

Bell v Angah
2018 NY Slip Op 30962(U)
May 16, 2018
Supreme Court, New York County
Docket Number: 151981/2015
Judge: Adam Silvera
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**SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY
PRESENT: Hon. Adam Silvera**

Part 22

_____X

JEFFREY BELL

DECISION/ORDER

Plaintiff,

-against-

**INDEX NO. 151981/2015
MOTION SEQ NO 004**

**KWANDO ANGAH and PATRICK
A. MENSA,**

Defendants,

_____X

ADAM SILVERA, J. :

Upon the foregoing papers, it is ordered that plaintiff’s motion to renew and for summary judgment is granted for the reasons set forth below. Plaintiff Jeffery Bell moves for leave, pursuant to CPLR § 2221(e), to renew his prior motion for summary judgment on the issue of liability, pursuant to CPLR 3212, for summary judgment on the issue of serious injury pursuant to Insurance Law § 5102(d), and to direct a trial on the issue of damages only is granted. Defendants oppose the motion.

BACKGROUND

The matter at hand involves an accident that occurred on July 8, 2013, at the intersection of 1st Avenue at or near its intersection with East 11th Street in the County, City, and State of New York, when plaintiff was allegedly lawfully traveling in a designated bicycle lane, with a yield sign in his favor, when a vehicle owned by defendant Patrick A. Mensa and operated by defendant Kwadwo Angah, attempted to make a left turn and, in the process, crossed over the

bicycle lane, which caused plaintiff to brake sharply and be propelled over his handlebars. As a result of this accident, plaintiff alleges he was seriously injured.

Plaintiff's prior motion for summary judgment on the issue of liability was denied by Justice Leticia M. Ramirez by order dated October 12, 2016, which stated that an issue of fact existed as to "whether the plaintiff was traveling so fast on his bicycle that he had no time to stop" (Plaintiff's Mot., Exh A). Subsequently, Justice Paul A. Goetz by so ordered stipulation dated December 15, 2017, precluded defendants from testifying at trial, responding with affidavits on motions, and granted plaintiff leave to file a motion to renew his prior motion for summary judgment "based upon the above new facts" (Plaintiff's Mot., Exh B).

DISCUSSION

A motion to renew may be brought where subsequent circumstances have developed warranting reconsideration (*Sayer v Sayer*, 130 AD2d 407, 420 [1st Dep't 1987] [finding that "new facts arising subsequent to the original motion ... constituted some further justification for a reconsideration by the court"]). Here, because defendants were precluded from testifying at trial and responding with affidavits on motions, new circumstances have developed warranting reconsideration. Thus, the branch of plaintiff's motion to renew is granted.

The branch of plaintiff's motion for summary judgment as to liability is granted in part. Plaintiff's motion has made out a prima facie case of negligence, and the burden shifts to defendants to raise a triable issue of fact. (*See Winegrad v New York University Medical Center*, 64 NY2d 851, 853 [1985]; *see also Zuckerman v City of New York*, 49 NY2d 557, 560 [1980]). Under New York City Traffic Rules §4-12(p)(2) and §4-08(e)(9) motor vehicles are prohibited from stopping in, driving on, or across bicycle lanes. Further, under VTL § 1442(b) "the driver of a vehicle approaching a yield sign shall in obedience to such sign slow down to a speed

reasonable for existing conditions, or shall stop if necessary ... and shall yield the right of way to any ... vehicle.” “An operator who has the right of way is entitled to anticipate that other vehicles will obey the traffic laws that require them to yield” (*Perez v Brux Cab Corp.*, 251 AD2d 157, 159 [1st Dep’t 1998]).

The Court of Appeals has held that a plaintiff is entitled to partial summary judgment on the issue of a defendant’s liability even if a defendant raises an issue of fact regarding plaintiff’s comparative negligence (*Rodriguez v City of New York*, —NE3d —, 2018 NY Slip Op 02287 [2018]). The issue of a plaintiff’s comparative negligence is addressed and determined only when considering the damages that a defendant owes to a plaintiff (*id.* at 3). Thus, plaintiff’s motion for summary judgment is appropriate regardless of plaintiff’s potential comparative negligence.

Here, plaintiff provides his affidavit and affirms that defendant driver suddenly cut in front of plaintiff and stopped in the bicycle lane. Defendants opposition mistakenly hinges their argument on the issue of comparative negligence, which is not sufficient to defeat a motion for summary judgment. Thus, defendants have failed to raise a triable issue of fact and plaintiff’s motion for summary judgment is granted as to defendants’ liability; however, plaintiff’s comparative fault is not decided herein and will remain open for the jury to determine at trial.

Finally, the branch of plaintiff’s motion for summary judgment in plaintiff’s favor on the issue of serious injury pursuant to Insurance Law § 5102(d), and to direct a trial on the issue of damages only is granted. While summary judgment is rarely granted in negligence actions, it is granted when there is no conflict at all in the evidence. *See Ugarriza v Schmieder*, 46 NY2d 471, 475-476 (1979). Under Insurance Law § 5102(d), a fracture constitutes a serious injury (*See also Baez v Boyd*, 90 AD3d 524, 525 [1st Dep’t 2011] [finding that the fracture of a heel bone

constituted a serious injury under the statute]; *Joyce v Lacerra*, 41 AD3d 236, 238 [1st Dep't 2007] [finding that a fracture of the plaintiff's knee as a result of the accident is, by itself, sufficient to establish a serious injury under the Insurance Law] [internal citation omitted]). Here, both plaintiff and defendants refer to the affirmed report of defendants' medical expert Dr. Rikki Lane, M.D. The doctor's report states that, while claims of "injury to the right hand and wrist due this mvc are not supported at all upon review of the medical record," plaintiff's left elbow does have an "acute minor fracture to the left radial head," that was a result of the accident (Plaintiff's Mot., Exh J). Both sides offer Dr. Rikki Lane, M.D.'s affidavit, thus, there is no issue of fact as to the plaintiff's fracture and a serious injury exists. The branch of plaintiff's motion for summary judgment on the issue of serious injury in plaintiff's favor is granted.

Accordingly, it is

ORDERED that the branch of plaintiff's motion for leave to renew its prior motion for summary judgment on the issue of liability is granted; and it is further

ORDERED that, upon renewal, the Court vacates its prior Order by Justice Leticia M. Ramirez, dated October 16, 2016, and grants plaintiff's motion for summary judgment in all respects except for the issue of plaintiff's comparative negligence; and it is further

ORDERED that the branch of plaintiff's motion for summary judgment is granted only as to the issue of liability as against defendants Kwadwo Angah and Patrick A. Mensa; and it is further

ORDERED that the branch of plaintiff's motion for summary judgment on the issue of serious injury in favor of plaintiff is granted; and it is further

ORDERED that an immediate trial be held as to plaintiff's comparative negligence and the amount of damages to which plaintiff is entitled; and it is further


ORDERED that plaintiff shall, within 30 days from entry of this order, serve a copy of this order with notice of entry upon defendants and upon the Clerk of the Trial Support Office (Room 158) and shall serve and file with said Clerk a note of issue and statement of readiness and shall pay the fee therefor, and said Clerk shall cause the matter to be placed upon the calendar for such trial.

This constitutes the Decision/Order of the Court.

Dated:

5/16/18

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HON. ADAM SILVERA
J.S.C.