

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

Garbutt v. United Parcel Serv.

131 A.D.3d 444 (N.Y. App. Div. 2015) · No. 2013-08205 · Decided August 5, 2015

SUMMARY

The Appellate Division, Second Department, reversed an order granting the defendants summary judgment in a personal-injury action arising from an automobile accident. The court held that the defendants failed to establish prima facie that Sakhiya Garbutt did not sustain a serious injury, and although they met that burden as to Vince Garbutt, the plaintiffs raised triable issues of fact regarding his alleged spinal injuries.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Reinaldo E. Rivera, J.P.; Thomas A. Dickerson, J.; Robert J. Miller, J.; Colleen D. Duffy, J.
JURISDICTION	New York
DECIDED	August 5, 2015
DOCKET	2013-08205
DISPOSITION	reversed
PROCEDURAL POSTURE	Plaintiffs appealed from an order granting defendants summary judgment dismissing the personal-injury complaint on the ground that neither plaintiff sustained a serious injury under Insurance Law § 5102(d).
STANDARD OF REVIEW	Summary judgment is reviewed de novo. The moving defendants had the prima facie burden to establish that each plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102(d); if that burden was met, the plaintiffs had to raise a triable issue of fact.
PRECEDENTIAL VALUE	published appellate decision
PARTIES	Vince Garbutt, Sakhiya Garbutt, et al. v. United Parcel Service, et al.

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether defendants established prima facie that Sakhiya Garbutt did not sustain a serious injury under the permanent consequential limitation of use, significant limitation of use, or 90/180-day categories of Insurance Law § 5102(d).
2. Whether plaintiffs raised a triable issue of fact concerning whether Vince Garbutt sustained serious injuries to his cervical and lumbar spine after defendants established a prima facie entitlement to summary judgment.

HOLDINGS

1. Defendants failed to establish prima facie that Sakhiya Garbutt did not sustain a serious injury under the permanent consequential limitation of use, significant limitation of use, or 90/180-day categories of Insurance Law § 5102(d).
2. Although defendants established prima facie that Vince Garbutt did not sustain serious injuries to his cervical and lumbar spine, plaintiffs raised triable issues of fact, precluding summary judgment.

KEY QUOTATIONS

*“Since the defendants did not sustain their prima facie burden in this regard, it is unnecessary to address the sufficiency of the submissions by the plaintiff Sakhiya Garbutt in opposition” (*1)*

*“In opposition, however, the plaintiffs raised triable issues of fact as to whether Vince Garbutt sustained serious injuries to the cervical and lumbar regions of his spine” (*2)*

FACTUAL BACKGROUND

The plaintiffs sought damages for personal injuries arising from a motor-vehicle accident. Sakhiya Garbutt alleged injuries to her cervical and lumbar spine, right shoulder, and left knee, as well as a claim under the 90/180-day category. Vince Garbutt alleged injuries to his cervical and lumbar spine. Defendants submitted medical evidence concerning Vince's alleged spinal injuries, but their submissions did not establish prima facie that Sakhiya lacked serious injuries in the categories asserted.

PROCEDURAL HISTORY

The Supreme Court, Kings County, granted defendants' motion for summary judgment dismissing the complaint. The Appellate Division reversed, holding that defendants failed to establish entitlement to judgment as to Sakhiya Garbutt and, although defendants established a prima facie case as to Vince Garbutt, plaintiffs raised triable issues of fact in opposition.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The order granting defendants summary judgment is reversed, and defendants' motion for summary judgment dismissing the complaint is denied.

CASES CITED

- Toure v. Avis Rent A Car Sys., 98 N.Y.2d 345 (2002)
- Gaddy v. Eyler, 79 N.Y.2d 955 (1992)
- McDonough v. Mulligan, 125 A.D.3d 616, 616 (N.Y. App. Div. 2015)
- Che Hong Kim v. Kossoff, 90 A.D.3d 969, 969 (N.Y. App. Div. 2011)
- Staff v. Yshua, 59 A.D.3d 614, 614 (N.Y. App. Div. 2009)
- Perl v. Meher, 18 N.Y.3d 208, 218-219 (2011)

OPINION

PER CURIAM.

Garbutt v United Parcel Serv. (2015 NY Slip Op 06415) Garbutt v United Parcel Serv. 2015 NY Slip Op 06415 Decided on August 5, 2015 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on August 5, 2015 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department REINALDO E. RIVERA, J.P.

THOMAS A. DICKERSON ROBERT J. MILLER COLLEEN D. DUFFY, JJ. 2013-08205 (Index No. 21840/10) [*1]Vince Garbutt, et al., appellants, vUnited Parcel Service, et al., respondents. Larry Hallock, Maspeth, N.Y. (Leonora Bloom of counsel), for appellants. Lester Schwab Katz & Dwyer, LLP, New York, N.Y. (Harry Steinberg and Daniel S. Kotler of counsel), for respondents.

DECISION & ORDER In an action to recover damages for personal injuries, the plaintiffs appeal from an order of the Supreme Court, Kings County (Lewis, J.), dated May 31, 2013, which granted the defendants' motion for summary judgment dismissing the complaint on the ground that neither plaintiff sustained a serious injury within the meaning of Insurance Law § 5102(d) as a result of the subject accident.

ORDERED that the order is reversed, on the law, with costs, and the defendants' motion for summary judgment dismissing the complaint is denied. The defendants failed to meet their prima facie burden of showing that the plaintiff Sakhiya Garbutt did not sustain a serious injury within the meaning of Insurance Law § 5102(d) as a result of the subject accident (see Toure v Avis Rent A Car Sys., 98 NY2d 345; Gaddy v Eyler, 79 NY2d 955, 956-957).

The documents submitted by the defendants failed to establish, prima facie, that the plaintiff Sakhiya Garbutt did not sustain serious injuries to the cervical and lumbar regions of her spine, to her right shoulder, and to her left knee under the permanent consequential limitation of use or significant limitation of use categories of Insurance Law § 5102(d) (see *McDonough v Mulligan*, 125 AD3d 616, 616), and failed to establish, prima facie, that she did not sustain a serious injury under the 90/180-day category of Insurance Law § 5102(d) (see *Che Hong Kim v Kossoff*, 90 AD3d 969, 969).

Since the defendants did not sustain their prima facie burden in this regard, it is unnecessary to address the sufficiency of the submissions by the plaintiff Sakhiya Garbutt in opposition (see *Che Hong Kim v Kossoff*, 90 AD3d at 969).

Therefore, the Supreme Court should have denied that branch of the defendants' motion which was for summary judgment dismissing the complaint insofar as asserted by the plaintiff Sakhiya Garbutt. The defendants did meet their prima facie burden of showing that the plaintiff Vince Garbutt did not sustain a serious injury within the meaning of Insurance Law § 5102(d) as a result of the subject accident (see *Toure v Avis Rent A Car Sys.*, 98 NY2d at 352; *Gaddy v Eyler*, 79 NY2d at 956-957).

The defendants submitted competent medical evidence establishing, prima facie, that the alleged injuries to the cervical and lumbar regions of his spine did not constitute serious injuries under the permanent consequential limitation of use or significant limitation of use categories of Insurance Law § 5102(d) (see *Staff v Yshua*, 59 AD3d 614, 614).

In opposition, however, the [*2]plaintiffs raised triable issues of fact as to whether Vince Garbutt sustained serious injuries to the cervical and lumbar regions of his spine (see *Perl v Meher*, 18 NY3d 208, 218-219).

Thus, the Supreme Court also should have denied that branch of the defendants' motion which was for summary judgment dismissing the complaint insofar as asserted by the plaintiff Vince Garbutt. RIVERA, J.P., DICKERSON, MILLER and DUFFY, JJ., concur. ENTER: Aprilanne Agostino Clerk of the Court