

**SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FIRST DEPARTMENT**

Lazarus v. Perez

73 A.D.3d 528 (N.Y. App. Div. 1st Dep't 2010) · Decided May 13, 2010

SUMMARY

The Appellate Division affirmed the denial of the plaintiffs' motion to renew an order granting defendants summary judgment. The court held that the plaintiffs failed to present new facts warranting renewal and, in any event, failed to submit contemporaneous objective medical evidence establishing a serious injury under New York's no-fault Insurance Law, including the 90/180-day category.

OPINION

Lazarus v. Perez 73 A.D.3d 528

PER CURIAM.

Order, Supreme Court, Bronx County (Nelson S. Román, J.), entered on or about May 22, 2008, which, to the extent appeal-able, denied plaintiffs motion to renew a prior order granting the motion by defendants Perez and Best Auto for summary judgment dismissing the complaint, unanimously affirmed, without costs. In the absence of new facts not offered on the prior motion that might have led to a different result (CPLR 2221 [e]), plaintiffs motion for renewal was properly denied (see *Rosado v Edmundo Castillo Inc.*, 54 AD3d 278, 279 [2008]). Even were we to consider the merits, we would find plaintiffs argument without substance. Although plaintiffs contemporaneous medical records and reports from South Africa were neither certified nor sworn, plaintiff could rely upon them because defendants referred to these documents in support of their motion for summary judgment. Nevertheless, these doctors discerned no significant abnormalities and found plaintiff to be “free of any neurological signs.” Nor do plaintiffs medical records contain any quantitative assessment of a loss of range of motion, spinal defects or other serious abnormalities. It is well settled that contemporaneous, objective proof of injury, such as an expert's designation of a numeric percentage loss of range of motion or the extent or degree of physical limitation, is necessary to satisfy the statutory serious injury threshold (see *Franchini v Palmieri*, 1 NY3d 536, 537 [2003]; *Toure v Avis Rent A Car Sys.*, 98 NY2d 345, 350-351 [2002]). Plaintiff's argument with regard to the 90/180 rule (Insurance Law § 5102 [d]) is similarly unavailing. Despite plaintiffs contention that she missed some time from college as a result of her accident, she failed to submit medical evidence to show that she could not perform “substantially all of the material acts which constitute [her] usual and customary daily activities” (*id.*) for not less than 90 of the first 180 days following the ac*529cident. Concur—Andrias, J.P., Saxe, Sweeny, Moskowitz and Abdus-Salaam, JJ.

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/new-york-supreme-court-of-the-state-of-new-york-appellate-division-first-department/2010/lazarus-v-perez-mflgaajr>