

Telatovich v New York City Tr. Auth.

2017 NY Slip Op 32844(U)

June 2, 2017

Supreme Court, Kings County

Docket Number: 22137/11

Judge: Karen B. Rothenberg

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
EDWARD TELATOVICH,

Plaintiff,

-against-

Decision and Order
Index # 22137/11

NEW YORK CITY TRANSIT AUTHORITY
Defendant,
-----X

J. Rothenberg

In this personal injury action arising out of a motor vehicle accident, a jury trial on the issue of liability only was held before this court on July 19th, 20th, 21st, 22nd, 25th, 26th, 27th, 29th, and August 1st, 2016. The jury found the defendant to have been negligent, and the defendant's negligence a proximate cause of the accident. The jury also found that the plaintiff was negligent and that the plaintiff's negligence was a proximate cause of the accident. They then went on to apportion liability; finding the defendant 20% responsible, and the plaintiff 80% responsible for the happening of the accident. Plaintiff now moves pursuant to CPLR 4404 (a) to set aside the verdict as against the weight of the evidence and for a new trial, and defendant opposes the motion and cross-moves for judgment notwithstanding the verdict.

The accident occurred on July 11, 2011, at approximately 10pm, in the intersection of Washington Avenue and St. Johns Place in Brooklyn, New York, when the motorcycle operated by plaintiff came into contact with a bus owned by defendant and operated by Gerard Nieves. It is uncontroverted that the bus was making a left turn, from southbound Washington Avenue onto St. Johns Place, and the motorcycle was traveling straight ahead, northbound, on Washington Avenue. The intersection was controlled by a traffic light.

Nelson Hernandez, the Superintendent of Bus Safety and Training for the defendant testified that he went to the accident scene to investigate the accident. He observed the bus had begun its turn and that the contact with the motorcycle occurred in the northbound lane of Washington Avenue. Mr. Hernandez interviewed the bus driver who indicated that the motorcycle was coming fast, and as soon as he saw the motorcycle he brought the bus to a stop.

Gerard Nieves, the bus driver involved in this accident, did not testify, but portions of his deposition were read to the jury. He testified that Washington Avenue had one lane

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in each direction, and at the intersection of St. Johns Place there was an additional left turn lane. Mr. Nieves first observed the motorcycle, which had a dim front light, when his bus entered the left turn lane. Upon seeing the motorcycle, which was 30 feet before the far crosswalk of the intersection, he applied his brakes heavily. The front tire of the motorcycle came into contact with the front of the bus on the driver's side.

Edward Teletovich, the plaintiff, testified that he was operating a motorcycle on the night of the accident, which he had modified by removing the fairing and front panel including the speedometer, shortening the seat and removing one of the headlights and repositioning the lights. He was traveling northbound on Washington Ave., and as he passed Lincoln Place he observed a bus ahead of him and traveling southbound enter the left turn lane. As he entered the intersection, and 1-2 seconds before the contact, he saw the bus turn in front of him. Mr. Teletovich testified that he tried to swerve but could not avoid striking the bus. Mr. Teletovich's testimony was unclear in regards to when and where he saw the bus. Stating that the bus was 60-80 yards away, or 100 feet away, or a few hundred feet away when he first saw it. But he did indicate that he did not apply his brakes.

Nicholas Bellizzi testified that he is a consulting forensic engineer. He indicated that the accident took place in the motorcycle's lane of traffic, and that the bus cut off the motorcycle by making a left turn in front of the motorcycle. He further opined that the street was well lit, that the single headlight modification to the motorcycle was not relevant to its visibility and that the motorcycle could not have been traveling at more than 30 mph. His extrapolation from time and distance testimony estimated the speed of the motorcycle at 22.85mph in the last two seconds before impact. At the time of the impact the bus was standing still.

Stephen Vidal, Chief Officer of Safety and Training at the Transit Authority, did not testify, but portions of his deposition were read to the jury. Mr. Vidal testified at his deposition that bus drivers are trained in how to make a left turn, and that the training given is consistent with the requirements of § 1141 of the Vehicle and Traffic Laws.

The plaintiff then rested, and the defense began its case.

Regina Brown testified that she lived 3 doors from the corner of Washington Ave and St. Johns Place, and that she was outside in front of her house on the date of the accident. At about 9:30/10pm she was caused to look when she heard a motorcycle revving up and then observed a motorcycle coming "like a bat out of hell" straight down Washington Ave. She indicated that this was an area where kids on motorcycles frequently race with one another. She observed the bus stopped at the red light at the intersection, and then saw the bus pull up to make a left turn and stop, as there were pedestrians passing. She saw the motorcycle sway and swerve, like it was losing control,

and then the motorcycle hit the bus. She indicated that there was enough room for the motorcycle to pass the bus on the driver's side. She claimed that the motorcyclist was not wearing a helmet. She indicated that the headlamp on the motorcycle was "dim like barely there". She first saw the motorcycle when it was entering Eastern Parkway and then 5-10 minutes later there was a big crash, like an explosion.

Detective Daniel Ryan was, on the date of the accident, a member of the New York City Highway Patrol, Accident Investigation Squad. He was not at the scene of this accident, however, he testified that he is aware that Detective Walter Bowden did go to the scene to investigate this accident. He described general procedures of A.I.S. including taking photographs, preparing reports, canvassing witnesses and video recordings and gathering evidence. The investigator types a DD-5, and there is a SPRINT report of calls to 911, and audio recordings of 911 calls. Also, diagrams were made with measurements taken at the scene.

Defense counsel then read some portions of the plaintiff's deposition testimony. Mr. Teletovich testified that he modified the motorcycle to make it lighter. He was not sure when the motorcycle was last inspected. He saw the bus before the collision traveling at least 30mph, when it was about 60- 80 yards away, or 100 feet away, when he was 30 percent down the block between Eastern Parkway and St. Johns Place. Mr. Teletovich was traveling at 25 mph. Plaintiff saw the bus enter the turning lane before plaintiff entered the intersection, but he did not change his speed.

Defendant read portions of bus driver Gerard Nieves' deposition testimony which indicated that the bus was standing still at contact. And, that Mr. Nieves saw the motorcycle two or three seconds before the contact, when the bus was in the intersection making the left turn and the motorcycle was 30 feet from reaching the crosswalk before the intersection.

Detective Walter Bowden investigated the scene of the accident. The A.I.S. diagram was marked into evidence. And, Detective Bowden testified that he did not observe a headlamp on the motorcycle.

C. Bruce Gambardella is a licensed professional engineer, and an expert in accident reconstruction. He testified that he went to the scene of the accident and made an accurate scene diagram using surveyors tools and the measurements from the police A.I.S. report. He also examined exemplars of both the bus and the motorcycle. The bumper of this bus was designed to withstand a 5mph crash into a solid wall and sustain no damage. Mr. Gambardella opined, given the weights of the vehicles and the damage sustained by each of them, that the motorcycle was traveling in excess of 50 mph at impact. Furthermore, the only evidence of a headlight, upon examination of the accident scene photos, was a 5 watt bulb that was fastened to the motorcycle with plastic zip ties.

There was no evidence of the original headlights, nor the brackets that held them in place. Furthermore, Mr. Gambardella testified that the front forks of the motorcycle, which he inspected, were compressed, which indicated that the plaintiff did brake hard before impact. Mr. Gambardella also testified that the motorcycle had an oil cooler, which was impacted in the accident and that there was an oil splatter pattern on the front of the bus and a dribble trail from the bus to where the motorcycle came to rest some 13-16 feet away. Mr. Gambardella further opined that the length of the skid marks, left by the bus, indicated that the bus was traveling at 9-12mph prior to braking, and it had come to a stop before impact. He testified that his measurements and speed estimates support the conclusion that the bus was in the intersection before the motorcycle. Mr. Gambardella also used a limited number of MSMAC program simulations to illustrate for the jury the differing outcomes of applying the testimony regarding time, speed and distance to the accident.

On cross examination Mr. Gambardella testified that the Transit Authority investigation concluded that the bus driver made a short turn, which blocked the entire southbound lane of traffic, and conceded that the bus driver acknowledged that the motorcycle had the right of way. He also testified that there are several ways to estimate the speed of vehicles, 1) measuring skid marks, (here there were 6 and 7 foot long skid marks from the bus, and none from the motorcycle) 2) observing the damage to the vehicles (here the bus had damage to the bumper and there was a large soft body dent to the front) and 3) crash test results.

The defense rested, summations were given and the jury was charged. After due deliberation the jury returned a comparative verdict unanimously finding 20% against the Transit Authority and 80% against the plaintiff, Theodore Telatovich.

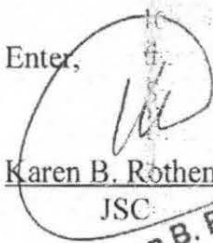
A motion pursuant to CPLR 4404(a) to set aside a jury verdict and for judgment as a matter of law will be granted where there is "simply no valid line of reasoning and permissible inferences which could possibly lead rational men to the conclusion reached by the jury on the basis of the evidence presented at trial" (*see Cohen v Hallmark Cards*, 45 NY2d 493, 499 [1978]). In addition, a jury verdict should not be set aside as contrary to the weight of evidence unless the jury could not have reached the verdict by any fair interpretation of the evidence (*see Lolik v Big V Supermarkets*, 86 NY2d 744, 745-746 [1995]). Moreover, the apportionment of fault among the parties is generally an issue of fact for the jury (*see Donahue v Smorto*, 240 AD2d 454, 465 [2d Dept 1997], and the jury's apportionment of fault should not be set aside unless it could not have been reached based upon a fair interpretation of the evidence (*see Jydnor v Home Depot U.S.A., Inc.*, 74 AD3d 1185, 1187-1188 [2d Dept 2010]). In light of the sharply conflicting evidence as to the cause of the accident, the jury's apportionment of fault is not contrary to the weight of the evidence, since it is based on a fair interpretation of the evidence (*see Evers v Carroll*, 17 AD3d 629 [2d Dept 2005]).

Accordingly, the plaintiff's motion is denied, and the defendant's motion is likewise denied.

This constitutes the Decision and Order of the court.

Dated: June 2, 2017

Enter,


Karen B. Rothenberg
JSC

Karen B. Rothenberg
Justice, Supreme Court



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