

**Collazo v Metropolitan Suburban Bus Auth.**

2008 NY Slip Op 33391(U)

December 1, 2008

Supreme Court, Nassau County

Docket Number: 14223/02

Judge: F. Dana Winslow

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SCAN

**SHORT FORM ORDER**

**SUPREME COURT - STATE OF NEW YORK**

**Present:**

**HON. F. DANA WINSLOW,**

**Justice**

\_\_\_\_\_  
**JOEHAU COLLAZO,**

**TRIAL/IAS, PART 7  
NASSAU COUNTY**

**Plaintiff,**

**MOTION DATE: 11/17/08**

**-against-**

**MOTION SEQ. NO.: 16  
INDEX NO.: 14223/02**

**METROPOLITAN SUBURBAN BUS  
AUTHORITY, METROPOLITAN  
TRANSPORTATION AUTHORITY/LONG  
ISLAND BUS COMPANY, MANNA R.  
RAMKISSOON, RYAN JALIM and  
DEONARINE JALIM,**

**Defendants.**

**The following papers read on this motion (numbered 1-5):**

**Notice of Motion ..... 1**  
**Memorandum of Law.....1a**  
**Affirmation in Opposition.....2**  
**Reply Affirmation.....3**  
**Trial Testimony of Joechau Collazo.....4**  
**Trial Testimony of Police Officer Navarro.....5**

Plaintiff Joechau Collazo moves for an order setting aside a verdict pursuant to CPLR §4404(a) reached in favor of defendants Metropolitan Suburban Bus Authority, Metropolitan Transportation Authority/Long Island Bus Company and Manna R. Ramkissoon (“defendants”) on June 24, 2008 (the “Verdict”) and for an order directing a new trial. By Order, dated October 4, 2007, Justice DeMaro granted defendants Ryan Jalim and Deonarine Jalim’s motion for summary judgment dismissing the action against them. This motion is determined as follows.

Plaintiff contends that on April 4, 2002, he was walking in the eastbound crosswalk of Hillside Avenue and 167<sup>th</sup> Street when he was struck by a defendant MTA/Long Island Bus Company bus operated by defendant Manna R. Ramkissoon (“Ramkissoon”) as it was moving in the left turn lane in the westbound direction of Hillside Avenue. Plaintiff alleges that his injuries included broken bones and a traumatic brain injury resulting in permanent cognitive and emotional deficits. Defendants contend that plaintiff ran across the westbound traffic lanes between 166<sup>th</sup> and 167<sup>th</sup> Streets and ran into defendants’ bus closer to 166<sup>th</sup> Street. The Court notes that there was no direct testimony by a witness or by plaintiff himself as to what occurred. The Court instructed the jury on June 24, 2008. The jury returned a verdict for defendants that day.

The basis of plaintiff’s motion to set aside the Verdict is as follows: (1) the Court gave an erroneous instruction on the law; and (2) the Verdict was against the weight of the evidence.

Court’s Instruction to the Jury

Plaintiff argues that the Court erroneously charged the jury with both **Vehicle and Traffic Law (“VTL”) §1111(d)(1)** and **New York City Traffic Regulations**, particularly §4-03(a)(3). VTL §1111(d)(1) covers red signals and provides

Traffic, except pedestrians, facing a steady circular signal, unless to make such other movement as is permitted by other indications shown at the same time, shall stop at a clearly marked stop line, but if none, then shall stop before entering the crosswalk on the near side of the intersection, or in the event there is no crosswalk, at the point nearest the intersecting roadway where the driver has a view of the approaching traffic on the intersecting roadway before entering the intersection and shall remain standing until an indication to proceed is shown.

**New York City Traffic Regulation §4-03(a)(3)(i) and (iii)** covering a steady red light alone provides,

Vehicular traffic facing such signal shall stop before entering the crosswalk on the near side of the intersection or, if none, then before entering the intersection and shall remain standing until an indication to proceed is shown. Pedestrians facing such signal shall not enter or cross the road way.

Plaintiff contends that the Court erred in permitting the jury to consider defendants’ conduct in allegedly two different ways. The Court instructed the jury that a violation by defendants of **VTL §1111(d)(1)** constitutes negligence while a violation of **New York City Traffic Regulations** constitutes only *some* evidence of negligence.

The Court notes that in applying the doctrine articulated in **Noseworthy v. City of New York**, 298 NY 76, the Court charged the jury that it was permitted to hold plaintiff to a lesser degree of proof if the jury was satisfied that plaintiff suffered a memory loss caused by the accident. The Court’s charge as to violations of **VTL §1111(d)(1)** enabled the jury to find absolute negligence. The Court’s charge as to violations of **New York City Traffic Regulations** enabled the jury to find some evidence of negligence sufficient to justify finding defendants

negligent taking into consideration plaintiff's amnesia applying the previously charged **Noseworthy** doctrine. Consequently, the Court finds under these circumstances, that there is no basis to set aside the Verdict based upon the Court's instructions to the jury.

#### Verdict as against the weight of the evidence

The basis of plaintiff's claim is that the weight of the evidence establishes that defendants' bus entered the intersection of 167<sup>th</sup> Street and Hillside Avenue against a steady red signal and thereafter, while the bus was moving in the left turn lane, came into contact with plaintiff as plaintiff was walking in the eastbound crosswalk of Hillside Avenue at its intersection with 167<sup>th</sup> Street.

Plaintiff submits the deposition testimony of witness Ryan Jalim ("Jalim"), read to the jury, who testified that his vehicle was stopped on Hillside Avenue because the traffic light governing westbound traffic was red at 166<sup>th</sup> Street/Merrick Blvd. Jalim testified that when his vehicle was stopped approximately one car length west of 167<sup>th</sup> Street, he heard a "loud bang" coming from the rear side of his vehicle and, upon hearing this bang, observed a pedestrian fall next to his vehicle and a bus driving by immediately in the left lane. (Deposition testimony read to the jury, pp. 13-29.) Robert J. Stacy ("Stacy"), dispatcher with defendant MTA/Long Island Bus Company, testified that defendant Ramkissoon told him at the scene of the accident, that the westbound traffic on Hillside Avenue was stopped at a red light. Stacy testified that it was his understanding at the time, based on information provided to him by Ramkissoon, that Ramkissoon was moving the bus in the left turn lane as there was a green turn signal permitting a left turn onto Merrick Blvd. Stacy testified further that Ramkissoon told him that the bus passed stopped cars. (Trial testimony, 6/12/08, pp. 99-100.)

Police Officer Navarro testified as to his recollections of the accident based on his accident report. Navarro testified that, although he did not witness the accident, he spoke with Ramkissoon upon Navarro's arrival at the accident scene, who told Navarro that the bus was traveling in the left westbound turn lane at the moment of impact. Navarro also testified that he noted on the police accident report that the accident occurred 150 east of 166<sup>th</sup> Street which, he estimated, is approximately 10 feet west of 167<sup>th</sup> Street. (Trial testimony, 6/16/08, pp. 10, 13-18, 31-32.)

Nicholas Bellizzi, P.E. ("Bellizzi") testified at trial for the plaintiff as to the sequencing of the traffic lights at Hillside Avenue and its intersections with 166<sup>th</sup> Street/Merrick Blvd. and 167<sup>th</sup> Street. Bellizzi testified that when through traffic on Hillside Avenue has a red light at its intersections with 166<sup>th</sup> and 167<sup>th</sup> Streets, the turn signal in the left turn lane at Merrick Blvd. is green. Bellizzi was asked a hypothetical question by plaintiff's attorney based on Jalim's testimony that Jalim's vehicle was stopped on Hillside Avenue for a red light at 166<sup>th</sup> Street/Merrick Blvd. when a bus passed him in the left turn lane. Bellizzi opined, to a reasonable degree of engineering certainty, that defendant bus driver Ramkissoon would have had to pass the intersection of 167<sup>th</sup> Street and Hillside Avenue against a red signal in order to proceed west in the left turn lane with a green left turn signal. (Trial testimony, 6/11/08, pp. 16-18; 26-29.)

Plaintiff testified at trial that he left a video store located at 167<sup>th</sup> Street and Hillside Avenue, waited for the pedestrian signal to turn on, and once it did, proceeded to cross the street.

Plaintiff testified that he remembered nothing which occurred subsequently. (Trial testimony, 6/13/08, p. 15; 6/17/08, pp. 6-14.)

Defendants argue that Jalim's trial testimony (i) that his vehicle was situated on Hillside Avenue four cars back from the intersection of 166<sup>th</sup> Street/Merrick Blvd.; and (ii) that plaintiff fell at the rear side of his vehicle, establishes that the accident occurred on Hillside Avenue 60 feet from its intersection with 166<sup>th</sup> Street/Merrick Blvd. Defendants claim therefore that plaintiff ran across westbound traffic lanes of Hillside Avenue and ran into the rear of defendants' bus closer to 166<sup>th</sup> Street.

The only testimony that establishes the location of plaintiff is the testimony of Ramkissoon that a passenger yelled out that a pedestrian made contact with the back of the bus but there was no witness, who alone or with others, could establish the location of the point of contact between plaintiff and defendants' bus. The Court finds by rendering the Verdict in favor of defendants, the jury would have had to believe that, after leaving the video store at 167<sup>th</sup> Street and Hillside Avenue, plaintiff crossed Hillside Avenue at an angle in order to hit defendants' bus closer to 166<sup>th</sup> Street.

In determining whether to set aside a jury verdict as against the weight of the evidence, the standard to be applied is whether the jury could have reached its decision on any "fair interpretation of the evidence." **Nicastro v Park** 113 AD2d 129; **Frances G. v. Vincent G.**, 145 AD2d 599.

In this case, the Court has great misgivings that plaintiff ran into the side of the bus closer to 166<sup>th</sup> Street and Hillside Avenue, the theory espoused by defendants. The ariel photograph relied upon by both parties throughout the trial gives greater credence to plaintiff's position because of the direction plaintiff walked after he left a video store on 167<sup>th</sup> Street and Hillside Avenue as testified to by plaintiff. The testimony of Police Officer Navarro and of witness Jalim, also confirm plaintiff's version of the accident. The Court accepted Police Officer Navarro's credibility during the trial as truthful and his testimony was as forthright as possible given the expiration of time which elapsed between the accident and the date of trial. The deposition testimony, read to the jury, of witness Jalim that his vehicle was stopped for a red light one car length west of the crosswalk at 167<sup>th</sup> Street and that he observed the bus moving in the left turn lane upon hearing a loud bang, also supports plaintiff's version. Moreover, the testimony of plaintiff's expert Bellizzi as to the light sequence of the lights on Hillside and 167<sup>th</sup> and 166<sup>th</sup> Streets was also favorable to plaintiff. In addition, the Court notes that the evidence establishes that the traffic was heavy on the day of the accident which further undermines defendants' position that plaintiff crossed Hillside Avenue at an angle and hit defendants' bus in the vicinity of 166<sup>th</sup> Street.

The Court finds that the only testimony supporting defendants' position was the trial testimony of defendant Ramkissoon. Ramkissoon testified that the traffic light for westbound

traffic on Hillside Avenue was green at 166<sup>th</sup> and 167<sup>th</sup> Streets, that the left turn light at the intersection of Hillside and Merrick Blvd. was red and that, as a result, Ramkissoon stopped his bus in the turn lane east of the intersection of Merrick Blvd. and Hillside Avenue. Ramkissoon testified further that the bus was stopped for 10-15 seconds when he became aware of contact between the bus and a pedestrian. (Trial testimony, 6/12/08, pp. 20-24).

However, Ramkissoon's in court testimony directly contradicts the testimony of Police Officer Navarro who testified as to the statements Ramkissoon made to him at the scene of the accident. Moreover, defendant Ramkissoon testified that he could not recall the statements he made to bus dispatcher Stacy at the accident scene whose testimony as to these statements also supports plaintiff's version.

Based on the foregoing, the Court finds that the testimonial evidence discussed above confirms, to the Court's satisfaction, that the Verdict was against the weight of the evidence. The Court hereby sets the Verdict aside and requires that a new trial be set.

Counsel for all parties are directed to appear before the Justice presiding in the Calendar Control Part at 9:30am on December 23, 2008.

Plaintiff shall serve defendants with a copy of this Order.

The foregoing constitutes the Order of this Court.

Dated: Dec 1, 2008

*[Handwritten Signature]*  
J. S.C.

**ENTERED**  
DEC 10 2008  
NASSAU COUNTY  
COUNTY CLERK'S OFFICE