

Shavuo v Loeber
2017 NY Slip Op 33434(U)
June 12, 2017
Supreme Court, Nassau County
Docket Number: Index No. 600061/17
Judge: Randy Sue Marber
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

Present: **HON. RANDY SUE MARBER**
JUSTICE

TRIAL/IAS PART 10

X

BRYANT SHAVUO,

Plaintiff,

Index No.: 600061/17

Motion Sequence...01

Motion Date...04/27/17

-against-

MARCELA G. LOEBER,

Defendant.

Papers Submitted: _____X
 Notice of Motion.....x

Upon the foregoing papers, the Plaintiff's unopposed motion, seeking summary judgment pursuant to CPLR § 3212 on the issue of liability, and striking the First Affirmative Defense alleging contributory negligence and/or assumption of risk asserted in the Defendant's Answer, is decided as hereinafter provided.

The instant action involves a rear end motor vehicle accident, occurring on June 21, 2016, at approximately 6:40 p.m., wherein the motor vehicle operated by the Defendant, MARCELA G. LOEBER, struck the rear of the motor vehicle operated by the Plaintiff. The collision took place on Greenwich Street, at its intersection with Grove Street, in the Village of Hempstead, County of Nassau, State of New York.

The Affidavit of the Plaintiff, BRYANT SHAVUO, is submitted in support of the motion. The Plaintiff states that on June 21, 2016, he was the passenger in a 2004

Jaguar motor vehicle which was being operated by his mother. The Plaintiff asserts that the vehicle he was in was completely stopped at a red traffic light for three (3) seconds before it was struck in the rear by a 2003 Chrysler motor vehicle that was owned and operated by the Defendant, MARCELA G. LOEBER. The Plaintiff also states that following the collision, the Defendant, MARCELA G. LOEBER, apologized to him and his mother for hitting them in the rear (*See Plaintiff's Affidavit annexed to the Plaintiff's Notice of Motion as Exhibit "A"*).

The Plaintiff alleges that he sustained serious and severe personal injuries for which he continues to receive medical treatment.

No opposition has been submitted by the Defendant, MARCELA G. LOEBER, for the relief requested.

Summary judgment is a drastic remedy and should only be granted when there are no triable issues of fact. *Andre v. Pomeroy*, 35 N.Y.2d 361 (1974). The goal of summary judgment is to issue find, rather than issue determine. *Hantz v. Fleischman*, 155 A.D.2d 415 (2d Dept. 1989).

Rear end collision cases create a *prima facie* case of liability with respect to the party who collides with the vehicle in front of it. This *prima facie* liability imposes a duty of explanation upon the operator of the rear vehicle to rebut the inferences of negligence by providing some non-negligent explanation for the collision. *Crisano v. Comp Tools Corp.*, 295 A.D.2d 393 (2d Dept. 2002). A rear end collision with a stopped or stopping vehicle creates a *prima facie* case of liability with respect to the operator of the rearmost vehicle, imposing a duty of explanation on that operator to excuse the collision

either through a mechanical failure, a sudden stop of the vehicle ahead, an unavoidable skidding on a wet pavement, or any other reasonable cause. *Filippazzo v. Santiago*, 277 A.D.2d 419 (2d Dept. 2000).

Here, the vehicle in which the Plaintiff was a passenger, was stopped at a red traffic light. No evidence is submitted to the contrary, nor is any evidence submitted alleging that the Plaintiff's car was in motion at the time of the accident.

When a 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. *Id.*; see Vehicle and Traffic Law § 1129 (a). This rule imposes upon drivers the duty to be aware of traffic conditions, including vehicle stoppages. *Johnson v. Phillips*, 261 A.D.2d 269 (1st Dept. 1999).

Accordingly, it is hereby

ORDERED, that the Plaintiff's motion for summary judgment, pursuant to CPLR § 3212, on the issue of liability, is **GRANTED**; and it is further

ORDERED, that the First Affirmative Defense alleging contributory negligence and/or assumption of risk, is **STRICKEN**; and it is further

ORDERED; that the issue of damages shall be addressed at the time of trial after discovery is completed; and it is further

ORDERED, that pursuant to the Preliminary Conference Order dated March 9, 2017, the parties shall appear for a Compliance Conference on June 22, 2017 at 9:30 a.m. before the Hon. Randy Sue Marber.

This decision constitutes the decision and order of the Court.

DATED: Mineola, New York
June 12, 2017

ENTERED

JUN 13 2017
NASSAU COUNTY
COUNTY CLERK'S OFFICE



Hon. Randy Sue Marber, J.S.C.

HON. RANDY SUE MARBER