

American Tr. Ins. Co. v Singh
2017 NY Slip Op 31981(U)
September 7, 2017
Supreme Court, Queens County
Docket Number: 551/15
Judge: Howard G. Lane
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.
This opinion is uncorrected and not selected for official publication.

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE HOWARD G. LANE
Justice

IAS PART 6

AMERICAN TRANSIT INSURANCE COMPANY,
as Subrogee of JAIME M. ANDRADE and
WALBERTO HOMERO,

Index No. 551/15

Plaintiff,

-against-

HARSIMARPREET SINGH,
Defendant.

After trial and based upon the credible testimony and
admissible evidence adduced therein, the court finds as follows:

This is an action in which plaintiff insurance company as
subrogee of Jaime M. Andrade and Walberto Homero seeks money
damages due to the negligence of defendant in ownership,
operation and/control of defendant's motor vehicle. The
complaint alleges that due wholly and solely by reason of the
carelessness and negligence of the defendant, the plaintiff's
insurance carrier issued payment to or on behalf of its subrogor,
for basic No-Fault (PIP), in a sum that exceeds the monetary
jurisdiction limit of all lower courts.

A bench trial was held before this court on June 13, 2017.

Plaintiff's prima facie case

It is well-settled law that an insurer who pays claims
against the insured for damages caused by wrongdoing of a third-

party is entitled to be subrogated to their rights which the insured would have had against such third-party for its wrongdoing (*Ocean Accident and Guarantee Corp. v. Hooker Electrochemical Co.*, 240 NY 37 [1925]). The insurer's right to subrogation is founded upon the fundamental principle that an insurer who has been compelled by its contract to pay to or on behalf of the insured claims for damages ought to be reimbursed by the party whose fault caused such damages. In this case, plaintiff insurer alleges it issued payments to or on behalf of its subrogor. After payments to its subrogor relying on principles of subrogation applicable as between insurer and insured, plaintiff brought this action to recover from the defendant as the alleged wrongdoer which caused the damages, a sum which would reimburse the insurer for the sums paid to its subrogors.

Although this case involves issues related to personal injury arising out of an automobile accident, the threshold issue as it relates to the defendant is whether the defendant was the actual owner of the vehicle that was involved in the accident on June 9, 2012. If the court determines that plaintiff has failed to establish by a fair preponderance of the evidence that defendant was the owner of the vehicle, then plaintiff's case must be dismissed.

But first, before the court discusses the issues raised at

trial, the court notes that in a decision of Justice Raffaele dated February 21, 2014, he determined that the 1997 Nissan vehicle involved in the subject accident was no longer insured by GEICO on the date of the accident on June 9, 2012 because GEICO had validly removed the 1997 Nissan vehicle from the policy two (2) days earlier on June 7, 2012. He further determined that the DMV Abstract of Registration record shows that on June 18, 2012 the license plates that were previously registered with a 1997 Nissan vehicle were now registered with a 1995 tan Nissan owned by the defendant Singh. He found that effective June 7, 2012, a 1995 Nissan Maxima replaced the 1997 Nissan on the policy. Justice Raffaele noted that there is a "significant lag" in the time before the DMV actually recognizes that a formerly insured vehicle which has been replaced by another vehicle on an existing insurance policy is no longer covered. Finally, the court determined that defendant Singh did not have insurance on the subject vehicle on the date of the accident. This fact is consistent with defendant's position at trial, in that, he asserts that he did not own the subject vehicle and therefore, he did not insure the subject vehicle.

Plaintiff called two (2) witnesses who shed some light on the issue of ownership of the subject vehicle. Jaime Andrade testified that at around 1:00 a.m. on June 9, 2012, he was driving southbound on Maurice Avenue when the subject vehicle,

(later described in the police accident report as a 1997 Nissan sedan, NY Plate #FXK2894), traveling northbound on Maurice Avenue, left its northbound lane and traveled into the southbound lane and came in contact with his vehicle head-on. After the collision, the driver and the passengers of the 1997 Nissan jumped out of the car, and he observed someone open the trunk and remove the license plate from the back of the car. They all left the scene in a black vehicle. A police Accident Report was admitted into evidence. The court finds that the Police Accident Report corroborates the witnesses' testimony.

Police Officer Pellot testified she was the police officer called to the scene of the accident and prepared the Police Accident Report. She testified that she believed she obtained the license plate number on the subject vehicle from observing it on the vehicle at the scene of the accident. She testified that she believed she obtained the information in the report, including the license plate number from her personal observations at the scene. However, she admitted the possibility that she may have obtained the license plate number information from "running" the VIN. The court finds that the Police Accident Report contains information that was not explained by Police Officer Pellot on how or where she obtained it including: (1) vehicle year and make (1997 Nissan); (2) vehicle type (sedan); (3) code (148); and (4) VIN (JN1CA27D4VT873833).

Defendant Harsimarpreet Singh testified that he has been a New York City police officer for seven (7) years. On June 6, 2013, he was the owner of a 1997 Nissan Maxima that he sold to a "Cesar Alvarez" (phonetic) in a "purchase and swap" deal. In exchange for his 1997 Nissan Maxima, he swapped for a 1995 Maxima plus he paid "Cesar Alvarez" \$200.00. After consumating the sale with Mr. Alvarez, he contacted his auto insurance company, cancelled the insurance on the 1997 Nissan Maxima and switched the auto insurance to the 1995 Nissan Maxima. He also removed his license plates. He testified that the following week he registered the 1995 Nissan Maxima using his former license plates that were on the 1997 Nissan Maxima.

The testimony of defendant is consistent with the findings of Justice Raffaele to the extent that effective June 7, 2012, two (2) days before the accident, a 1995 Nissan Maxima owned by defendant Singh replaced a 1997 Nissan on GEICO's insurance policy, and that the DMV Abstract of Registration record shows that on June 18, 2012 that the plates that were registered on the 1997 Nissan were now registered with a 1995 tan Nissan owned by defendant Singh.

The only evidence that links the subject vehicle to defendant is the testimony of Police Officer Pellot who testified that she believed, but was not certain, that she observed a license plate on the subject vehicle at the scene of the

accident. There is contradicting evidence that the license plate had been retained by defendant after he sold the 1997 Nissan on June 7, 2012, removed the license plates from the vehicle and subsequently transferred them to a 1995 tan Nissan. The court credits the testimony of defendant and finds that the license plate was not on the subject vehicle at the time of the accident.

Based upon the foregoing, the court determines that plaintiff has failed to prove by a fair preponderance of the evidence that defendant was the owner of the subject vehicle at the time of the accident.

Accordingly, the complaint is dismissed and the court awards judgment in favor of defendant.

Conclusion

Accordingly, judgment is granted in favor of the defendant and plaintiff's action is dismissed.

This constitutes the decision and order of the court.

Dated: September 7, 2017

.....
Howard G. Lane, J.S.C.