

Hussain v Abbas

2007 NY Slip Op 31088(U)

May 3, 2007

Supreme Court, Queens County

Docket Number: 0011433/2005

Judge: Joseph P. Dorsa

Republished from New York State Unified Court System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER

NEW YORK SUPREME COURT : QUEENS COUNTY

P R E S E N T : HON. JOSEPH P. DORSA IAS PART 12
Justice

- - - - - x

AMJAD HUSSAIN,

Plaintiff,

Action No. 1
Index No.: 11433/05

- against -

Motion Date: 3/21/07

SYED ABBAS, CASEY JOHNSON and COLIN
HAZZARD,

Motion No.: 20

Defendants.

- - - - - x

SYED ABBAS,

Plaintiff,

Action No. 2
Index No. 14858/05

- against -

COLIN HAZZARD and CASEY JOHNSON,

Defendants.

- - - - - x

The following papers numbered 1 to 22 on this motion:

	<u>Papers Numbered</u>
Defendant Abbas' Notice of Motion-Affirmation- Affidavits-Service-Exhibits in Action No. 1	1-4
Defendant Hazzard's Notice of Cross-Motion- Affirmation-Affidavit-Service-Exhibits	5-8
Plaintiff Hussain's Notice of Cross-Motion- Affirmation-Affidavit-Service-Exhibits	9-13
Plaintiff Abbas' Affirmation in Opposition- to Defendant Abbas' Notice of Cross Motion	14-16
Defendant Hazzard's Opposition and Reply to Plaintiff Hussain's Notice of Cross Motion	17-19
Defendant Abbas' Affirmations in Opposition to Cross-Motions	20-24
Defendant Hazzard's Reply Affirmation to	

Defendant Abbas' Cross-Motion	25-26
Plaintiff Hussain's Reply Affirmation	27-28

By notice of motion, defendant, Syed Abbas (Abbas), seeks an order of the Court, pursuant to CPLR § 3212, granting him summary judgment.

Defendant, Colin Hazzard (Hazzard), files a cross-motion for summary judgment and dismissal of the complaint and all cross-claims as to him.

Plaintiff files a cross-motion for summary judgment on the issue of liability.

Defendant Abbas files two affirmations from two attorneys (Hayes and Lynch) in the same office opposing defendant Hazzard's cross-motion and plaintiff's cross-motion and a reply to the opposition to their motion.

Plaintiff Abbas in the second action files an opposition to defendant Hazzard's cross-motion and plaintiff Abbas in the second action replies.

Defendant Hazzard files an affirmation in opposition to plaintiff Abbas' cross-motion in the second action, an affirmation in opposition to plaintiff Hussain's cross-motion and a reply to the opposition to their cross-motion.

Finally, plaintiff Hussain files a reply to the opposition to their cross-motion.

The underlying cause of action is a claim by plaintiff for personal injuries alleged to have been sustained in a three car motor vehicle accident on June 1, 2004, on Hempstead Avenue, at or near the intersection of 222nd Street, Queens, N.Y.

At that time and place, plaintiff was a passenger in a vehicle operated by defendant in Action No. 1, Syed Abbas. Abbas was traveling eastbound in the left hand lane of Hempstead Avenue, when he came to a stop at a red traffic signal controlling the intersection with 222nd Street. While stopped for the traffic signal Abbas' vehicle was struck in the rear by the vehicle operated by Casey Johnson (Johnson).

As a result of his vehicle being struck in the rear, the Abbas vehicle was pushed through the intersection and into on coming traffic in the westbound lane of Hempstead Avenue. At

that point the Abbas vehicle struck the vehicle operated by Hazzard head on.

Defendant Hazzard in both actions claims that this all happened within seconds; that he had no time to react or avoid the collision.

On August 16, 2006, plaintiff Hussain was granted a default judgment against defendant Johnson. On February 14, 2006, plaintiff in Action No. 2, Abbas, was granted a default judgment against defendant Johnson.

"A rear-end collision with a stopped automobile establishes a prima facie case of negligence on the part of the operator of the moving vehicle and imposes a duty on the operator of the moving vehicle to explain how the accident occurred" (Leal v. Wolff, 224 AD2d 392, 393 [^{2d} Dep't. 1996]).

"The operator of the moving vehicle is required to rebut the inference of negligence created by an unexplained rear-end collision because he or she is in the best position to explain whether the collision was due to a mechanical failure, a sudden stop of the vehicle ahead, an unavoidable skidding on a wet pavement, or some other reasonable cause." Id. at 393. (See also, Grimes-Carrion v. Carroll, 13 AD3d 125, 787 NYS2d 6 (1st Dep't 2004)).

The moving vehicle, it is undisputed, was the vehicle operated by defendant Johnson. As is evident, Johnson has offered no explanation.

Accordingly, upon all of the foregoing, the motion and cross-motion are decided as follows:

It is hereby

ORDERED, that defendant Abbas' motion for summary judgment is granted and the complaint and all cross-claims as to him are dismissed; and, it is further

ORDERED, that the Clerk is directed to enter judgment accordingly; and, it is further

ORDERED, that defendant Hazzard's cross-motion for summary judgment is granted and the complaint and all cross-claims as to him are dismissed; and, it is further

ORDERED, that the Clerk is directed to enter judgment

accordingly; and, it is further

ORDERED, that plaintiff Hussain's motion for summary judgment on the issue of liability as against defendants Abbas and Hazzard is denied.

Dated: Jamaica, New York
May 3, 2007

JOSEPH P. DORSA
J.S.C.