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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. JOHN W. BURKE

Justice

-----X TRIAL/I.A.S. PART 2
CLAUDIO CAMPOLI, ANNA MARIA CAMPOLI, NASSAU COUNTY
ANGELO ALATI and LIDIA ALATI,

Plaintiffs,

INDEX NO. 24551/98

-against-

LINCOLN LIMOUSINE BROKERAGE, INC. and
AZZAMOK HASSAN,

MOTION DATE: 9/28/01
MOTION NO. 005

Defendants.

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Notice of Motion, Affs. & Exs..... 1
Answering Affidavits..... 2
Replying Affidavits..... 3
Briefs: Plaintiff's/Petitioner's.....
Defendant's/Respondent's.....

Upon the foregoing papers, it is ordered that this motion by defendants for summary judgment dismissing the complaint as to plaintiff Angelo Alati on the ground that said plaintiff did not sustain "serious injuries" as that term is defined in Insurance Law §5102 is disposed of as hereinafter provided.

On October 31, 1997 the plaintiff was a right front seat passenger in a van taking him to work when the van was in a collision with another vehicle. Mr. Alati was taken to Elmhurst Hospital where he complained of leg and back pain. No X-rays were taken, Motrin was prescribed and Mr. Alati went home the same day.

He commenced treatment with Dr. Vartkes Khachadurian, an orthopedist, on November 4, 1997. Plaintiff indicated he had pain in his legs, knees and calves. The doctor indicates in his affirmation that Mr. Alati's initial examination revealed that he had tenderness along the anterior lateral aspect of both legs and had mild contusion and ecchymosis. He also noted that Mr. Alati had full ROM of the hips, knees and ankles but had pain on motion of the knee and ankle and pain on stretching the calf. His affirmation states that the cervical spine examination revealed no evidence of limitation of movement, no spasms and no pain. Radiographic studies of plaintiff's lower extremities "revealed normal findings, no evidence of fractures". There was soft tissue swelling. His diagnosis was "contusion of both lower extremities with ecchymosis and mild hematomas of the gastrocnemius area". Dr. Khachadurian prescribed "physical therapy for localized treatment",

advised Advil "two tablets TID", hot packs and elevation of his legs at home. At the time the patient had "normal neurological". The doctor then suggested an MRI. Physical therapy was continued. On December 9, 1997, since the plaintiff was a construction worker, the doctor recommended that he not go to work. An MRI was again suggested.

Despite the patient's complaints therapy was continued. On or about March 3, 1998 the plaintiff underwent an MRI. It showed a subligamentous anterior herniation of the L3-L4 intervertebral disc. On March 17, 1998 the doctor found the patient's "neurological was intact". Exercises and therapy were continued. At the same time the doctor recommended that Mr. Alati return to work. The patient was not seen again by Dr. Khachadurian until August 9, 2001. He made findings similar to those found in the past. He concluded that the accident was, within a reasonable degree of medical certainty, the competent producing cause of the plaintiff's incapacity for over four and one-half months following the accident.

On October 19, 2000 the defendants' examining physician, Dr. Andre Fethiere, an orthopedist, diagnosed the plaintiff as having sustained a lumbosacral strain/sprain without radiculopathy, an anterior subligamentous disc herniation at the L3-L4 level with disc space narrowing and contusions of both legs.

Under the circumstances presented, the motion is granted. The plaintiff Angelo Alati is deemed not to have sustained a serious injury as that term is defined in Insurance Law §5102.

The court notes that this motion was made 5 days after the expiration of the post-Note of Issue 120-day period. The five-day period is not significant and is attributed to law office failure.

Movant shall serve a copy of this order upon the attorneys for plaintiffs within 10 days of the date hereof.

Dated: DEC 17 2001


J. S. C.

ENTERED

DEC 19 2001

NASSAU COUNTY
COUNTY CLERKS OFFICE