Brown v Maruf
2007 NY Slip Op 31132(U)
April 16, 2007
Supreme Court, Queens County
Docket Number: 0020791/2005
Judge: Patricia P. Satterfield
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE PATRICIA P. SATTERFIELD IA Part 19
Justice

TAMARA BROWN, x Plaintiff, - against - BAHADUR MARUF and FRED TAXI CORP., Defendants. x	Index Number 20791 2005 Motion Date January 24, 2007 Motion Cal. Number 6 Motion Seq. No. 1

The following papers numbered 1 to 17 read on this motion by defendants for summary judgment dismissing plaintiff's complaint and on this cross motion by plaintiff for summary judgment in her favor and against defendants on the issue of liability.

	Papers Numbered
Notice of Motion - Affidavits - Exhibits.........	1-4
Notice of Cross Motion - Affidavits - Exhibits...	5-8
Answering Affidavits - Exhibits.................	9-14
Reply Affidavits................................	15-17

Upon the foregoing papers it is ordered that the motion and cross motion are determined as follows:

In this action, plaintiff seeks damages for personal injuries allegedly sustained in a motor vehicle accident on February 25, 2005, when her vehicle, which was stopped at a red light, was struck in the rear by a vehicle owned by defendant Fred Taxi Corp. and operated by defendant Bahadur Maruf.

A rear-end collision establishes a prima facie case of negligence on the part of the driver of the offending vehicle and imposes a duty on him or her to explain how the accident occurred. (See Milskiy v Solanky, 8 AD3d 353 [2004]; see also McGregor v Manzo, 295 AD2d 487 [2002]; Gambino v City of New York, 205 AD2d 583 [1994].) The driver of the offending vehicle is required to rebut the inference of negligence, and if he or she

cannot do so, the driver of the lead vehicle may properly be awarded judgment as a matter of law. (See McGregor v Manzo, supra; see also Leal v Wolff, 224 AD2d 392 [1996]; Barile v Lazzarini, 222 AD2d 635 [1995].)

In this case, plaintiff met her initial burden of demonstrating her entitlement to summary judgment as a matter of law by submitting competent evidence establishing that her vehicle was lawfully stopped at a red light when the collision occurred. (See Nozine v Anurag, ___ AD3d ___ 2007 NY Slip Op 2094 [2d Dept, March 13, 2007]; see also Sherin v Roda, 14 AD3d 604 [2005]; Sabbagh v Shalom, 289 AD2d 469 [2001].) Thus, the burden shifts to defendants to produce evidentiary proof in admissible form sufficient to raise a triable issue of fact. (See Zuckerman v City of New York, 49 NY2d 557 [1980].)

Defendants failed to meet this burden. Defendants, in opposition, interposed the affirmation of their attorney who lacks personal knowledge of the facts. (See Zuckerman v City of New York, supra.) Contrary to the attorney's assertion, plaintiff's proof in support of her cross motion, which included her examination before trial testimony, was sufficient to sustain her initial burden. In addition, the reliance of defendants' attorney on hearsay in the police report is insufficient to raise an issue of fact. (See Gomez v Sammy's Transport, Inc., 19 AD3d 544 [2005].) Moreover, the conclusory statement contained in the police report that defendant driver Maruf pressed onto the brakes and slid into plaintiff's vehicle is insufficient to rebut the presumption that said defendant was negligent. (See Sabbagh v Shalom, supra; see also Schmidt v Edelman, 263 AD2d 502 [1999]; Pincus v Cohen, 198 AD2d 405 [1993].) Defendant Maruf was under a duty to drive at a safe speed and to maintain a safe distance between his vehicle and the vehicles ahead of him, taking into account the road conditions. (See Vehicle and Traffic Law § 1129[a]; see also Ortega v City of New York, 281 AD2d 466 [2001]; Benyarko v Avis Rent A Car System, Inc., 162 AD2d 572 [1990].)

Accordingly, plaintiff's cross motion for partial summary judgment in her favor and against defendants on the issue of liability is granted.

Defendants' motion for summary judgment dismissing plaintiff's complaint is denied inasmuch as a triable issue of fact exists concerning whether plaintiff sustained a serious injury within the meaning of Insurance Law § 5102(d) based on the sworn report of her examining and treating chiropractor, Louis Macolino, D.C., specifying decreased range of motion in plaintiff's cervical and lumbar spines as evidence by objective medical findings, including

range of motion tests, along with evidence of disc herniation at L4-5 as confirmed by an affirmed magnetic resonance imaging report. (See Toure v Avis Rent A Car Systems, Inc., 98 NY2d 345 [2002]; see also Shpakovskaya v Etienne, 23 AD3d 368 [2005]; Clervoix v Edwards, 10 AD3d 626 [2004].) Dr. Macolino also asserted that plaintiff's injuries are permanent and causally related to the subject motor vehicle accident. (See Clervoix v Edwards, supra.)

Dated: April 16, 2007

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J.S.C.