

Blackman v New York City Tr. Auth.
2018 NY Slip Op 30757(U)
March 26, 2018
Supreme Court, Bronx County
Docket Number: 302324/2010
Judge: Mitchell J. Danziger
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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QUINETTE BLACKMAN,

Plaintiff,

-against-

NEW YORK CITY TRANSIT AUTHORITY,
MANHATTAN AND BRONX SURFACE
TRANSIT OPERATING AUTHORITY, "JOHN
DOE", THE CITY OF NEW YORK, THE NEW
YORK CITY POLICE DEPARTMENT and
"JAMES ROE", and MONICA GARCIA,

Defendants.
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DECISION AND ORDER

Present: HON. MITCHELL J. DANZIGER

Index No. 302324/2010

Recitation, as required by CPLR 2219 (a), of the papers considered in the review of the motions as indicated below:

Papers	Numbered
Notice of Motion and Affidavits Annexed	1
Opposition	2
Opposition	3

The plaintiff, Quinette Blackman, commenced this action to recover damages she allegedly sustained as a result of a motor vehicle collision that occurred on December 1, 2009, near the intersection of Fordham Road and Southern Boulevard in Bronx, New York. In her amended complaint, the plaintiff alleges that she was a passenger on a New York City Transit Authority ("NYCTA") bus when it collided with a car owned by defendants The City of New York and the New York City Police Department (the "NYC defendants"). The plaintiff further alleges that defendant Monica Garcia also negligently operated her vehicle, and that NYCTA, Garcia, and the NYC defendants were the sole proximate cause of the collision.

Defendant Garcia now moves for summary judgment dismissing the complaint and cross-claims as asserted against her. Garcia argues that she was “stopped/or slowed down” because of an emergency created by the NYC defendants, and the NYCTA bus struck the rear of her vehicle; thus, she is entitled to summary judgment. In support of her motion, Garcia submits, *inter alia*, the pleadings, the transcript of her examination before trial, the transcript of the plaintiff’s testimony pursuant to General Municipal Law § 50-h (“50-h hearing”), and the transcript of the examination before trial of a NYCTA bus operator. The plaintiff opposes the motion, arguing that Garcia changed lanes suddenly when it was unsafe to do so, which caused the NYCTA bus to strike the rear of Garcia’s car. Additionally, the plaintiff requests that the Court grant summary judgment in her favor on the issue of liability inasmuch as she was an innocent passenger. The NYC defendants also oppose the motion, contending that there are issues of fact to preclude summary judgment in favor of Garcia. The NYC defendants further contend that the plaintiff has failed to establish that her conduct did not contribute to the injuries she sustained.

At her examination before trial, Garcia testified that on December 1, 2009, at approximately 11:00 a.m., while she was operating a vehicle owned by her husband, she was involved in a collision with a bus. Garcia did not possess a drivers license or a driving permit at the time; however, she had permission from her husband to drive the vehicle. Garcia was traveling on Fordham Road, which consisted of three lanes in each direction separated by a grassy median. When Garcia was near the intersection of Fordham Road and the Bronx River Parkway, she stopped in the middle lane to allow a NYPD vehicle, which was traveling in the opposite direction, to make a U-turn in the roadway. Garcia observed the NYPD vehicle when it started crossing over the median with its sirens and lights turned on. Garcia testified that traffic was “light” and that she did not stop suddenly

or switch lanes at any point. She was stopped for approximately three seconds before the bus struck the rear of her vehicle.

At her 50-h hearing, the plaintiff testified that she was a passenger on a NYCTA bus when it struck a vehicle. The plaintiff was seated toward the rear of the bus with other passengers when she “heard a crash and a boom, and then . . . flew up and back,” causing her to be injured.

At his examination before trial, David Lindo testified that he had been employed by NYCTA as a bus operator since June 1999. On December 1, 2009, he was operating a NYCTA bus in the Bronx, and was involved in an accident with one other vehicle. Lindo was traveling westbound on Fordham Road, which consisted of two lanes and one additional right turning lane that led to the Bronx River Parkway. When Lindo approached the Bronx River Parkway underpass, he observed four or five police vehicles in the right westbound lane with lights turned on. Because the right lane was blocked by police activity, Lindo moved into the left lane, traveling less than 10 miles per hour. Garcia’s vehicle, which was “going pretty slow,” was in front of Lindo’s bus in the westbound left lane. Shortly after entering the left lane and after passing the police activity, Lindo returned to the right lane. Approximately three seconds after re-entering the right lane, a police vehicle that was traveling eastbound on Fordham Road attempted to cross over the median to enter the westbound lane, and Garcia’s vehicle “swerved” into the right lane in front of the bus. Despite braking and turning his steering wheel to the right, the bus collided with the rear of Garcia’s vehicle. Garcia’s vehicle was moving slightly when the impact occurred, and the bus was traveling approximately three miles per hour. According to Lindo, the police vehicle did not enter the roadway before the accident occurred.

It is well established that the proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law by tendering evidence

in admissible form sufficient to eliminate any material issues of fact from the case (*see Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]). The movant has the initial burden of proving entitlement to summary judgment, and failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]). Once such proof has been offered, the burden then shifts to the opposing party who must proffer evidence in admissible form and must show facts sufficient to require a trial of any issue of fact to defeat the motion for summary judgment (CPLR 3212 [b]; *Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]; *Zuckerman v City of New York*, 49 NY2d 557 [1980]).

Pursuant to Vehicle and Traffic Law § 1129 (a), when a driver of a motor vehicle approaches another automobile from the rear, he or she is bound to maintain a safe rate of speed, to keep control over his or her vehicle, and to exercise reasonable care to avoid colliding with the other vehicle (*see Vehicle and Traffic Law § 1129 [a]*; *Gibson v Levine*, 95 AD3d 1071 [2d Dept 2012]; *Zweeres v Materi*, 94 AD3d 1111 [2d Dept 2012]; *Guzman v Schiavone Constr. Co.*, 4 AD3d 150 [1st Dept 2004]). Thus, a rear-end collision with a stopped or stopping vehicle creates a prima facie case of liability regarding the operator of the moving vehicle and imposes a duty of explanation on the operator of the moving vehicle to excuse the collision by providing a non-negligent explanation, such as a mechanical failure, a sudden stop of the vehicle ahead, an unavoidable skidding on wet pavement or some other reasonable excuse (*see Baez-Pena v MM Truck & Body Repair, Inc.*, 151 AD3d 473 [1st Dept 2017]; *Fajardo v City of New York*, 95 AD3d 820 [2d Dept 2012]; *Ortiz v Hub Truck Rental Corp.*, 82 AD3d 725 [2d Dept 2011]).

In her motion, Garcia argues that she was struck in the rear by the NYCTA bus during an emergency created by the NYPD vehicle; thus, she is entitled to summary

judgment as a matter of law. The emergency doctrine recognizes that “when an actor is faced with a sudden and unexpected circumstance which leaves little or no time for thought, deliberation or consideration, or causes the actor to be reasonably so disturbed that the actor must make a speedy decision without weighing alternative courses of conduct, the actor may not be negligent if the actions taken are reasonable and prudent in the emergency context,” provided the actor had not created the emergency (*Maisonet v Roman*, 139 AD3d 121, 123 [1st Dept 2016]).

Here, Garcia demonstrated that her vehicle was struck in the rear by the NYCTA bus while she was stopped or stopping. Both Garcia and the bus operator testified that her vehicle was struck in the rear. Nevertheless, Garcia has failed to conclusively establish that she was not at fault in the happening of the accident, and there is an issue of fact whether the emergency doctrine is applicable to absolve Garcia of liability (*see Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]; *Zuckerman v City of New York*, 49 NY2d 557 [1980]; *Maisonet v Roman*, 139 AD3d 121, 123 [1st Dept 2016]; *Maniscalco v New York City Tr. Auth.*, 95 AD3d 510, 511 [1st Dept 2012]). In the deposition testimony of the bus operator, which Garcia submitted in support of her motion, the bus operator testified that the police vehicle had not entered the roadway when the collision occurred, and that Garcia swerved her vehicle in front of the bus (*see Barba v Stewart*, 137 AD3d 704 [1st Dept 2016]; *Pyke v Bachan*, 123 AD3d 994 [2d Dept 2014]). As a result, the bus struck the rear of Garcia’s vehicle. Inasmuch as Garcia has failed to meet her burden as the proponent of the summary judgment motion, the Court need not consider the sufficiency of the papers in opposition to the motion (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]). Accordingly, Garcia’s motion is denied.

Without making her own motion for summary judgment, the plaintiff requests that the Court, upon its authority to search the record, grant her summary judgment on the

issue of liability (*see* CPLR 3212 [b]; *Barca v City of New York*, 13 Misc3d 464, 466 [Sup Ct, Bronx County 2006]). It is well established that a plaintiff's right to summary judgment on the issue of liability as an innocent passenger is not barred or restricted by any potential issue of comparative fault as between the owners and operators of the two vehicles involved in the accident (*see Delgado v Martinez Family Auto*, 113 AD3d 426 [1st Dept 2014]; *Petty v Dumont*, 77 AD3d 466, 467 [1st Dept 2010]).

Here, although the plaintiff did not move for summary judgment, upon searching the record, the Court finds that she is entitled to judgment as a matter of law on the issue of liability (*see Oluwatayo v Dulinayan*, 142 AD3d 113 [1st Dept 2016]). The record establishes that the plaintiff was a passenger on the NYCTA bus, and was seated when the accident occurred (*Garcia v Tri-County Ambulette Serv.*, 282 AD2d 206, 207 [1st Dept 2001]). Accordingly, the Court grants the plaintiff partial summary judgment.

Accordingly, it is

ORDERED that defendant Monica Garcia's motion for summary judgment dismissing the complaint is denied; and it is further

ORDERED that summary judgment is granted to the plaintiff on the issue of liability.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

Dated: 3/26, 2018



HON. MITCHELL J. DANZIGER, J.S.C.