

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE PATRICIA P. SATTERFIELD IA Part 19
Justice

JEAN MORRA, et al., x

Plaintiffs,

-against-

GABRIELLI TRUCK LEASING,
Defendant.

x

Index
Number 1512 2002
Motion
Date September 8, 2004
Motion
Cal. Number 32

The following papers numbered 1 to 14 read on this motion by the defendant for summary judgment dismissing the plaintiffs' complaint.

| | <u>Papers Numbered</u> |
|---|----------------------------|
| Notice of Motion - Affidavits - Exhibits..... | 1-4 |
| Answering Affidavits - Exhibits..... | 5-11 |
| Reply Affidavits - Exhibits..... | 12-14 |

Upon the foregoing papers it is ordered that the motion is determined as follows:

This is an action to recover damages for personal injuries allegedly sustained by the plaintiff, on February 29, 2000, as a result of a motor vehicle accident. The accident occurred when the defendant's truck apparently rolled forward from its parked position and struck the passenger side of the plaintiffs' vehicle.

The defendant moves for summary judgment dismissing the claims of plaintiff Jean Morra on the ground that he did not sustain a serious injury as a result of the accident. The defendant also seeks summary judgment dismissing the claims of plaintiffs Djenane Prophete, Maria Nadia Volf and Baptiste Samtobert on the grounds that they are precluded from offering evidence at trial for failure to comply with court-ordered discovery.

In support of summary judgment, the defendants submit the affirmed medical reports of Dr. Michael Miller, an orthopedist, and Dr. Kojo Essuman, a neurologist, who conducted independent medical examinations of plaintiff Morra on August 12, 2003 and November 18, 2003, respectively. The defendant contends that based upon their doctor's findings there is no evidence of any condition in plaintiff Morra which might meet the serious injury threshold of Insurance Law § 5102(d). Contrary to the defendant's contentions, the court finds that Dr. Miller's determination that plaintiff Morra exhibited a mild limitation in the range of motion in his back raises an issue of fact about the extent of Morra's injuries sustained in the accident especially in light of the affidavit of Dr. Naporst, plaintiff Morra's treating physician, which indicates that Morra suffered restrictions of 25% and 5%, respectively, in the range of motion in his back and neck as a result of the accident. Accordingly, that branch of the defendant's motion which is for summary judgment dismissing the claims of plaintiff Morra is denied. (See, Winegrad v New York Univ. Med. Center, 64 NY2d 851 [1985]; Gomez v New York City Transit Authority, 291 AD2d 431 [2002]; Koscialek v Chen, 283 AD2d 554 [2001]; Grossman v Wright, 268 AD2d 79 [2000].)

That branch of the motion which seeks summary judgment dismissing the claims of the remaining defendants on the grounds that they have been precluded from providing evidence herein is denied without prejudice to renewal since a final order of preclusion has not been issued at this juncture.

Dated: January 14, 2005

J.S.C.