

Scanned

SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF NASSAU

PRESENT:

Hon. Burton S. Joseph,

Justice.

NADINE SENEQUE,

Plaintiff,

- against -

METROPOLITAN SUBURBAN BUS AUTHORITY,
and JOHN DOE #1,

Defendants.

Trial/IAS Part 18
Index No. 26210/1998
Motion No. 001
Motion Date 12/4/2001

Papers Numbered

Notice of Motion, Affidavit & Exhibits Annexed.....	1
Affirmation in Opposition.....	2
Reply Affirmation.....	3

Upon the foregoing papers and for the following reasons, the motion by Defendant MTA-Long Island Bus s/h/a Metropolitan Suburban Bus Authority, returnable December 4, 2001, for summary judgment dismissing the complaint on the ground that Plaintiff Nadine Seneque has failed to meet the threshold requirements of Insurance Law § 5102(d), is granted.

This action is brought as a result of an accident on April 3, 1998, in which Plaintiff allegedly sustained injury while attempting to board one of Defendant's buses at the bus stop located at Hempstead Turnpike and Elmont Road. During her deposition, Plaintiff testified that the accident occurred when the bus began to move forward as she was attempting to board it

causing her to fall back onto the pavement.

In support of its motion for summary dismissal, the Defendant has submitted the affirmations of its examining orthopedic surgeon and neurologist which demonstrate that this Plaintiff did not sustain serious injury within the meaning of Insurance Law § 5102(d) (*Gaddy v. Eyster*, 79 NY2d 955). Defendant's experts opined, after an October 2000 examination of Plaintiff and review of her medical records, that Plaintiff suffered from no neurological disability at the time of her examination. Specifically, orthopedic surgeon Harvey Mannis, M.D., and neurologist Kuldip Sachdev, M.D. noted full range of motion of Plaintiff's cervical and lumbar spine and no neurological deficits in the upper or lower extremities. Dr. Mannis states further that Plaintiff "may have suffered a right wrist sprain which was fully resolved". Dr. Sachdev opined that "any pain complained of" by Plaintiff "concerning her right hand was not causally related to the bus incident". Thus, the burden shifted to Plaintiff to come forward with sufficient evidence that she did, in fact, sustain a serious injury.

While Plaintiff has submitted the affidavit of her chiropractor, Stephen Simonetti, D.C., which sets forth the objective tests he performed on January 31, 2001 (approximately two months after she came under his care) and on October 3, 2001 and October 8, 2001, and while he quantifies the restrictions in the range of motion of Plaintiff's lumbar and cervical spine, and causally relates said restrictions to the accident herein, Plaintiff's opposition is insufficient to raise a factual issue. The Plaintiff has failed to submit any proof contemporaneous with the accident of any initial range of motion restrictions (*Lanza v. Carlick*, 279 AD2d 613, 614; *Passarelle v. Burger*, 278 AD2d 294; *Jimenez v. Kambli*, 272 AD2d 581). The fact that objective tests were performed on the aforementioned dates does not cure the infirmity inherent

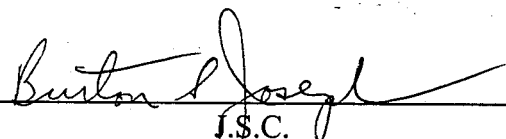
in Plaintiff's opposition.

The chiropractor's attempt to causally relate the restrictions he notes to the accident which occurred 30 months prior is nothing short of sheer speculation at best in the absence of objective evidence (including MRI findings) of any range of motion restrictions during the 30-month period between the accident and his initial examination of Plaintiff. Moreover, the record does not contain any medical records regarding the nature and extent of Plaintiff's treatment from the date of the accident until the time she presented to Dr. Simonetti on October 5, 2001, for consultation (*see, Ekundayo v. GHI Auto Leasing Corp.*, 273 AD2d 346, *lv denied* 95 NY2d 765). Thus, Plaintiff has failed to raise a factual issue as to whether she suffered "serious injury" within the ambit of Insurance Law § 5102(d).

Accordingly, the Defendant's motion is granted and the complaint is hereby dismissed in its entirety. This constitutes the decision, order and judgment of the Court.

ENTER:

Dated: Mineola, New York
February 11, 2002



J.S.C.

XXX

ENTERED

FEB 19 2002

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**