution of any judgment until the determination of this motion and any resultant appeal. Plaintiff opposes.

On October 20, 2025, the jury found that:

1. The plaintiff sustained a medically determined injury or impairment of a non-permanent nature which prevented him from performing substantially all of the material acts which constitute his usual and customary daily activities for not less than ninety (90) days during the one hundred eighty (180) days immediately following the occurrence of the injury or impairment (hereafter referred to as the “90/180” claim).

2. The plaintiff did not sustain a permanent consequential limitation of use of a body organ or member.
3. The plaintiff did not sustain a significant limitation of use of a body function or system.

Subsequently, the jury awarded \$38,700 dollars in damages for injury, pain and suffering and \$164,250 dollars in damages for future pain and suffering. Defendant now moves to set aside this verdict because the Court erred in giving the 90/180-day charge (PJI 2:88G) to the jury. It is the defendant's position that if the trial court had not instructed the jury on PJI 2:88G then the jury would not have rendered a verdict in favor of the plaintiff. Defendant objected at trial that there was not sufficient evidence presented during the trial to support the 90/180-day charge. It was argued that there was no expert testimony from plaintiff's only expert as to a medically determined impairment that prevented the plaintiff from substantially all of his material acts. *See* trial transcript dated October 17, 2025 pg. 152. Plaintiff reasoned that there was enough testimony from the plaintiff as to his daily household chores and job responsibilities that he was prevented from doing. Plaintiff also noted that the disability letters showed that he was prevented from substantially performing all of his activities and that they were in evidence. *See* trial transcript dated October 17, 2025 pg. 154. The Court allowed the charge over Defendant's objection. Defendant now reiterates this objection and puts forward this motion to set aside the verdict on the same basis.

A plaintiff must present objective evidence of a medically determined injury or impairment of a non-permanent nature for a 90/180 claim. *Toure v. Avis Rent a Car Sys.*, 98 N.Y.2d 345, 357 (2002). In *Toure*, the issue was whether the plaintiff offered sufficient objective medical evidence to establish a qualifying injury or impairment. *Id.* Plaintiff contended that the testimony of their expert doctor coupled with the review of the plaintiff's

MRI report was sufficient to support the jury's finding of a serious injury. *Id.* However, the Court found the expert's opinion relied on plaintiff's subjective complaints of pain and the MRI report did not constitute proof by itself. *Id.* at 357-358. In the present case, there was no medical testimony whatsoever to support plaintiff's 90/180 claim. Plaintiff's expert, Dr. Ashraf, only testified to Plaintiff's torn ligament – specifically only the existence of the injury and not that the injury kept him from substantially doing all of his daily activities during the first 90 days after the accident.

When the Court confronted this issue at trial, the following conversation was had:

MR. PEPPER: If there's no requirement one must say, you know, I can't do anything. That's not what the standard is. The standard is such that if the bulk of his day is caught up with work and overtime, and he's prevented from doing that, the jury could easily find that that makes up, you know, substantially all of his daily acts. And I think at that point the court has to -- the court should be giving that.

THE COURT: And of course it has to be medically determined –

MR. PEPPER: Well, there is plenty of testimony –

THE COURT: -- not just him saying -- (crosstalk)

MR. PEPPER: -- and records regarding –

THE COURT: There's no real testimony –

MR. PEPPER: -- well, we have his testimony of a medically determined injury, but we also -- (crosstalk)

THE COURT: Stop. Stop. Whose testimony?

MR. PEPPER: Dr. Ashraf testified to the torn ligament.

THE COURT: He testified to the injury, but he didn't determine that it prevented him from substantially performing all of his activities.

MR. PEPPER: The disability -- it's my position that the disability letter do that and they're in evidence.

THE COURT: Okay

See trial transcript dated October 17, 2025, pg. 153-154.

Therefore, plaintiff relied on their expert witness who testified to the injury, plaintiff's own testimony discussing that he could not work immediately after the accident, and the disability letters that were in evidence. It should be noted that Dr. Ashraf did not testify about the material in the disability letters. According to the cross examination of Dr. Ashraf, defense counsel asked him about the disability letter from January of 2022 which declared the plaintiff as not disabled and capable of working full time with no restrictions. Defense counsel further clarified that this was about five weeks after Dr. Ashraf started treating the plaintiff. *See* trial transcript dated October 17, 2025, pg. 135. According to the Plaintiff's Exhibit 5, there is a disability letter dated December 29, 2021, that labels the plaintiff as totally disability and unable to work. Therefore, Dr. Ashraf's treatment overlaps with the period of time that the disability letters declare the plaintiff as disabled. Yet, Dr. Ashraf offered no actual medical testimony as to the plaintiff's 90/180 claim.

Due to this failure, it was an error on the part of this Court to charge the jury PJI 2:88G 90/180, as there was no expert testimony to support the charge. Accordingly, the verdict is set aside and judgment is entered in favor of the Defendant.

CONCLUSION

WHEREFORE it is hereby:

ORDERED that Defendant's motion for an order pursuant to CPLR § 4404 to set aside the jury's verdict and modify the judgment in favor of Defendant is granted.

This constitutes the decision and order of the Court.

DATED: May 4, 2026
Brooklyn, New York



Hon. Joy F. Campanelli, J.S.C.