Farmer v Kaszyk
2012 NY Slip Op 33896(U)
March 19, 2012
Supreme Court, Bronx County
Docket Number: 307764/2010
Judge: Lucindo Suarez
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: I.A.S. PART 19

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LARRY FARMER and LISA K. MATTHEW,

Plaintiffs,

- against -

ROBERT L. KASZYK, J. ANTHONY EXPRESS, INC. and JONATHAN J. GARCIA,

Defendants.

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DECISION AND ORDER

Action #1

Index No. 307764/2010

JONATHAN GARCIA,

Plaintiff,

- against -

J. ANTHONY EXPRESS, INC. and ROBERT L. KASZYK,

Defendants.

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Action #2

Index No. 300307/2011

PRESENT: Hon. Lucindo Suarez

Upon plaintiff's notice of motion dated February 20, 2012 and the affirmation and exhibits submitted in support thereof; defendants' affirmation in opposition dated March 6, 2012; and due deliberation; the court finds:

In these actions joined for discovery and trial, plaintiff Jonathan Garcia ("Garcia") moves for partial summary judgment on the issue of defendants' liability for causing the subject motor vehicle accident. Plaintiff alleges that his vehicle was struck in the right rear by defendants' tractor-trailer when it attempted to merge into plaintiff's lane after passing toll booths for the north-bound George Washington Bridge. Plaintiff submits the deposition transcripts of plaintiff Lisa Matthew ("Matthew"), a passenger in his vehicle, and defendant driver Robert L. Kaszyk ("Kaszyk").

Matthew testified that she first observed the tractor-trailer to her immediate right at the toll booth. After exiting the toll booth, plaintiffs' vehicle passed the tractor-trailer, which had activated its turn signal. Traffic was heavy, with cars moving at a slow pace. Several lanes merged together after the toll booths, and the lane in which the tractor-trailer traveled would eventually end and force it to merge left into plaintiffs' lane. Garcia stopped the vehicle due to traffic ahead. The vehicle was at a complete stop for one to two seconds when Matthew felt a heavy impact at the rear. She heard no horns, brakes, or screeching tires prior to the accident.

Kaszyk testified that he first saw plaintiffs' vehicle to his immediate left at the toll booth. After exiting the toll booth, Kaszyk activated his turn signal to merge left because his lane would soon end. He described traffic as congested, moving at a stop-and-go pace. Plaintiffs' vehicle was one of two SUV-type vehicles traveling in the lane to his immediate left. Plaintiffs' vehicle was approximately three feet in front of the tractor-trailer when he began to merge left. The occupants of the second SUV, which had been traveling alongside the tractor-trailer, began shouting at Kaszyk. He was momentarily distracted by the noise and looked in the direction of the second SUV. He stopped but made contact with the rear bumper of plaintiffs' vehicle, which had stopped abruptly. Kaszyk estimated eight to ten inches separated plaintiffs' vehicle and the tractor-trailer prior to the impact. He was driving no more than one mile per hour when the accident occurred.

A driver changing lanes must ascertain whether "such movement can be made with safety." *See* Vehicle and Traffic Law § 1128(a). Similarly, "a driver is expected to drive at a sufficiently safe speed and to maintain enough distance between himself and cars ahead of him so as to avoid collisions with stopped vehicles." *Malone v. Morillo*, 6 A.D.3d 324, 325, 775 N.Y.S.2d 312, 313 (1st Dep't 2004) (internal citation omitted); *see also* Vehicle and Traffic Law § 1129(a).

Plaintiff has established his entitlement to partial summary judgment on the issue of liability.

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See Cascante v. Kakay, 88 A.D.3d 588, 931 N.Y.S.2d 295 (1st Dep't 2011); *Zummo v. Holmes*, 57 A.D.3d 366, 869 N.Y.S.2d 447 (1st Dep't 2008). Given the presence of a second vehicle traveling directly alongside the tractor-trailer as well as plaintiffs' stopped vehicle, plaintiff has demonstrated that Raszyk attempted to change lanes when it was not safe to do so. *See* Vehicle and Traffic Law § 1128(a). A violation of Vehicle and Traffic Law § 1128(a) presents a *prima facie* case of liability. *See Abramov v. Visan Fuel Oil Co., Inc.*, 27 A.D.3d 404, 809 N.Y.S.2d 919 (2d Dep't 2006).

Defendants oppose on the basis of the emergency doctrine, which does not apply to routine rear-end collisions. *See Johnson v. Phillips*, 261 A.D.2d 269, 271, 690 N.Y.S.2d 545, 547 (1st Dep't 1999). The circumstances in which this accident occurred do not constitute an emergency. Kaszyk testified that while driving no more than one mile per hour in stop-and-go traffic, he looked away from plaintiff's vehicle to another vehicle traveling to his immediate left. The distraction does not obviate Raszyk's obligation to maintain a safe distance from plaintiffs' vehicle. *See* Vehicle and Traffic Law § 1129; *see also Giangrasso v. Callahan*, 87 A.D.3d 521, 928 N.Y.S.2d 68 (2d Dep't 2011). Nor has Raszyk has offered no reason why a safe distance could not have been maintained, *see Mullen v. Rigor*, 8 A.D.3d 104, 778 N.Y.S.2d 168 (1st Dep't 2004), as he testified there was enough roadway before his lane ended to complete the merge. Further, Raszyk offers no explanation why he attempted to merge when a second vehicle in plaintiffs' lane was traveling alongside his tractor-trailer.

Although Garcia did not submit the transcript of his own testimony, this does not warrant a different result. The general rule regarding liability for rear-end accidents "has been applied when the front vehicle stops suddenly in slow-moving traffic; even if the sudden stop is repetitive; when the front vehicle, although in stop-and-go traffic, stopped while crossing an intersection; and when the front car stopped after having changed lanes." *Johnson*, 261 A.D.2d at 271, 690 N.Y.S.2d at

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547 (1st Dep't 1999) (citations omitted). The sudden stop of the lead vehicle "is generally insufficient to rebut the presumption of non-negligence on the part of the lead vehicle." *Woodley v. Ramirez*, 25 A.D.3d 451, 452, 810 N.Y.S.2d 125, 126-27 (1st Dep't 2006) (citations omitted). Plaintiff is not required to establish his freedom from comparative negligence to be granted summary judgment on the issue of liability. *See Tselebis v. Ryder Truck Rental, Inc.*, 72 A.D.3d 198, 895 N.Y.S.2d 389 (1st Dep't 2010). The court notes that on prior motion practice that did include Garcia's testimony, plaintiffs were granted partial summary judgment on liability and Garcia was granted summary judgment dismissing the complaint in *Farmer v. Kaszyk*, Index No. 307764/2010 (Supreme Court, Bronx County).

Accordingly, it is

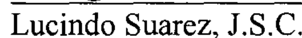
ORDERED, that the motion of plaintiff for partial summary judgment on the issue of defendants' liability for causing the accident is granted; and it is further

ORDERED, that the Clerk of the Court is directed to enter judgment in favor of plaintiff against defendant on the issue of defendants' liability for causing the accident; and it is further

ORDERED, that, plaintiffs in both actions having filed notes of issue and certificates of readiness for trial, upon receipt of a copy of this decision with written notice of its entry, the Clerk of the Pre-Trial Part shall place both matters upon the appropriate calendar for a joint trial on damages and shall notify the parties of the date, time and place of any conference to be conducted in contemplation of same.

This constitutes the decision and order of the court.

Dated: March 19, 2012



Lucindo Suarez, J.S.C.