

Decision and Order of the Honorable Francois A. Rivera
Appealed From, dated February 23, 2021, with Notice of Entry,
dated March 2, 2021
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FILED: KINGS COUNTY CLERK 02/26/2021 11:22 AM
NYSCEF DOC. NO. 306

INDEX NO. 513369/2015
RECEIVED NYSCEF: 02/26/2021

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
GWENDOLYN WILLIAMS, Individually and as Parent
and Natural guardian of T' AHELI CAMPBELL, a minor

Index No.: 513369/2015E

DECISION & ORDER

Plaintiff,

-against-

PATRICK ATSE NCHO, GREGORY ISKHAKOV,
and VALENTINA CIOTTI,

Defendants.
-----X

The defendant, PATRICK ATSE NCHO, comes before this Court with a motion pursuant to CPLR § 4404(a) for an Order setting aside the jury verdict on damages in this matter, rendered on December 9, 2019, which awarded the Plaintiff, GWENDOLYN WILLIAMS \$75,000 past pain and suffering, and \$25,000 future pain and suffering, for injuries allegedly sustained in an automobile accident on June 18, 2015. Co-defendants GREGORY ISKHAKOV and VALENTINA CIOTTI, had been previously dismissed from this case by a prior liability verdict.

Defendant NCHO, by prior counsel Russo & Toner, LLP, filed the subject motion, dated March 9, 2020, with exhibits annexed thereto, for an Order setting aside the jury verdict, and directing Judgment in favor of NCHO, arguing that the evidence in this case was insufficient as a matter of law to support the jury's award of damages on one No-Fault Threshold exception that the Plaintiff had sustained a medically determined injury or impairment of the right knee as a result of the subject accident that prevented her from performing substantially all of the material acts that constituted her usual and customary daily activities for not less than 90 days during the 180 days immediately following the accident. The jury had held that the Plaintiff had not sustained injuries on any of the other No-Fault Threshold exceptions which they were given by this Court.

Plaintiff's Counsel filed and served their Affirmation in Opposition to that motion, together with exhibits annexed thereto, dated March 20, 2020. Thereafter, Defendant NCHO served filed his Reply Affirmation, dated May 13, 2020. This Court then scheduled this matter for oral argument, on the record, for November 10, 2020.

At the oral argument of this motion on November 10, 2020 the Defendant NCHO was represented by Stephen B. Toner, Esq., of substituted defense counsel, McGivney, Kluger, Clark & Intocchia, P.C. The Plaintiff, Ms. WILLIAMS, was represented by her counsel Avinoam Cohen, Esq.

After extensive oral argument before this Court on the record, and this Court giving due consideration to the motion papers, the parties exhibits annexed thereto, and the arguments presented by both counsel; this Court took all evidence that was proffered in a light most favorable to the non-movant Plaintiff, giving her the benefit of every favorable inference.

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After doing so, this Court finds that no rational jury could conclude based upon the evidence that was presented that the Plaintiff suffered an injury in the 90/180 category, as further defined by the multiple Appellate Decisions on this issue. After consideration of the expert witness physicians who testified, the plaintiff's own testimony, the medical records put before this jury, and the totality of the testimony and documents submitted at trial, the evidence to support the 90 of 180 category was just not there. The evidence failed to prove a medically determined condition. Nor was there sufficient evidence to prove that her condition curtailed all of her customary and daily activities to a great extent for that period. It is therefore

ORDERED that the defendants motion, pursuant to CPLR § 4404(a) for an Order setting aside the jury verdict on damages in this matter, and directing a judgment in favor of the defendant NCHO is hereby GRANTED, in all respects; and that the defendant have judgment as against the Plaintiff in this matter.

DATED: February 23 , 2021



HON. FRANCOIS RIVERA, J.S.C.