

Sang Soon Lee v Casado

2016 NY Slip Op 33169(U)

April 20, 2016

Supreme Court, Westchester County

Docket Number: Index No. 70116/14

Judge: Mary H. Smith

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DECISION AND ORDER

To commence the statutory period of appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this Order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
IAS PART, WESTCHESTER COUNTY

Present: HON. MARY H. SMITH
Supreme Court Justice

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SANG SOON LEE and SEONG DEOK HONG,

Plaintiff,

MOTION DATE: 4/15/16
INDEX NO.: 70116/14

-against-

MARIA CASADO,

Defendant.

-----X
The following papers numbered 1 to 6 were read on this motion by plaintiffs for partial summary judgment on the issue of liability, etc.

Papers Numbered

Notice of Motion - Affirmation (Batchvarov) - Exhs. (A-E)	1-3
Answering Affirmation (Dillon) - Affidavit (Casado) - Exh.	4-5
Replying Affirmation (Batchvarov)	6

Upon the foregoing papers, it is Ordered and adjudged that this motion by plaintiffs for partial summary judgment on the issue of liability is granted.

This personal injury action to recover for "serious injuries" arises out of a three-vehicle collision that had occurred, at approximately 8:00 p.m., on September 18, 2014, on a north-bound lane of the Major Deegan Expressway, in the Bronx. At the time of the

subject crash, non-party Yohn Zapata a/k/a John Zapata had been a passenger in a vehicle owned and operated by an unknown third party, which vehicle this Court shall identify as the Zapata vehicle. Behind the Zapata vehicle had been the vehicle owned by plaintiff Phil Wan Lee and driven by plaintiff Seong Deok Hong, which the Court shall identify as the Hong vehicle. Behind the Hong vehicle had been defendant Casado's vehicle. The record at bar, which includes affidavits from each plaintiff and defendant, as well a copy of the MV-104 Accident Report, establishes that traffic had been "slow moving" and the Hong vehicle had been behind the Zapata vehicle, whereupon it had been struck in the rear by defendant Casado's vehicle, the force of which impact had caused the Hong vehicle to crash into the rear of the Zapata vehicle.

Plaintiffs presently are moving for partial summary judgment on the issue of liability, relying upon the extensive body of law holding that a rear end collision creates a presumption of liability against the rear driver and arguing that there is no evidence supporting any finding of plaintiffs' comparative negligence.

Defendant has submitted her affidavit wherein she claims that, immediately prior to impact, she had been "maintaining a reasonable distance between [her] vehicle and the vehicle directly in front of [her]," i.e., the Hong vehicle, and that she suddenly had become emotionally upset at the realization that said date had been the anniversary of the date she first had learned that her son suffered from a serious life-threatening illness, whereupon she had begun to cry. This statement is in accord with defendant's statement at the crash site to the responding police officer that she "momentarily [had] lost sight [of the Hong vehicle] and when she regained sight she was too close ... and couldn't brake on time and hit vih2 on the rear." In her affidavit at bar, defendant states that it had "appeared" to her

at that moment that the Hong vehicle came to “a sudden stop.” Defendant states that she had applied her brakes but that the front of her vehicle made contact with the rear of the Hong vehicle, whereupon, because the Hong vehicle had been too close to the Zapata vehicle, the front of the Hong vehicle then struck the rear of the Zapata vehicle.¹

Based upon the foregoing, defendant argues that plaintiffs have not demonstrated their entitlement to summary judgment because they have not established their lack of negligence in the happening of the crash and she maintains that there exist triable issues of fact regarding plaintiffs’ comparative negligence in the operation of their vehicle, and specifically with respect to the plaintiffs’ vehicle having stopped abruptly and following too closely behind the Zapata vehicle.

It is well settled that a rear-end collision with a stopped or stopping vehicle creates an inference of negligence and a prima facie case of liability on the part of the operator of the offending vehicle, imposing upon such operator a duty of explanation. See Hanakis v. DiCarlo, 98 A.D.3d 1082 (2nd Dept. 2012); Perez v. Roberts, 91 A.D.3d 620 (2nd Dept. 20); Blaso v. Parente, 79 A.D.3d 923 (2nd Dept. 2010); Davidoff v. Mullokandov, 74 A.D.3d 862 (2nd Dept. 2010); Mandell v. Benn, 67 A.D.3d 746 (2nd Dept. 2009); Campbell v. City of Yonkers, 37 A.D.3d 750 (2nd Dept. 2007); Carhuayano v. J & R Hacking, 28 A.D.3d 413 (2nd Dept. 2006). At the same time, the operator of a motor vehicle is under a duty to operate his motor vehicle with reasonable care, to not follow another vehicle too closely, to be aware of the actual and potential hazards existing from road conditions, and

¹Yohn Zapata has commenced in Bronx County, Supreme Court, an action naming as defendants the parties at bar: Seong Deok Hong, Phil Wan Lee and Maria Casado.

to see that which, under the facts and circumstances, he should have seen by the proper use of his senses. See PJI 277.1; Vehicle and Traffic Law Section 1129(a); Drakh v. Levin, 123 A.D.3d 1084 (2nd Dept. 2014); Marsella v. Sound Distributing Corp., 248 A.D.2d 683 (2nd Dept. 1998); McCarthy v. Miller, 139 A.D.2d. 500 (2nd Dept. 1988). Therefore, when a driver approaches another vehicle from the rear, he is bound to maintain a reasonably safe rate of speed and use reasonable care to avoid colliding with the other vehicle, and the failure to do so, in the absence of a non-negligent explanation, constitutes negligence as a matter of law. See Tutrani v. County of Suffolk, 64 A.D.3d 53, 59 (2nd Dept. 2009); Leal v. Wolff, 224 A.D.2d 392 (2nd Dept. 1996); Abramowicz v. Roberto, 220 A.D.2d 374, 375 (2nd Dept. 1995); Aromando v. City of New York, 220 A.D.2d 617 (2nd Dept. 1994); Silberman v. Surrey Cadillac Limousine Service, 109 A.D.2d 833 (2nd Dept. 1985).


The driver of the offending vehicle however may succeed in raising a triable issue of fact with respect thereto through evidence that the collision had been due to a mechanical failure, an unforeseeable sudden stop of the vehicle ahead, an unavoidable skidding on a wet pavement, or any other reasonable cause. See Ramos v. TC Paratransit, 96 A.D.3d 924, 925 (2nd Dept. 2012); DeLouise v. S.K.I. Wholesale Beer Corp., 75 A.D.3d 489, 490 (2nd Dept. 2010); Klopchin v. Masri, 45 A.D.3d 737 (2nd Dept. 2007). However, it is settled law that a claim of sudden stop, by itself, is insufficient to defeat summary judgment in a rear-end collision action. See Staton v. Ilic, 69 A.D.3d 606 (2nd Dept. 2010); Arias v. Rosario, 52 A.D.3d 551 (2nd Dept. 2008); Lundy v. Llatin, 51 A.D.3d 877 (2nd Dept. 2008).

Based upon the record at bar, the Court finds that plaintiffs prima facie have

demonstrated their entitlement to liability judgment against defendant through their undisputed averments that, while their vehicle had been driving in slow moving traffic, defendant's vehicle had struck the rear of plaintiffs' vehicle. See Zdenek v. Safety Consultants, Inc., 63 A.D.3d 918 (2nd Dept. 2009); Arias v. Rosario, p. 552. Defendant's claim that plaintiffs' vehicle had stopped suddenly is totally without evidentiary support and wholly insufficient to raise any issue of fact as to plaintiffs' alleged comparative negligence. Indeed, defendant notably has failed to address the prevailing traffic conditions just prior in time to the crash and she does not dispute plaintiffs' claims that traffic at that time had been slow moving. Nor does defendant address how closely behind plaintiffs' vehicle she had been traveling and at what speed, nor does she state at what point she had observed plaintiffs' vehicle's illuminated brake lights and how long after defendant had applied her brakes had the impact occurred. Defendant notably does admit however that, immediately prior to the subject impact, she had experienced an emotional upset that had caused her to have teary eyes, leading ineluctably to the conclusion that defendant had been distracted and had not paid full attention to her driving and traffic conditions, resulting in her following too closely behind plaintiffs' vehicle, her delayed reaction to distancing her vehicle from the rear of plaintiffs' vehicle, and her failure to have stopped her vehicle in time.

The parties shall appear in the Compliance Conference Part, room 800, at 9:30 a.m., on May 4, 2016.

Dated: April 20, 2016
White Plains, New York



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J.S.C.

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