

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

PRESENT: HON. DAVID J. AYRES,  
Justice.

TRIAL PART 43

-----X  
COLLIE O. CHANDLER

INDEX NO.: 19479/2002

Plaintiff,

-against-

MOTION SEQ # 001

FAUZH Y SLIBA and ENTERPRISE LEASING  
COMPANY OF BALTIMORE d/b/a ENTERPRISE  
RENT A CAR,

MOTIONS SUBMITTED:  
April 12, 2005

Defendants.  
-----X

The following papers read on this motion:

- Notice of Motion/Affirmation/Exhibits. . . . . x
- Affirmation In Opposition/Affidavits/Supporting Affirmation. . . . . x
- Reply Affirmation/Exhibit. . . . . x

Upon the foregoing papers, it is ordered that the defendants' motion for summary judgment is denied as follows:

This matter involves an automobile accident which occurred on December 6, 1999, on Ring Road, near its intersection with Zeckendorf Boulevard, Town of Hempstead, County of Nassau. Plaintiff COLLIE O. CHANDLER claims that he sustained serious personal injury, as defined by New York State Insurance Law §5102(d), as a result of this incident.

In this action, plaintiff contends, among other things, that the accident caused him to suffer injuries that "prevented him from performing substantially all of the material acts which constituted his usual and customary daily activities for not less than ninety days during the one hundred eight days immediately following the occurrence . . ." [See, CPLR §5102 (d)] Specifically, CHANDLER claims that he was unable to perform his job duties as a security guard, as well as other activities for at least 90 out of the 180 days that immediately following this car accident.

Defendants, in support of the instant motion, have submitted plaintiff's verified bill of particulars and a copy of an unexecuted transcript of plaintiff's deposition testimony. Defense counsel has not advised the Court as to whether the transcript was properly served upon plaintiff for signature, and whether plaintiff failed to return to them the signed transcript. Accordingly, this Court has not considered the transcript in support of this application.

Further, defendant has furnished the Court with the affirmed medical reports of defendants' examining orthopedist, John Killian, M.D. and neurologist, John Keleman, M.D. pertaining to their physical examinations of the plaintiff conducted in July, 2004. These reports, while commenting on plaintiff's condition as of July, 2004, do not comment on whether the claimed period of disability, i.e. 90 out of the 180 days following the accident, was medically-determined. To the contrary, these reports cite objective positive findings from diagnostic tests, such as MRI and electrodiagnostic studies, performed upon the plaintiff within the 180 days following the accident.

Defendant also submitted a letter of November 24, 2004, as well as a check history and an employee reprimand, from plaintiff's employer Freeport Public Schools to evidence the fact that plaintiff was not limited in performing his usual duties for the period claimed following the accident. However, these documents on their face do not establish that plaintiff was able to carry out his normal and customary activities for no less than 90 of the 180 days immediately following the accident.

Accordingly, the Court finds that defendants have failed to meet their initial burden of establishing that the plaintiff did not sustain a serious injury (See, Toure v Avis Rent A Car Sys., 98 N.Y.2d 345).

Defendants' motion for summary judgment is denied in its entirety.

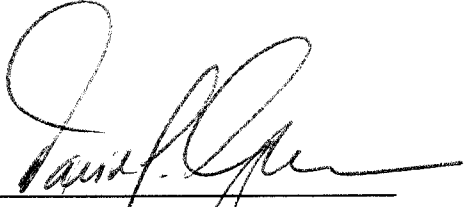
IT IS SO ORDERED.

Dated: June 17, 2005

**ENTERED**

JUN 22 2005

**NASSAU COUNTY  
COUNTY CLERK'S OFFICE**

  
Hon. David J. Ayres  
County Court Judge and  
Acting Supreme Court Justice