

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: Honorable, ALLAN B. WEISS IAS PART 2
Justice

SHIN SOOK JIN, EUN JUNG HAN and
SON HEE HAN

Plaintiffs

-against-

KI Y. KWON, VANESSA RAMSAWAK and
LITTLE RICHIE BUS SERVICE, INC.

Defendants.

Index No:11571/04

Motion Date: 5/3/06

Motion Cal. No: 9

The following papers numbered 1 to 17 read on this motion by defendants, VANESSA RAMSAWAK and LITTLE RICHIE BUS SERVICE, INC. for summary judgment in their favor as to liability and for summary judgment dismissing the complaint on the grounds that plaintiffs have not sustained a serious injury within the meaning of Sections 5102 and 5104 of the Insurance Law; cross-motion by defendant, KWON, for summary judgment dismissing the complaint on the grounds that plaintiffs have not sustained a serious injury; and cross-motion by plaintiffs for summary judgment in their favor as to liability and for summary judgment in their favor finding that plaintiffs sustained a serious injury.

	<u>PAPERS NUMBERED</u>
Notice of Motion-Affidavits-Exhibits	1 - 4
Notice of Cross-Motion-Affidavits-Exhibits	5 - 8
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Upon the foregoing papers it is ordered that this motion is determined as follows.

The defendants', RAMSAWAK and LITTLE RICHIE BUS SERVICE, INC., motion to dismiss the complaint insofar as it is asserted against them is granted and the complaint is dismissed. The branch of the plaintiffs' cross-motion seeking summary judgment as to liability is granted as against the defendant, KWON and

denied as to the defendants, RAMSAWAK and LITTLE RICHIE BUS SERVICE.

The defendants', motion and cross-motion to dismiss the complaint on the grounds that plaintiffs have not sustained a serious injury are granted only as to the plaintiff, EUN JUNG HAN and denied as to plaintiff, JIN. The branch of the plaintiffs' cross-motion for summary judgment finding, as a matter of law, that the plaintiffs sustained a serious injury is denied.

This action arises out of an automobile accident which occurred on March 12, 2004 on the Horace Harding Expressway, the service road of the Long Island Expressway, at the intersection with 164th Street. The defendants, RAMSAWAK and owned by LITTLE RICHIE BUS SERVICE, INC., established, prima facie, that they are entitled to summary judgment on the issue of liability based on the deposition testimony of the parties and the police officer who responded to the scene, which demonstrated that the van, owned and operated by the defendant, KWON, while trying to make a left turn from the middle lane of the Horace Harding Expressway, in violation of Vehicle and Traffic Law §1160(c) was struck by the bus operated by the defendant, RAMSAWAK and owned by LITTLE RICHIE BUS SERVICE, INC., as it was traveling straight in the left lane. Where, as here, the movants have established their entitlement to summary judgment on the issue of liability, the party opposing the motion must demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action. (Winegrad v New York Univ. Med. Ctr., 64 NY2d 851, 853 [1985]; Zukerman v City of New York, 49 NY2d 557, 562 [1980].) The co-defendant, KWON submitted no opposition the motion. Although the plaintiffs state in their cross-motion, that they oppose, they have submitted no evidence to raise a question of fact regarding the issue of liability.

Defendants, RAMSAWAK and LITTLE RICHIE BUS SERVICE, INC., also move for summary judgment dismissing the complaint on the ground that the plaintiffs have not sustained a serious injury. Co-defendant, Kwon, cross moves for dismissal on this ground. In this regard, the defendants have submitted competent medical evidence including the affirmation of their examining orthopedist and radiologist, the plaintiffs' deposition testimony which establish, prima facie, that the plaintiffs did not sustain a serious injury within the meaning of Insurance Law § 5102(d) as a result of the accident. (See, Gaddy v. Eyler, 79 NY2d 955 [1992]; Jackson v. New York City Tr. Auth., 273 AD2d 200 [2000]; Greene v. Miranda, 272 AD2d 441 [2000]). Thus, the burden shifts to the plaintiffs to demonstrate the existence of a triable issue of fact by submitting competent medical proof. (see, Gaddy v.

Eyler, supra; Licari v. Elliott, 57 NY2d 230, 235 [1982]; Lopez v. Senatore, 65 NY2d 1017 [1985]). With respect to the plaintiff, JIN, the affirmed medical reports of her examining and treating physicians are sufficient to raise a question of fact as to whether JIN sustained a serious injury.

In opposition to the motion, plaintiff, JIN, submitted, inter alia, the affirmed reports of her treating chiropractor, Dr. Bae, the affirmed reports of Dr. Harrison, an orthopedist, dated February 16, 2005 and March 2, 2006, and the affirmed results of the MRIs of plaintiff's cervical, lumbar and lumbosacral spine. The MRI reports as to her lumbosacral spine showing herniations with impingement of the nerve roots and constitute a sufficient objective basis for the plaintiff's complaints of pain and restrictions of motion of her lumbosacral spine. In addition, the conflicting medical reports regarding the range of motion of the plaintiff's lumbosacral spine merely raise questions of fact.

With respect to plaintiff, Han, the plaintiff's medical evidence is insufficient to raise a question of fact. It is apparent that the claimed limitations set forth in the affirmed reports of the plaintiff's treating physicians are not of a sufficient magnitude to qualify as a "significant" or "important limitation of use". (See, Kravtsov v. Wong, 11 AD3d 516 [2004]; Arrowood v. Lowinger, 294 AD2d 315, 316 [2002]; Georgia v. Ramautar, 180 AD2d 713 [1992].)

Since the plaintiff, Han's, school records reflect that she did not miss any time from school, and there is no objective evidence of a medically determined injury resulting from the accident which caused her alleged 6 month absence from work, she has failed to raise a triable issue as to whether she was unable to perform substantially all of her daily activities for not less than 90 of the first 180 days subsequent to the accident. (see, McConnell v. Ouedraogo, 24 AD3d 423 [2005]; Lorenzo v. O'Keefe, 1 AD3d 411 [2003]; DiNunzio v. County of Suffolk, 256 AD2d 498, 499 [1998]; Beckett v. Conte, 176 AD2d 774 [1991]; Zelenak v. Clark, 170 AD2d 677 [1991]; Phillips v. Costa, 160 AD2d 855 [1990].)

Dated: May 23, 2006
D#25

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J.S.C.