Singh v 1199 Seiu United Healthcare Workers E.
2019 NY Slip Op 34273(U)
October 30, 2019
Supreme Court, Queens County
Docket Number: Index No. 701395/2017
Judge: Cheree A. Buggs
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Short Form Order

NEW YORK SUPREME COURT-QUEENS COUNTY

Present: **HONORABLE CHEREÉ A. BUGGS** IAS PART 30
Justice

----------X Index No.: 701395/2017

MANJIT SINGH

Plaintiff,

-against-

1199 SEIU UNITED HEALTHCARE WORKERS EAST and TYRONE EFFERSON,

Defendants.

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Motion
Date: October 16, 2019

Motion Cal. No.: 41

Motion Sequence No.: 3

The following efile papers numbered 26-49, 51-56 submitted and considered on this motion by defendants 1199 SEIU United Healthcare Workers East and Tyrone Efferson seeking an Order pursuant to Civil Practice Law and Rules ("CPLR") 3212 granting summary judgment in their favor against plaintiff Manjit Singh on the basis that plaintiff did not sustain a serious injury as defined under New York State Insurance Law §5102(d).

	Papers Numbered
Notice of Motion-Affidavits-Exhibits.....	EF 26-49
Affirmation in Opposition-Affidavits-Exhibits....	EF 51-54
Reply Affirmation-Affidavits-Exhibits.....	EF 55-56

The instant negligence litigation arises from a two car motor vehicle accident which occurred on August 24, 2016 at LaGuardia Airport at or near Terminal B in the County of Queens, State of New York. Plaintiff Manjit Singh (hereinafter "Singh") commenced this action with the filing of a summons and verified complaint on January 30, 2017. Singh seeks to recover damages for serious injuries he alleged that he sustained in the accident due to the negligence of the defendants 1199 SEIU United Healthcare Workers East and Tyrone Efferson, the owner and operator of the alleged offending vehicle which came into contact with Singh's vehicle on the date of the accident. Discovery is now complete. Singh filed a Note of Issue on March 15, 2019 making this motion for summary judgment timely (*see Brill v City of New York*, 2 NY3d 648 [2004]; *Bargil Assocs., LLC v Crites*, 173 AD3d 958 [2d Dept 2019]).

In support of the motion, defendants' documentary evidence included the pleadings; Singh's verified bill of particulars dated November 17, 2017; Magnetic Imaging Resonance (MRI) reports of Dr. John S. Lyons of Junction Express Radiology, P.C. dated December 9, 2009; an operative report of Northshore LIJ Forest Hills Hospital dated August 27, 2010 of Dr. Robert Donadt, and office records Forest Hills Orthopedic Group; MRI reports of Doshi Diagnostic ordered by Dr. Steven Schwartz; an operative report of County Line Endoscopy and Surgery Center dated August 10, 2013; narrative report of Dr. Laxmidhar Diwan of Queens Arthropscopy and Sports Medicine dated July 22, 2013; Singh's deposition transcript dated June 26, 2018; the independent medical examination report of Dr. Leon Sultan dated September 5, 2018; the independent medical examination of Dr. Edward M. Weiland dated August 14, 2018; and, the independent radiology reports of Dr. David A. Fisher dated August 19, 2019.

Plaintiff's Verified Bill of Particulars

In his verified bill of particulars dated November 17, 2017, Singh alleged that as a consequence of the accident, he sustained injuries to his left shoulder, neck and back. He asserted that he was not confined to home or bed following the accident and he also claimed that his pre-existing injuries to his neck, back and left shoulder were exacerbated by the accident, and that he sustained a serious injury under the significant disfigurement; a fracture; permanent loss of use of a body organ, member function or system; permanent consequential limitation of use of a body organ, member, function or system; significant limitation of use of a body organ, member, function or system and/or the 90/180 day categories of the Insurance Law.

Plaintiff's Deposition Testimony

Singh gave sworn testimony on June 26, 2018. He testified that at the time of the accident, he was employed as a driver for a limousine company. Prior to the accident, he was working about 15 hours a day, five days a week and after the accident he reduced his hours to ten hours a day. He was involved in prior accidents where he sustained injuries. He recalled in 2009 he was injured and underwent left shoulder surgery. He also injured his neck and back and underwent physical therapy and had injections to both. He testified that after treatment his pain subsided in those areas.

In 2012 or 2013 he was involved in a motor vehicle accident, and he sustained injury to his neck and back. He recalled that he received medical treatment for over a year and a half to these affected areas, and that his pain subsided, however, in his back he had discomfort, but no pain from about two and a half years prior to the instant accident.

He was also involved in a motor vehicle accident on December 14, 2017. Prior to the 2017 accident he stated that he was still experiencing pain in his shoulder, neck and back, and he was still treating with physicians. Before the 2016 accident he was not treating with any physicians. Following the instant accident he treated with a chiropractor and orthopedist for his neck, back and shoulder pain, and received injections also. Surgery was recommended for his shoulder and he had not done it yet. He recalled that he had taken MRI's of his back, neck and shoulder, and was told

that he had a problem with these areas. He was confined to his home for two weeks following the the 2016 accident.

Records of Junction Express Radiology reviewed by Dr. John S. Lyons

A MRI was taken of Singh's left shoulder on December 8, 2009. Dr. Lyons impression of the film was subscapularis tendonopathy and bursitis; fluid in the subdeltoid bursa and joint capsule with swelling of the conjoined tendon. In his opinion, the findings were indicative of post-traumatic tenosynovitis/bursitis. A MRI of Singh's lumbosacral spine was taken on November 30, 2009. According to Dr. Lyons, the film revealed L3-4 disc bulge with thecal sac impingement; L4-5 disc bulge with thecal sac impingement and muscle spasm. A MRI of the cervical spine was taken on November 12, 2009 which in Dr. Lyon's opinion, revealed C6-7 disc bulge with thecal sac impingement.

Northshore LIJ Forest Hills Hospital/Forest Hills Orthopedic Group

An operative report of Northshore LIJ Forest Hills Hospital dated August 27, 2010 of Dr. Robert Donadt was annexed to defendants' papers. Singh underwent surgery on his left shoulder on this date due to tendinitis and bursitis. A detached labrum was repaired. Full thickness loss of cartilage over a large area of the humeral head and some mild partial thickness chondromalacia of the glenoid was noted. There was a full thickness tear in the rotator cuff which was repaired. Marked bursitis was noted in the subacromial space. Hypertrophic bursal tissue was removed. The distal clavicle was hypertrophied with spurs and an acromioplasty was performed. Dr. Donadt's office notes (Forest Hills Orthopedic Group) relate to his treatment of Singh prior to the surgery and why surgical intervention was required.

MRI reports of Doshi Diagnostic Imaging Services ordered by Dr. Steven Schwartz

Also annexed to defendants' papers was a MRI film taken at Doshi Diagnostic Imaging Services on July 13, 2013 of the left shoulder reviewed by Dr. Narayan Paruchuri, which revealed an intermediate grade interstitial tear of the anterior fibers of the supraspinatus tendon; a linear intersititial tear seen within the anterior fibers of the infraspinatus tendon. Capsular hypertrophy of the acromioclavicular joint was seen and high grade cartilage loss along the inferior aspect of the glenoid with marrow edema and cystic changes. An extensive tear of the anterior/inferior labrum and a loose body measuring 7 mm in the anterior aspect of the glenohumeral joint. Also, a MRI of the cervical spine taken reviewed by Dr. Narayan Paruchuri on June 8, 2013 revealed left paracentral disc herniation with significant impingement on the left side of the thecal sac at C6-7; and at C5-6 central left paracentral disc herniation with anterior thecal sac impingement and reduction in disc signal intensity. Further, a MRI of the lumbar spine taken on June 8, 2013 reviewed by Dr. Narayan Paruchuri revealed reduction in disc signal intensity at L4-5, disc bulge with bilateral forminal impingement and anterior thecal sac impingement. There was a 2 millimeter central disc herniation with anterior thecal sac impingement and straightening of the lumbar lordosis indicative of muscle

spasm.

Operative reports of County Line Endoscopy and Surgery Center

Included in defendants submissions were operative reports of County Line Endoscopy and Surgery Center. Singh underwent lumbar epidural steroid injections with the guidance of fluoroscopy on August 10, 2013, September 7, 2013 and November 2, 2013.

Narrative report of Dr. Laxmidhar Diwan of Queens Arthropscopy and Sports Medicine

According to the narrative report of Dr. Laxmidhar Diwan of Queens Arthropscopy and Sports Medicine dated July 22, 2013, annexed to the papers, Singh had complaints of pain and limitation of motion following a motor vehicle accident which occurred on March 23, 2013. Range of motion in Singh's cervical spine, left shoulder and lumbar spine was decreased. His left shoulder arthroscopy performed on October 27, 2010 was noted. In Dr. Diwan's opinion, Singh suffered from impingement syndrome involving the left shoulder with glenoid labral tear and partial tear of the rotator cuff; lumbar spine, disc bulge/herniation at L3-L4 and L4-L5; cervical spine, disc bulge/herniation involving C5-C6 and C6-C7. Singh was working, however Dr. Diwan stated that Singh remained partially disabled.

Independent Medical Report of Dr. Leon Sultan

Dr. Leon Sultan performed an independent orthopedic examination on Singh on September 5. 2018 and also rendered his report the same day. The doctor reviewed various records including MRI reports and performed an examination. Range of motion testing was performed with a goniometer and was as follows:

Cervical Spine-flexion 45 degrees (50 degrees normal); extension 30 degrees (25-35 degrees normal); right and left rotation 50 degrees (45-60 degrees normal); right and left tilting 25 degrees (20-30 degrees normal);

Left Shoulder- abduction and forward elevation 175 degrees (170-180 degrees normal); internal rotation is complete. External rotation 45 degrees (45 degrees normal); adduction 45 degrees (45 degrees normal); posterior extension 40 degrees (40-45 degrees normal);

Thoracolumbar examination-forward flexion 60-75 degrees (60-90 degrees normal); extension 10 to 15 degrees (10-15 degrees normal); right and left rotation 45-50 degrees (45-70 degrees normal); right and left tilting 20 degrees (20-25 degrees normal); Straight leg raising was negative bilaterally.

In Dr. Sultan's opinion, Singh was "status post reported trauma the cervical spine, thoracolumbar spine and left shoulder clinically resolved." Dr. Sultan stated that Singh was without any ongoing orthopedic or neurological impairment in regard to the accident.

Independent Medical Examination of Dr. Edward M. Weiland

Dr. Edward M. Weiland performed an independent neurological examination of Singh on August 14, 2018. The doctor reviewed Singh's verified bill of particulars, various medical records and performed an examination. He noted that Singh lost a week from work following the accident, and noted that Singh had a prior accident on December 14, 2017 where he reinjured his neck, back and left shoulder. Range of motion testing was performed with a goniometer and was as follows:

Cervical Spine-forward flexion 50 degrees (50 degrees normal); extension 60 degrees (60 degrees normal); right and left rotation 80 degrees (80 degrees normal); right and left lateral flexion 45 degrees (45 degrees);

Lumbar Spine-flexion 60 degrees (60 degrees normal); extension 25 degrees (25 degrees normal); right and left lateral flexion 25 degrees (45 degrees normal).

Thoracic Spine-flexion 45 degrees (45 degrees normal); extension 0 degrees (0 degrees normal); right and left rotation 30 degrees (30 degrees normal); right and left lateral bend 45 degrees (45 degrees normal);

Shoulders- flexion 180 degrees (180 degrees normal); extension 40 degrees (40 degrees normal); abduction 180 degrees (180 degrees normal); internal rotation 80 degrees (80 degrees normal); external rotation 90 degrees (90 degrees normal).

In Dr. Weiland's opinion Singh suffered cervical and lumbosacral sprains/strains which had resolved, and the neurological examination was normal.

Dr. Weiland submitted an addendum to his report on September 10, 2018. He stated that "[b]ased upon the history obtained from Mr. Singh, it is impossible to determine a clear causal relationship of subjective complaints of neck pain radiating to the arm, as well as lower back pain radiating to the buttock and thigh regions based upon the fact that Mr. Singh identified this to [him] that he sustained a more recent motor vehicle accident on 12/14/17 when he reported sustaining a reinjury to his neck and the posterior aspect of his spine, as well as reinjuring his left shoulder. The doctor stated that whatever traumatic injuries sustained in either accident were resolved from a neurologic perspective.

Independent Radiology Review by Dr. David A. Fisher

Dr. David A. Fisher, Diplomate, American Board of Radiology reviewed various MRI films taken of Singh and rendered a report on April 19, 2019. He reviewed the MRI of the lumbar spine taken by Dr. Steven Schwartz on June 18, 2013. In his opinion the film revealed mild degenerative changes at L3/4 and L4/5. He reviewed the MRI of the lumbar spine taken on November 5, 2016 at All County and compared both MRI's and in his opinion the impression was mild degenerative changes at L3/4 and L4/5, slightly progressed from the prior MRI. He stated that there was "no

radiographic evidence of traumatic or causally related injury to the lumbar spine." He also reviewed the MRI of the cervical spine taken on June 8, 2013. In his opinion the impression was mild/moderate degenerative changes, most pronounced at the C5/6 and C6/7 levels. He also reviewed the MRI of the cervical spine taken at All County on November 5, 2016, and compared both MRI's and in his opinion, it revealed mild/moderate degenerative changes redemonstrated, most pronounced at the C5/6 and C6/7 levels. In his opinion, both studies showed mild degenerative changes and no radiographic evidence of traumatic and injury to the cervical spine. Additionally, he reviewed the MRI of the left shoulder taken by Dr. Steven Schwartz on June 13, 2013. In his opinion, the film revealed status post arthroscopic surgery; mild supraspinatus tendonosis, inferior glenoid spurring and degeneration of the inferior labrum. He reviewed the MRI of the left shoulder taken at All County on December 3, 2016 and compared it to the prior MRI. In his opinion, there was no interval change. Both studies showed post-surgical changes and no radiographic evidence of traumatic or causally related injury to the left shoulder.

Law and Application

The proponent of a motion for summary judgment carries the initial burden of presenting sufficient evidence to demonstrate as a matter of law the absence of a material issue of fact (*Alvarez v Prospect Hospital*, 68 NY2d 320 [1986]). Once the proponent has met its burden, the opponent must produce competent evidence in admissible form to establish the existence of a triable issue of fact. (*See Zuckerman v City of New York*, 49 NY2d 557 [1980].) Summary judgment which is a drastic remedy, will not be granted by the Court if there is any doubt as to the existence of a triable issue of fact (*Andre v Pomeroy*, 32 NY2d 361 [1974]).

Pursuant to New York Insurance Law §5102(d) a "serious injury" is "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 body organ or member; significant limitation of use of a body function or system, or a medically determined injury or impairment of a non-permanent nature which prevents the injured person from performing substantially all of the material acts which constitute such person's usual and customary daily activities for not less than ninety days during the one hundred eighty days immediately following the occurrence of the injury or impairment."

The Court finds that defendants failed to establish their prima facie entitlement to judgment as a matter of law. Defendants failed to demonstrate that Singh did not sustain a serious injury under the permanent consequential limitation of use of a body organ or member and/or significant limitation of use of a body function or system categories of the Insurance Law. Defendants' expert, Dr. Sultan failed to state the range of motion for Singh's left shoulder on internal rotation and make a comparison to normal values and he also failed to state the range of motion on straight leg raise in comparison to normal (*see Shirman v Lawal*, 69 AD3d 838 [2d Dept 2010]; *Walker v Public Admin. of Suffolk County*, 60 AD3d 757 [2d Dept 2009]; *see also* Sixth Edition of the AMA Guides). Therefore defendants failed to demonstrate prima facie entitlement to judgment as a matter of law with evidence that Singh's alleged injuries at issue were attributable to prior accidents or pre-existing

conditions and were not exacerbated by the accident (*see McKenzie v Redl*, 47 AD3d 775 [2d Dept 2008]). Thus the Court need not consider the sufficiency of the opposition papers (*Id*).

Therefore, defendants' motion is denied.

This constitutes the decision and Order of the Court.

Dated: October 30, 2019

Hon. Thereé A. Buggs, JSC