

Lee v Traore

2024 NY Slip Op 31535(U)

April 22, 2024

Supreme Court, Kings County

Docket Number: Index No. 515173/2020

Judge: Carolyn E. Wade

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This opinion is uncorrected and not selected for official publication.

2004]). Where a defendant fails to present such a *prima facie* case, Courts will not even look to the sufficiency of the plaintiff's opposition papers and will deny the motion out of hand (see *Scotti v. Boutureira*, 8 AD3d 6525 [2d Dept 2004]; see also *Greenidge v. HRH Construction Corp.*, 279 AD2d 400 [1st Dept 2001]).

Here, Defendants have failed to make a *prima facie* showing that Plaintiff did not sustain a serious injury. At his deposition, Mr. Lee testified that he was employed by the U.S. Army as a Tanker and currently worked as a full-time recruiter, as he could no longer pass the physical fitness tests due to his injuries. Defendants' examining doctors, Dr. Andrew N. Bazos and Dr. Charla Fischer, did not examine Plaintiff until more than three years after the subject accident. Dr. Bazos' report revealed restricted ranges of motion in the right shoulder and left shoulder. With respect to Plaintiff's right shoulder: forward elevation (50% loss), Abduction (65% loss), external rotation and internal rotation (11% loss). As to Plaintiff's left shoulder: forward elevation (61% loss), abduction (65% loss). Dr. Fischer additionally found restrictions in his cervical spine: forward flexion (9%), extension (58%), lateral rotation right/left (38%), right lateral bending (33%), left lateral bending (56%); and lumbar spine: flexion (8%), extension (40%). As such, Dr. Bazos and Dr. Fischer's reports are insufficient to sustain defendants' burden of proof to establish that Mr. Lee had not sustained a serious injury.

In opposition, Plaintiff submits sufficient evidence in admissible form raising a triable issue of fact as to whether he sustained a serious injury. Plaintiff submits the affirmation of David Mun, M.D. who performed a qualitative and quantitative examination of the Plaintiff that was contemporaneous with the subject accident (*Perl v. Mehr*, 18 NY3d 208 [2011]). Dr. Mun specifically noted the restrictions in the ranges of motion in Plaintiff's cervical spine, lumbar spine,

left shoulder and left knee. Dr. Mun opined that Plaintiff's injuries were caused by the subject accident (*Williams v. Clark*, 54 Ad3d 492 [2d Dept 2008]).

Plaintiff also submits the affidavit of Dr. Edward Shin who treated him contemporaneously with the accident, and for two years after, found restrictions of ranges of motion in his cervical and lumbar spines, which were causally related the motor vehicle accident. Plaintiff also submits the affirmed report of Dr. Yoo, which states that he began treating Plaintiff a few months after the accident for his left shoulder, right shoulder and left knee. Dr. Yoo recommended and performed arthroscopic surgery to plaintiff's left shoulder on July 27, 2020, left knee on October 26, 2020 and right shoulder on May 16, 2022. Moreover, Dr. Yoo reviewed the MRI films and causally related plaintiff's injuries, surgeries and restricted ranges of motion to the motor vehicle accident. Further, Dr. Yoo opined that Mr. Lee will have permanent sequelae. While further treatment may alleviate the patient's symptomatology, the permanent residuals of the injuries could not be completely resolved by way of future medical treatment intervention.

The affirmation of Dr. Ji Han detailed restrictions in the ranges of motion in Mr. Lee's neck and back, the epidural injections that were administered under his care and the discectomy at the L4-5 level. Dr. Han details the continued restrictions in Mr. Lee's ranges of motion after his surgery up to and including a recent examination on August 29, 2023, which revealed objectively measured limitations in Plaintiff's ranges of motion (*Johnson v. Cristino*, 91 AD3d 604 [2d Dept 2012]). Dr. Han also causally related Mr. Lee's injuries to the accident.

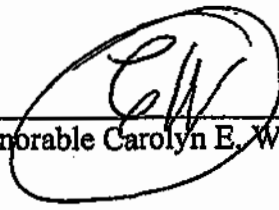
Plaintiff also submitted the affirmations of radiologists, Dr. B.V. Reddy and Dr. Allen Rothpearl, who performed magnetic resonance imaging of Plaintiff's left shoulder, left knee, cervical spine, lumbar spine and right shoulder. Tears were detected in Plaintiff's left knee, left shoulder and right shoulder as well as herniations and bulges of the cervical and lumbar spine.

These findings, coupled with the Plaintiff's limited ranges of motion, raise a triable issue of fact as to the existence of a serious injury (*Park v. He Jung Lee*, 84 Ad3d 904 [2d Dept 2011]).

Accordingly, Defendants' motion for summary judgment, pursuant to Insurance Law § 5102(d), is **DENIED**.

This constitutes the Decision and Order of the Court.

ENTER:



Honorable Carolyn E. Wade, J.S.C.

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