

injuries are not serious within the meaning of Insurance Law § 5102(d), a defendant can meet their prima facie burden (see Margarin v Krop, 24 AD3d 733 [2005]; Karabchievsky v Crowder, 24 AD3d 614 [2005]).

Here, the defendants put forth the affirmed orthopaedic report of Wayne Kerness, M.D., the affirmed neurological report of Sarasavani Jayaram, M.D., the affirmed dental report of Evan Temkin, D.M.D., the affirmed neurological report of Moshin Ali, M.D. and the transcripts of the plaintiff's § 50-h hearing and deposition. The reports detailed the objective range of motion testing that they performed, compared the plaintiff's range of motion to normal and concluded that the plaintiff did not suffer from a permanent injury. The defendants' evidence was sufficient to make a prima facie showing that the plaintiff did not sustain a serious injury (Pommells v Perez, 4 NY3d 566 [2005]; Zhang v Wang, 24 AD3d 611 [2005]).

The burden shifted to plaintiff to demonstrate the existence of a triable issue of fact as to whether she sustained a serious injury. (Gaddy v Eyler, 79 NY2d 955 [1992]). In opposition plaintiff submitted the affirmation of Richard J. Rizzuti, M.D., which attached plaintiff's MRI reports, and the affirmed report of plaintiff's treating physician, George O. Quaye, M.D. dated January 21, 2006. The evidence submitted by the plaintiff is insufficient to raise a triable issue of fact. The plaintiff failed to submit any medical proof that was contemporaneous with the accident showing range of motion restrictions for the plaintiff (Ranzie v Abdul-Massih, ___ AD3d ___, 2006 NY Slip Op 02514 [2d Dept, Apr. 4, 2006]; Yeung v Rojas, 18 AD3d 863 [2005]; Nemchyonok v Ying, 2 AD3d 421 [2003]). While Dr. Quaye detailed the plaintiff's current range of motion restrictions, he failed to indicate, beyond conclusory allegations, that those restrictions were causally related to the subject accident (see Ifrach v Neiman, 306 AD2d 380 [2003]). Additionally, the plaintiff did not offer any probative medical evidence as to the course of treatment she received in the two years since the accident (Jason v Danar, 1 AD3d 398 [2003]). Furthermore, the plaintiff did not submit any competent medical evidence that she was unable to perform substantially all of her daily activities for not less than 90 of the first 180 days after the accident (Jackson v Colvert, 24 AD3d 420 [2005]; Teodoru v Conway Transp. Serv., 19 AD3d 479 [2005]).

Accordingly, defendants' motion is granted and the complaint is dismissed.

Dated: April 10, 2006

Lawrence V. Cullen, J.S.C.