

Kai Chen v Singh

2021 NY Slip Op 34180(U)

October 7, 2021

Supreme Court, Queens County

Docket Number: Index No. 700901/2018

Judge: Ulysses B. Leverett

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----X
KAI CHEN,

Plaintiffs,

-against-

JAGTAR SINGH and SANCHI CAB CORP.,
MCGUINNESS MANAGEMENT CORP., and
ANGIE VALENTIN,

Defendants.
-----X

PEGUY MICHEL

Plaintiff,

-against-

KAI CHEN, ANGIE L. VALENTIN, JAGTAR SINGH
and SANCHO CAB CORP.,

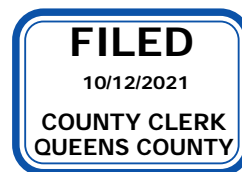
Defendants.
-----X

Present: **HONORABLE ULYSSES B. LEVERET:**

Notice of Motion-Affirmation-Exhibits.....
Notice of Cross Motion.....
Affirmation In Opposition/Cross Motion-Exhibits.....

Papers Numbered

EF-209-221
EF-222-224
EF-245-252



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Motion Seq. No. 12

Decision and Order

Upon the foregoing papers, it is ordered that defendant Angie L. Valentin’s motion for an order pursuant to CPLR § 3212 for summary judgment in favor of defendant, and dismissing the complaint of plaintiff Peguy Michel on the ground that plaintiff did not sustain a serious injury under Insurance Law § 5102 (d) is denied. Defendants Jagtar Singh, Sanchi Cab Corp., and McGuinness Management’s cross motion for an order granting summary judgment and dismissing the complaint of plaintiff for failure to meet the no-fault statute’s threshold requirement mandated by Insurance Law § 5102 (d) is denied.

Plaintiff Peguy Michel seeks to recover for personal injuries allegedly sustained as a result of a four vehicle accident which occurred on May 19, 2016, on the Long Island Expressway, County of Queens, State of New York.

Plaintiff Peguy Michel asserts that on May 19, 2016, he was the driver of the third vehicle in a four vehicle chain accident and was rear ended by defendant Singh’s taxi and propelled into co- defendant’s Chen vehicle. Plaintiff alleges that as a result of the accident, he sustained injuries to his neck, left shoulder and lower back.

Insurance Law § 5102(d) defines a “serious injury” as “ 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

permanent nature which prevents the injured from performing substantially all of the material acts, which constitute such person's usual and customary daily activities for not less than 90 days during the 180 days immediately following the occurrence of the injury or impairment."

Defendant Angie Valentin alleges that plaintiff has not suffered a serious injury within the meaning of the No Fault Law. In support of the motion, defendant Valentin submitted a report dated January 5, 2021 by Dr. Jay Eneman, an orthopedic surgeon who reviewed plaintiff's medical records and examined plaintiff on January 5, 2021. Dr. Eneman's range of motion examination of plaintiff's cervical spine revealed flexion to 50 degrees (normal 50 degrees), extension to 60 degrees (normal 60 degrees), right/left lateral flexion 45 degrees (normal 45 degrees), right/left rotation to 80 degrees (normal 80 degrees). Examination of the cervical spine revealed negative for paraspinal tenderness, muscle spasm and trapezius tenderness.

Plaintiff's thoracic spine range of motion revealed flexion to 45 degrees (normal 45 degrees), extension to 0 degrees (normal 0 degrees), right/left lateral bending 45 degrees (normal 45 degrees), right/left rotation to 30 degrees (normal 30 degrees). Dr. Eneman states that the thoracic spine revealed negative for paraspinal spasm or paraspinal tenderness.

Plaintiff's lumbar spine range of motion examination revealed flexion 60 degrees (normal 60 degrees), extension to 25 degrees (normal 25 degrees), right/left lateral bend to 25 degrees (normal 25 degrees). The lumbar spine revealed negative for paraspinal spasm or paraspinal tenderness.

Examination of the right shoulder revealed abduction 180 degrees (normal 180 degrees), adduction 30 degrees (normal 30 degrees), forward flexion 180 degrees (normal 180 degrees), extension 40 degrees (normal 40 degrees), internal rotation 80 degrees (normal 80 degrees), external rotation 90 degrees (normal 90 degrees). The right shoulder revealed negative for tenderness, no effusion or muscle atrophy. No crepitus and impingement sign is negative.

Examination of the left shoulder revealed abduction 180 degrees (normal 180 degrees), adduction 30 degrees (normal 30 degrees), forward flexion 180 degrees (normal 180 degrees), extension 40 degrees (normal 40 degrees), internal rotation 80 degrees (normal 80 degrees), external rotation 90 degrees (normal 90 degrees). The left shoulder revealed negative for tenderness, no effusion or muscle atrophy. No crepitus and impingement sign is negative.

Dr. Eneman states that plaintiff's injuries are a direct result of the subject accident and have all been resolved. Dr. Eneman concludes that the plaintiff is not presently disabled secondary to the injuries sustained in the subject accident. Plaintiff can continue to work full time without restrictions.

Defendant submitted a report dated November 5, 2019 by Dr. George J. Cavaliere, a board certified radiologist who reviewed plaintiff's 6/8/2016 cervical spine MRI. Dr. Cavaliere's review revealed reversal of the normal cervical lordosis that is consistent with muscular spasm or patient positioning. The multi level disc desiccation is degenerative in etiology and there is no evidence of post traumatic change on this evaluation.

Dr. Cavaliere's review of plaintiff's 6/8/2016 left shoulder MRI revealed subchondral cystic change in the humeral head that is degenerative in etiology. There is no evidence of post

traumatic change on this evaluation. No evidence of rotator cuff tear.

Defendant submitted a January 26, 2020 radiological review by Dr. Decker, a radiologist who reviewed plaintiff's 7/3/2017 cervical spine MRI. Dr. Caviliere's findings revealed cord with no atrophy or enlargement, craniocervical junction is normally positioned. Facets are aligned and ligaments are intact. Soft tissues are intact and no pre or paravertebral soft tissue lesion. Dr. Decker states the findings are not causally related to the date of the subject accident and that there is no evidence to suggest that an acute traumatic injury was sustained.

Plaintiff's 1/26/2020 lumbar spine MRI review revealed no fracture, no vertebral body subluxation. Discs maintain normal signal and height. There was no evidence to suggest that an acute traumatic injury was sustained and no herniation or fracture. Facet hypertrophy at L3-L4 and L4-L5 that is longstanding and not causally related to the subject accident.

Defendants Jagtar Singh, Sanchi Cab Corp. and McGuinness Management Corp. cross move for summary judgment on the ground that plaintiff did not sustain a serious injury pursuant to Insurance Law §§ 5102 (d) and 5104(a) and incorporate the arguments set forth in the motion-in-chief.

When defendant has established that plaintiff's injuries are not serious within the meaning of No-Fault Law, the burden shifts to the plaintiff to come forward with evidence to overcome the defendant's submissions by demonstrating a triable issue of fact that a serious injury was sustained within the meaning of the Insurance Law. See *Jin v Reilly*, 296 AD 2d 373 (2002).

Plaintiff Peguy Michel in opposition to defendants Jagtar Singh, Sanchi Cab Corp. and McGuinness Management Corp. cross motion asserts that plaintiff sustained a significant limitation of the use of his cervical and lumbar spine and a permanent consequential limitation of the use of his cervical and lumbar spine as a result of the subject accident. Plaintiff alleges that he has submitted admissible evidence that demonstrates triable issues of fact as to whether plaintiff's physical injuries constituted a "serious injury" within the meaning of Insurance Law § 5102(d).

Plaintiff submitted a June 3, 2021 affirmation by Dr. Sang Lee who last examined plaintiff on March 19, 2021 and reviewed plaintiff's medical records. Plaintiff's range of motion of the cervical spine was limited 10% in extension, right/left lateral flexion 40 degrees (normal 45 degrees), 12% in right rotation (70 degrees/normal 80 degrees), 6% in left rotation (75 degrees/normal 80 degrees). Lumbar spine range of motion was restricted 5% in flexion (85 degrees/normal 90 degrees), 15% in extension, right lateral bending, right/left rotation (25 degrees/normal 30 degrees). Dr. Lee states that his findings revealed posttraumatic cervical and lumbosacral strain and sprain, lumbosacral scoliosis, cervical disc herniation and bulges and left C6-C7 radiculopathy and that these injuries were traumatically induced and causally related to the subject accident. Dr. Lee concludes that to a reasonable degree of medical certainty based on the objective tests performed, plaintiff sustained a significant limitation of the use of his cervical and lumbar spine and a permanent consequential limitation of the use of his cervical and lumbar spine as a result of the subject accident.

Plaintiff submitted a July 5, 2017 report signed by Dr. John Himelfarb of Lenox Hill Radiology of plaintiff's 7/3/2017 cervical spine MRI that revealed a slight reversal of the normal cervical curvature with a slight lyphosis, posterior disc bulge at the C3-4 level, left paracentral disc

herniation at C4-5 level, posterior disc herniation at the C5-6 level favoring the right side impinging upon the right vertebral aspect of the cord, posterior disc bulge at the C6-7 level.

It is well established that the proponent of 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 issue of fact. See *Zuckerman v City of New York*, 49 NY 2d 557 (1980). Here, the affirmed medical reports of the parties' doctors directly contradict each other. Where parties offer conflicting medical evidence on the existence of a serious injury, the existence of such injury is a matter for a jury's determination. See *Cracchiolo v Omerza*, 87 AD 3d 674 (2011).

The Court finds that there are triable issues of fact as to the existence of serious injury. Accordingly, defendant Angie L. Valentin's motion for an order pursuant to CPLR § 3212 for summary judgment in favor of defendant, and dismissing the complaint of plaintiff Peguy Michel on the ground that plaintiff did not sustain a serious injury under Insurance Law § 5102 (d) is denied. Defendants Jagtar Singh, Sanchi Cab Corp., and McGuiness Management's cross motion for an order granting summary judgment and dismissing the complaint of plaintiff for failure to meet the no-fault statute's threshold requirement mandated by Insurance Law § 5102 (d) is denied.

This is the decision and order of this Court.

Dated: October 7, 2021


Ulysses B. Leverett, JSC

