

Salama v Proud Tr. Inc.
2018 NY Slip Op 32254(U)
September 12, 2018
Supreme Court, Kings County
Docket Number: 514209/16
Judge: Debra Silber
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : PART 9**

X

WALEED SALAMA,

Plaintiff,

-against-

**PROUD TRANSIT INCORPORATED
and SHIRAJUL ISLAM,**

Defendants.

X

DECISION / ORDER

**Index No. 514209/16
Motion Seq. No. 2
Date Submitted: 7/26/18
Cal No. 51**

Recitation, as required by CPLR 2219(a), of the papers considered in the review of defendants' motion for summary judgment.

Papers	NYSCEF Doc.
Notice of Motion, Affirmation and Exhibits Annexed.....	<u>21-34</u>
Affirmation in Opposition and Exhibits Annexed.....	<u>36-41</u>
Reply Affirmation.....	<u>42</u>

Upon the foregoing cited papers, the Decision/Order on this application is as follows:

This is a personal injury action arising out of a motor vehicle accident. Defendants move for summary judgment dismissing the plaintiff's complaint, pursuant to CPLR Rule 3212, on the ground that plaintiff did not sustain a "serious injury" as defined by Insurance Law § 5102(d).

On April 22, 2016, plaintiff Salama was traveling on the Brooklyn Queens Expressway in the left lane, near Kane Street, in Brooklyn, when traffic slowed and the defendant Shirajul Islam, driving a vehicle owned by Proud Transit Incorporated, attempted to move into the left lane and struck plaintiff's vehicle in the rear. The bill of

particular alleges that as a result of the accident, plaintiff sustained bulging discs at L3-L4, L4-L5, and C3-C4, disc herniations at L5-S1, C4-C5, C5-C6, and C6-C7, as well as a complex tear of the posterior horn of the medial meniscus of the right knee extending to both the superior and inferior articular surfaces, tendinosis of the supraspinatus and infraspinatus tendon, and a tear of the infraspinatus tendon of the left shoulder necessitating arthroscopic surgery to the plaintiff's right knee and left shoulder.

Defendants contend that plaintiff did not sustain a "serious injury" as a result of this accident, and that he only suffered from muscle strains as a result of the accident. Defendants claim that all of the other injuries plaintiff complains about are from pre-existing and degenerative conditions.

Defendants have made a prima facie showing of their entitlement to summary judgment based upon the affirmed medical reports of Timothy Haydock, M.D., Robert S. April, M.D., Barbara Freeman, M.D., and Darren Fitzpatrick, M.D. who assert that plaintiff's claimed injuries are not causally related to the subject accident (see *White v Dangelo Corp.*, 147 AD3d 882 [2d Dept 2017]; *Young Chan Kim v Hook*, 142 AD3d 551, 552 [2d Dept 2016]).

Timothy Haydock, M.D., who is board certified in emergency medicine, concludes that the emergency room records are inconsistent with the injuries alleged in the plaintiff's bill of particulars and indicate that the claimed injuries do not have an acute traumatic origin and are not causally related to the plaintiff's April 22, 2016 accident. Dr. Haydock states that there were no acute traumatic findings to causally relate the plaintiff's accident to the claimed injuries other than muscle spasm. Robert S. April, M.D., an examining neurologist, concludes that the accident did not produce a

neurological diagnosis, disability, limitation or need for further intervention. Barbara Freedman, M.D., an examining orthopaedist, found normal ranges of motion in plaintiff's cervical and lumbar spine and concludes that plaintiff had pre-existing degenerative joint disease of the left shoulder and right knee which were addressed with surgery. Dr. Freedman notes there were no complaints by plaintiff about the knee when he sought treatment at the emergency room.

Finally, Darren Fitzpatrick, M.D., a board certified radiologist, reviewed the MRI films of plaintiff's shoulder from August 31, 2016, four months after the accident. He found rotator cuff tendinosis and bursal surface fraying with likely subacromial impingement. He opines that this is degenerative and not traumatic in origin.

However, the court finds that plaintiff has overcome the motion and raised a triable issue of fact, based upon the affirmed June 10, 2017 medical report of plaintiff's treating doctor, Ramy Hanna, (Exhibit A) who has treated plaintiff since April 27, 2016. Based upon a September 7, 2016 evaluation, Dr. Hanna found decreased ranges of motion in plaintiff's cervical and lumbar spine as well as in his left shoulder and right knee. He concludes that plaintiff remains with a significant and painful disability and with a markedly restricted range of motion. He opines, based upon the injuries and plaintiff's course of treatment, that plaintiff has a permanent disability with a permanent consequential limitation of use of the injured parts of his body and that plaintiff has sustained a permanent partial and significant loss of use of the parts of his body injured in the subject accident. Further, he found that the neuro-spinal deficits and the deficits in the plaintiff's extremities are directly and causally related to the injuries sustained on April 22, 2016, based upon the accident history, plaintiff's present complaints,

symptomatology, his physical examination, the plaintiff's response to treatment and the scope of plaintiff's professional activities and activities of daily living, as well as the absence of similar symptomatology before the date of the accident. Moreover, plaintiff testified at his September 28, 2017 deposition that he has not worked since the date of the accident and that he was told by Dr. Hanna not to work for a year (Exhibit E at 84-85). In addition, he testified that in the six months after the accident he only left his home to go to doctor's appointments; he dressed himself with great difficulty; he did not clean his home; and he did not shop but rather ordered in food for himself (Exhibit E 87-89).

Accordingly, it is

ORDERED that the motion is denied.

This constitutes the decision and order of the court.

Dated: September 12, 2018

ENTER:



Hon. Debra Silber, J.S.C.

**Hon. Debra Silber
Justice Supreme Court**