Rodriguez v New York City Tr. Auth.

2008 NY Slip Op 31749(U)

June 18, 2008

Supreme Court, New York County

Docket Number: 0118181/2004

Judge: Marilyn Shafer

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SCANNED ON 6/24/2008

[*1]

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Marilyn Shafer Justice PART 8

Index Number : 118181/2004
RODRIGUEZ, JACQUELINE
VS
TRANSIT AUTHORITY
Sequence Number : 002
OTHER

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

motion to/for _____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	1, 2
Answering Affidavits — Exhibits	3
Replying Affidavits	4

Cross-Motion: ☐ Yes ☒ No

Upon the foregoing papers, it is ordered that this motion granted in accord with the attached memorandum.

FILED

JUN 24 2008

COUNTY CLERK'S OFFICE
NEW YORK

Dated: 6/18/08

J.S.C.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Check one: ☒ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

SUPREME COURT OF The STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. MARILYN SHAFER PART 8
Justice

JACQUELINE RODRIGUEZ,

Plaintiff,

-against-

NEW YORK CITY TRANSIT AUTHORITY and MANHATTAN AND BRONX SURFACE TRANSIT OPERATING AUTHORITY (MABSTOA)

Defendants.

INDEX NO. 116445/07

MOTION DATE _____

MOTION SEQ. NO. 002

MOTION CAL. NO. _____

The following papers, numbered 1 to 4, were read on this motion to set aside the jury verdict as to question 1(b); directing judgement for the plaintiff on question 1(b); and for a new trial on the remaining issues:

	PAPERS NUMBERED
Notice of Motion, Affirmation – Exhibits	1,2
Affirmation in Opposition — Exhibits	3
Affirmation in Reply	4

FILED
JUN 24 2008

Cross-Motion: ☐ Yes ☒ No

Upon the foregoing papers, it is ordered that this motion to set aside the jury verdict is granted.

Plaintiff was standing behind her car, illegally parked in a bus stop, when the bus backed into her car and she was injured. The jury found that defendants negligent, but found defendants' negligence was not a substantial factor in causing her accident. This is a motion to set aside that part of the verdict which found defendants' negligence was not a substantial factor

in causing the accident.

Background

The record shows that plaintiff Jacqueline Rodriguez parked her car in a bus stop behind a bus operated by the defendants and driven by Nkosinkulu Cetshwayo. The bus was parked closely behind another bus and could not leave the parking place without first backing up. A driver cannot see directly behind the bus when he is in the driver's seat.

Cetshwayo testified, in his deposition which was read at trial, that he had inspected the bus, which included walking around it to determine that there was nothing behind him. He reentered the bus and inspected the interior. Between the time that Cetshwayo entered the bus and the time he began to back up his bus, Rodriguez parked her car behind the bus. She was standing behind her car, unloading the trunk, when the bus backed into it, knocking her to the ground and causing her injuries.

The only disputed issue of fact, relevant to this application, is how much time passed between the time that Cetshwayo entered the bus and the time he began to drive. Cetshwayo testified that less than a minute passed. Rodriguez testified that she had been parked approximately five minutes while her trunk was being unloaded. An unrelated witness to the accident, Angela McConico, testified that she saw Rodriguez pull up, brought her daughter inside to day care center, and witnessed the accident when she returned to the street. She testified that the accident occurred between seven and thirteen minutes after Rodriguez parked. Neither Rodriguez nor McConico saw Cetshwayo make an external inspection of the bus.

The Court charged the jury, without modification, the PJI charges 2:10 and 2:12 on

negligence and 2:70 on causation:

> Now, an act or omission is regarded as a cause of an injury if it was a substantial factor in bringing about the injury. That is if it has such an effect in producing the injury that reasonable people would regard it as a cause of the injury. There may be more than one cause of an injury, but to be substantial it cannot be slight or trivial. You may, however, decided that a cause is substantial even if you assign a relatively small percentage to it. [1]

The jury responded in the affirmative to question 1(a) on the verdict sheet: Were the defendants negligent? They responded in the negative to question 1(b): Was defendants' negligence a substantial factor in causing the accident?

Plaintiff moves to set aside the jury's response to 1(b) as legally insufficient, inconsistent and against the weight of the evidence. She argues that there is no reasonable interpretation of the evidence which justifies finding that the bus, unsafely backing up into her car, was not a substantial factor in causing the accident. Whatever actions or inactions she may have taken should only be considered on the issue of comparative negligence.

Defendants argue, in opposition, that factual disputes must be resolved in the light most favorable to the defendant, since there was a defense verdict. In that light, Cetshwayo's testimony that less than a minute passed after his inspection must be taken as true. Rodriguez must have parked within forty seconds after the inspection and, as the jury fairly concluded, she was the sole proximate cause of the accident. In the alternative, the jury fairly concluded that her conduct was an intervening and superceding cause of the accident. [2]

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[1] *New York Pattern Jury Instructions* replaced the term "proximate cause" with "substantial factor" in its third edition, published in 1996. The newer charge was otherwise identical to the older one. (*DiMaggio v M O'Connor Contracting Co,* 175 Misc 2d 253 [Kings Cty 1998])

[2] The jury was not charged regarding intervening or superceding cause.

Plaintiff replies that her application is not to set the verdict for inconsistency but because it is against the weight of the credible evidence and to have the Court enter judgment on the issue of causation in her favor as a matter of law.

Discussion

It is well-settled that a motion to set aside a jury verdict shall not be granted unless the preponderance of the evidence in favor of the moving party is so great that the verdict could not have been reached upon any fair interpretation of the evidence. (*Baker v Turner*, 200 AD2d 525 [1st Dept 1994]; *Lolik v Big V Supermarkets*, 86 NY2d 744[1995]). There must be simply "no valid line of reasoning and permissible inferences" which could possibly lead rational persons to the conclusion reached by the jury on the basis of the evidence at trial. (*Cohen v Hallmark Cards, Inc*, 45 NY2d 493 [1978]) In reviewing the jury verdict for sufficiency, the evidence is examined in the light most favorable to the prevailing party, that is, the defendant in this case. (*Baker v Turner, supra*) If there was conflicting evidence, the Court may not substitute its own, or the moving party's, judgment in place of the verdict if the verdict was one in which reasonable people could have rendered after reviewing the conflicting evidence in favor of one party. (*Dobess Realty Corp v City of New York*, 79 AD2d 348 [1st Dept 1981]) The trial court must avoid unnecessary interference with the fact-finding function of the jury to a degree that amounts to usurpation of the jury's duty. (*Nicastro v Park*, 113 AD2d 129 [2d Dept 1985]) In the absence of indications that substantial justice has not been done, a successful litigant is entitled to the benefits of a favorable jury verdict. (*Nicastro v Park, supra*)

This Court finds the jury's verdict is both inconsistent and against the weight of the

credible evidence. A jury's finding that a party was at fault but that fault was not a proximate cause of the accident is inconsistent and against the weight of the evidence only when the issues are so inextricably interwoven as to make it logically impossible to find negligence without also finding proximate cause. (*Won Sok Kim et al v New York City Transit Authority et al,* 29 AD3d 984 [2d Dept 2006]) There is no dispute that the accident was caused by the bus backing into Rodriguez' car. The finding that defendants were negligent cannot be reconciled with the finding that that negligence was not the proximate cause of the accident. (*Bucich v City of New York,* 111 AD2d 646 [1st Dept 1985]) Rodriguez' negligence, if any, is relevant to the question of comparative liability, not proximate cause.

Moreover, Cetshwayo's testimony that Rodriguez parked her car, exited and opened the trunk in less than 40 seconds is against the weight of credible evidence. Rodriguez credibly described her actions over several minutes and her testimony is supported by an independent witness. Since the jury found the defendants negligent, they are not entitled to have this factual dispute resolved in their favor.

Given this apparent inconsistency in the jury's findings, it would not be feasible at this point to retrace the jury's footsteps and grant judgment for either party. (*Nallan v Helmsley-Spear, Inc,* 50 NY2d 507 [1980])

Accordingly, it is

ORDERED that plaintiff's motion to set aside the verdict is granted; and it is further

ORDERED that the parties schedule a conference with the Court for the purpose of scheduling a retrial.

This reflects the decision and order of this Court.

Dated: 6/18/08

J.S.C.

Check one: [X] FINAL DISPOSITION [ ] NON-FINAL DISPOSITION

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