Holligan v Singh

2016 NY Slip Op 31382(U)

June 8, 2016

Supreme Court, Queens County

Docket Number: 713072/2015

Judge: Robert J. McDonald

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This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK
CIVIL TERM - IAS PART 34 - QUEENS COUNTY
25-10 COURT SQUARE, LONG ISLAND CITY, N.Y. 11101

P R E S E N T : **HON. ROBERT J. MCDONALD**
Justice

- - - - - - - - - - - - - - - - - - - x

GERALDINE HOLLIGAN,

Plaintiff,

- against -

SONAM SINGH and GURDEEP SINGH,

Defendants.

- - - - - - - - - - - - - - - - - - - x

Index No.: 713072/2015

Motion Date: 5/31/16

Motion No.: 86

Motion Seq.: 1

FILED
JUN 21 2016
COUNTY CLERK
QUEENS COUNTY

The following electronically filed documents read on this motion by plaintiff, GERALDINE HOLLIGAN, for an Order pursuant to CPLR 3212, granting summary judgment on the issue of liability in favor of plaintiff:

	Papers Numbered
Notice of Motion-Affirmation-Exhibits...............	EF 9
Affirmation Opposition-Exhibit......................	EF 10 - 11
Affirmation in Reply................................	EF 13

This is an action to recover damages for personal injuries allegedly sustained by plaintiff as a result of a motor vehicle accident that occurred on October 15, 2013 on Central Avenue at or near its intersection with Ford Lane in Valley Stream, Nassau County, New York. The complaint alleges that defendants' vehicle struck the vehicle behind plaintiff and pushed that vehicle into plaintiff's vehicle while it was stopped for a traffic light.

This action was commenced by serving and filing a summons and complaint on December 18, 2015. Issue was joined by defendants serving a verified answer dated January 8, 2016. Plaintiff now seeks partial summary judgment on the issue of liability in favor of plaintiff on the ground that no triable issue of fact exists with respect to defendants' negligence.

In support of the motion, plaintiff submits an affirmation from counsel, Scott L. Wiss, Esq.; a copy of the verified bill of particulars; a copy of the pleadings; a copy of the Police Accident Report (MV-104A); and her own affidavit dated April 19, 2016.

Plaintiff affirms that at the time of the accident, her vehicle was stopped for at least fifteen seconds when she felt a heavy impact to the rear of her vehicle. Defendants' vehicle struck non-party's vehicle that was behind her vehicle and pushed non-party's vehicle into her vehicle.

In the Accident Description portion of the Police Accident Report, the responding officer noted:

> "MV1 (defendants), MV2 (non-party) and MV3 (plaintiff) were in a collision. Operator of MV1 (defendants) was distracted for unknown reason and did not notice MV2 (non-party) and MV3 (plaintiff) were stopped in traffic and struck MV2 (non-party). The impact of the collision caused MV2 (non-party) to struck MV3 (plaintiff)."

Based on plaintiff's affidavit and the Police Accident Report, counsel for plaintiff contends that the accident was caused solely by defendant driver's negligence in that he failed to maintain a safe speed, failed to maintain a safe distance between his vehicle and the vehicle in front of him in violation of VTL § 1129(a), and failed to avoid striking the vehicle in front of his vehicle.

In opposition, defendant driver, Sonam Singh, submits his own affidavit dated May 19, 2019. He affirms that he was involved in a three-car accident on October 15, 2013. He states that the vehicle in front of his, which was operated by non-party Thomas Gilroy, came to an abrupt and unexplained stop. In the moments leading up to the accident, he observed Mr. Gilroy's vehicle speeding up and coming to frequent short stops. Since he noticed that Mr. Gilroy's vehicle was traveling at a fairly high speed, and given the traffic conditions, he attempted to keep his vehicle as far a distance as possible from Mr. Gilroy's vehicle. He was unable to bring his vehicle to a complete stop before making contact with the rear portion of Mr. Gilroy's vehicle. It is defendant driver's recollection that after impacting the rear of Mr. Gilroy's vehicle, Mr. Gilroy's vehicle then came into contact with plaintiff's vehicle. He affirms that although the Police Accident Report states that he was distracted, he was not in any way distracted at the time of the accident.

Counsel for defendant, Antonio Marano, Esq., contends that the Police Accident Report is inadmissable hearsay; plaintiff failed to establish a prima facie case as she does not indicate that she actually observed the non-party's vehicle directly behind her or defendants' vehicle prior to or during the occurrence of the accident; defendant has a non-negligent explanation for the collision based on sudden or unavoidable circumstances; and the motion is premature.

The proponent of a summary judgment motion must tender evidentiary proof in admissible form, eliminating any material issues of fact from the case. If the proponent succeeds, the burden shifts to the party opposing the motion, who then must show the existence of material issues of fact by producing evidentiary proof in admissible form, in support of his or her position (see Zuckerman v City of New York, 49 NY2d 557[1980]).

"When the driver of an automobile approaches another automobile from the rear, he or she is bound to maintain a reasonably safe rate of speed and control over his or her vehicle, and to exercise reasonable care to avoid colliding with the other vehicle" (Macauley v ELRAC, Inc., 6 AD3d 584 [2d Dept. 2003]). It is well established law that a rear-end collision with a stopped or stopping vehicle creates a prima facie case of negligence on the part of the driver of the rearmost vehicle, requiring the operator of that vehicle to proffer an adequate, non-negligent explanation for the accident (see Delgado v Bang, 120 AD3d 608 [2d Dept. 2014]; Kertesz v Jason Transp. Corp., 102 AD3d 658 [2d Dept. 2013]; Ramos v TC Paratransit, 96 AD3d 924 [2d Dept. 2012]; Pollard v Independent Beauty & Barber Supply Co., 94 AD3d 845 [2d Dept. 2012]; Klopchin v Masri, 45 AD3d 737 [2d Dept. 2007]).

Here, it is undisputed that plaintiff's vehicle was stopped when it was struck in the rear by non-party's vehicle which was propelled into plaintiff's vehicle after non-party's vehicle was struck in the rear by defendants' vehicle. Defendant driver himself affirms such in his affidavit. Thus, plaintiff satisfied her prima facie burden of establishing entitlement to summary judgment as a matter of law (see Volpe v Limoncelli,74 AD3d 795 [2d Dept. 2010]; Vavoulis v Adler, 43 AD3d 1154 [2d Dept. 2007];Levine v Taylor, 268 AD2d 566 [2d Dept. 2000]).

Having made the requisite prima facie showing of entitlement to summary judgment, the burden then shifted to defendants to raise a triable issue of fact as to whether plaintiff was also negligent, and if so, whether that negligence contributed to the happening of the accident (see Goemans v County of Suffolk,57 AD3d 478 [2d Dept. 2007]).

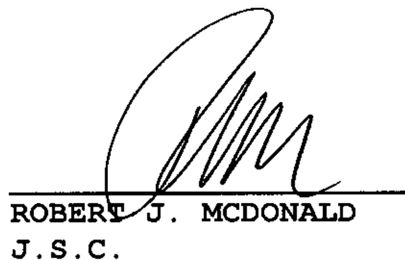
This Court finds that defendant driver failed to provide evidence as to a non-negligent explanation for the accident sufficient to raise a triable question of fact (see Lampkin v Chan, 68 AD3d 727 [2d Dept. 2009]; Cavitch v Mateo, 58 AD3d 592 [2d Dept. 2009]; Garner v Chevalier Transp. Corp, 58 AD3d 802 [2d Dept. 2009]; Kimyagarov v Nixon Taxi Corp., 45 AD3d 736 [2d Dept. 2007]). Even though defendant driver maintains that the accident was the result of non-party stopping suddenly, this does not explain his failure to maintain a safe distance from the vehicle in front of him especially, where as here, defendant driver observed non-party's vehicle stopping suddenly prior to the accident, or suggest that plaintiff was comparatively negligent (see Dicturel v Dukureh,71 AD3d 558 [1st Dept. 2010]; Shirman v Lawal,69 AD3d 838 [2d Dept. 2010]; Lampkin v Chan,68 AD3d 727 [2d Dept. 2009]; Zdenek v Safety Consultants, Inc.,63 AD3d 918 [2d Dept. 2009]).

Additionally, although counsel for defendants speculates that additional discovery will lead to evidence demonstrating that non-party's vehicle suddenly and abruptly stopped, and thus will provide defendants with a non-negligent excuse, counsel has not demonstrated how further discovery might reveal material facts as to plaintiff's negligence (see CPLR 3212[f]; Medina v Rodriguez, 92 AD3d 850[2d Dept. 2012]; Hanover Ins. Co. v Prakin,81 AD3d 778 [2d Dept. 2011]; Essex Ins. Co. v Michael Cunningham Carpentry, 74 AD3d 733 [2d Dept. 2010]; Peerless Ins. Co. v Micro Fibertek, Inc., 67 AD3d 978 [2d Dept. 2009]; Gross v Marc, 2 AD3d 681 [2d Dept. 2003]). Plaintiff affirms that she was stopped for fifteen seconds when her vehicle was struck in the rear. No evidence has been put forth to suggest otherwise.

Accordingly, it is hereby,

ORDERED, that plaintiff GERALDINE HOLLIGAN's motion is granted, plaintiff shall have partial summary judgment on the issue of liability against defendants, and the Clerk of Court is authorized to enter judgment accordingly.

Dated: June 8, 2016
Long Island City, N.Y



ROBERT J. MCDONALD
J.S.C.

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