

Lewis-Williams v Maimonides Med. Ctr.

2024 NY Slip Op 31123(U)

March 20, 2024

Supreme Court, Kings County

Docket Number: Index No. 523837/2022

Judge: Francois A. Rivera

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At an IAS Term, Part 52 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 20th day of March 2024

HONORABLE FRANCOIS A. RIVERA

-----X
JENISE LEWIS-WILLIAMS,

Plaintiff,

- against -

MAIMONIDES MEDICAL CENTER and
BEATRICE ESTEVEZ,

Defendants.
-----X

DECISION & ORDER

Index No.: 523837/2022

Motion Seq. No.: 1

Recitation in accordance with CPLR 2219 (a) of the papers considered on the notice of motion filed on October, 18, 2023, under motion sequence number one, by Jenise Lew-Williams (hereinafter the plaintiff)for an order pursuant to CPLR 3212: (1) dismissing the twelfth affirmative defense of VTL 1104 for immunity asserted by Maimonides Medical Center (hereinafter MMC) and Beatrice Estevez (hereinafter Estevez collectively the defendants); and (2) deeming plaintiff free from comparative negligence and dismissing the comparative fault defense. The motion is opposed.

- Notice of motion
- Affirmation in support
 - Exhibits 1-6
- Affirmation in opposition
- Affirmation in reply
- Statement of material facts
- Counter statement of material facts

BACKGROUND

On August 17, 2022, the plaintiff commenced the instant action by filing a summons and verified complaint with the Kings County Clerk’s office (KCCO). On October 12, 2022, the defendants interposed and filed a joint verified answer with the KCCO. The verified complaint

alleges the following salient facts. On June 23, 2022, plaintiff was operating her Honda Civic vehicle at the intersection of East 22nd Street and Avenue K in Brooklyn. At the time of the accident, defendant Estevez was operating an ambulance in the course of her employment with Maimonides Medical Center (“MMC”). The vehicle driven by the plaintiff and the ambulance driven by Estevez collided due to Estevez’s negligent operation of the ambulance. The collision caused the plaintiff to sustain serious physical injury.

LAW AND APPLICATION

The deposition of the plaintiff and defendant Estevez established the following facts. Defendant Estevez and plaintiff were involved in a motor vehicle accident on June 23, 2022, at the intersection of East 22nd Street and K Avenue in Brooklyn. At the time of the accident, Defendant Estevez was operating an ambulance owned by defendant MMMC with MMC’s permission. Plaintiff was proceeding through a green light at the time of the accident and Estevez was proceeding against a red light. Although Estevez was responding to an emergency, and the lights were engaged on the ambulance, the sirens were not engaged at the time of the accident.

The reckless disregard standard of care in Vehicle and Traffic Law § 1104(e) only applies when a driver of an authorized emergency vehicle involved in an emergency operation engages in the specific conduct exempted from the rules of the road by Vehicle and Traffic Law § 1104(b) (*Kabir v. County of Monroe*, 16 N.Y.3d 217, 220 [2011]). Any other injury-causing conduct of such a driver is governed by the principles of ordinary negligence (*id.* at 220; see *Benn v. New York Presbyt. Hosp.*, 120 A.D.3d 453 [2d 2014]).

In addition, while the reckless disregard standard of care in Vehicle and Traffic Law § 1104(e) applies to a driver of an authorized emergency vehicle involved in an emergency

operation, who engages in specific conduct exempted from the rules of the road by Vehicle and Traffic Law § 1104(b), the exemptions apply only when the authorized emergency vehicle sounded audible signals such as a siren and displayed at least one red light (see Vehicle and Traffic Law § 1104[c]; *Wynter v City of New York*, 173 AD3d 1122 [2d 2019]).

Plaintiff's application to dismiss defendants' twelfth affirmative defense of VTL §1104 immunity must be granted, as Estevez failed to engage the sirens on the ambulance as she approached and proceeded through the intersection against a red light. The immunity provided by VTL §1104 does not apply to an ambulance that did not engage its sirens to provide an audible warning as it approached and entered the intersection (*see* VTL §1104(c) (*Sardar v. Park Ambulance Serv. Inc.*, 56 Misc 3d 756, 761-62 (Sup. Ct. Kings Cty 2017, Hon. Rivera, JSC)

Since defendant Estevez conduct was not privileged under VTL §1104, the standard of care for determining civil liability in this case is ordinary negligence (*See Kabir v. County of Monroe*, 16 N.Y.3d 217, 230-31 [2011]).

Defendant Estevez was negligent as a matter of law for proceeding through a red traffic signal, causing the collision. *See* VTL §1111(d). Traffic . . . facing a steady circular red signal . . . shall stop . . . and shall remain standing until an indication to proceed is shown; *McCourt v. Wasilewski*, 122 A.D.3d 693, 694 [2d Dept. 2014]). A driver who enters an intersection against a red light in violation of VTL §1111(d)(1) is negligent as a matter of law (*Callahan v Glennon*, 193 A.D.3d 1029 [2d Dept 2021]). A violation of a standard of care imposed by the Vehicle and Traffic Law constitutes negligence per se (*Id.*). Defendant MMC is vicariously liable for Estevez's negligence as the owner of the vehicle who permitted her to use it. *See* VTL §388.

Accordingly, plaintiff is entitled to summary judgment on the issue of liability against defendants Estevez and MMC. Plaintiff is also entitled to dismissal of the third and tenth

affirmative defenses alleging comparative fault by plaintiff, as there is no issue of fact with respect to the absence of comparative negligence by plaintiff. Plaintiff was proceeding through a green light and, as the driver with the right of way who had only a second or split second to react and attempted to turn to avoid the collision, she was not comparatively negligent in the happening of the accident as a matter of law (*See Pouncey v. New York City Tr. Auth.*, 219 A.D.3d 512, 514 (2d Dept. 2023)).

CONCLUSION


The branch of the motion by Jenise Lew-Williams for an order pursuant to CPLR 3212 dismissing the twelfth affirmative defense of VTL 1104 asserted by Maimonides Medical Center and Beatrice Estevez is granted.

The branch of the motion by Jenise Lew-Williams for an order pursuant to CPLR 3212 deeming plaintiff free from comparative negligence and dismissing the affirmative defense of contributory negligence and comparative fault is granted.

The branch of the motion by Jenise Lew-Williams for an order pursuant to CPLR 3212 granting summary judgment in plaintiff's favor on the issue of liability against defendants Maimonides Medical Center and Beatrice Estevez is granted.

The foregoing constitutes the decision and order of this Court.

ENTER:



J.S.C.