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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK
COUNTY OF NASSAU

Present: HON. ZELDA JONAS
Justice

CHRISTINA BELLINI,

Plaintiff,

- against -

DEBORAH LANDESMAN, URI LANDESMAN, JOHN MAICHIN, JOHN MAICHIN, JASON CASTRO, JOSE CASTRO, LASIS COZZOIRNO and BETTER ENGINE SYSTEM TECH,

Defendants.

TRIAL/IAS PART 26

Index No. 13357/01

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Motions by defendants, Deborah and Uri Landesman, Louis s/h/a Lasis Cozzoirno and Better Engine System Tech, John Maichin, and Jason and Jose Castro for summary judgment dismissing the complaint on the issue of liability are denied as moot.

Motion by defendant Maichin for summary judgment dismissing the complaint on the grounds that plaintiff failed to sustain a "serious injury" within the meaning of Insurance Law §5102(d) is granted.

In this action, plaintiff seeks damages for injuries she sustained on June 15, 2001 in a multi-vehicle accident on the Cross Island Parkway. Plaintiff was the driver of Vehicle #2 in a five-car collision. She drove home following the accident. According to her bill of particulars, plaintiff's injuries include:

Right C4 radiculopathy;
Focal disc bulge at C4-5;
Mid and lower back pain;
LS radiculopathy; and
Broad based disc at L4-5.

(Verified Bill of Particulars annexed as Exhibit B to the Maichin moving papers). According to the affirmed MRI report, the last injury should read "Broad based disc bulge at L4-5." At the time of the accident, plaintiff had completed her course work and internship as a student at Touro College (Bellini transcript p. 40). She commenced her employment as an occupational therapist at the New York City Board of Education in September, 2001. At her job, plaintiff requires help transferring children of ages 7-12 from wheelchairs (Bellini transcript pp. 108, 143-144), and since the accident, she stopped participating in volleyball (Bellini transcript p. 79). She testified that there is nothing she did before the accident that she cannot do now (Bellini transcript, p. 144),

In support of his motion for summary judgment, defendant Maichin submits verified reports from an orthopedist, Dr. Zolan, and a neurologist, Dr. Davis. Dr. Zolan opines that plaintiff's cervical and lumbar sprains are resolved and no orthopedic treatment is indicated. Dr. Davis opines that plaintiff has no neurological disability. This evidence establishes a *prima facie* case that plaintiff's injuries are not

"serious" within the meaning of Insurance Law §5102(d) (*Gaddy v. Eyler*, 79 N.Y.2d 955, 957; *see generally, Toure v. Avis Rent A Car Sys.*, 98 N.Y.2d 345, 352).

In opposition plaintiff submits *inter alia* affirmed copies of her MRI reports and a report dated October 13, 2001 and affirmed on August 22, 2002 by a Dr. Liguori who concludes that plaintiff's disc bulges at C4-5 and L4-5 are causally related to the accident and that plaintiff "will be left with a permanent partial disability." While Dr. Liguori provides range of motion statistics revealing limitations of the cervical spine, he provides no information as to the nature of the testing performed (*Palasek v. Misita*, 289 A.D.2d 313), any resulting qualitative assessment of plaintiff's condition (*Toure, supra*), or any recent examination (*Diaz v. Wiggins*, 271 A.D.2d 639, 640). Moreover the alleged limitations are belied by Ms Bellini's testimony that her injuries do not preclude her from doing any activities she did before the accident.

Diagnosis of a bulging disc, by itself, does not constitute a serious injury (*Toure, supra* at p. 353, fn. 4; *see, Crespo v. Kramer*, 295 A.D.2d 467; *Ceglian v. Chan*, 283 A.D.2d 536). To succeed on this theory a plaintiff is required to provide objective evidence of the extent or degree of the limitation and its duration (*Crespo, supra*) or a qualitative assessment of plaintiff's condition, comparing plaintiff's limitations to the normal function, purpose, and use of the affected body function or system (*Toure, supra* at 350). Plaintiff here has done neither.

The record is similarly deficient with respect to application of the 90/180 day rule. No detail whatsoever is provided as to what plaintiff's customary daily activities

were and how she was disabled from performing them (*Lebreton v. NYCTA*, 267 A.D.2d 211, 213; *see*, *Jean-Mehu v. Berbec*, 215 A.D.2d 440). In any event, plaintiff's deposition testimony demonstrates plainly that she was not prevented from performing all of the material acts which constituted her usual and customary daily activities for 90 of the 180 days immediately following the accident (*Kassin v. City of NY*, __A.D.2d__, 748 N.Y.S.2d 265; Crespo, supra).

On this record, plaintiff has failed to raise a triable issue of fact that she has sustained a "serious injury" within the meaning of Insurance Law §5102(d). Under these circumstances defendant Maichin's motion for summary judgment dismissing the complaint must be granted. As a "serious injury" is a threshold requirement for liability, all defendants are entitled to the same relief.

There is no need for the Court to consider the issues presented by the motions for summary judgment on liability, which are hereby denied as moot.

Dated: 12/16/02

J.S.C.