SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: I.A.S. PART 14

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DARIO SANTANA,

Plaintiff,

- against -

URBAN HEALTH PLAN, INC. and MATTHEW A. PINA,

Defendants.

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DECISION AND ORDER

Index No. 31372/2017E

John R. Higgitt, J.

Upon plaintiff's April 17, 2018 notice of motion and the affirmation, affidavit and exhibits submitted in support thereof; defendants' August 7, 2018 affirmation in opposition and the exhibits submitted therewith; plaintiff's August 7, 2018 affirmation in reply; and due deliberation; plaintiff's motion for partial summary judgment on the issue of defendants' liability and for dismissal of defendants' affirmative defenses premised upon plaintiff's comparative negligence, contributory negligence and culpable conduct is granted.

Plaintiff moves for partial summary judgment on the issue of defendants' liability for causing the subject motor vehicle accident. In support of the motion, plaintiff submits an affidavit in which he avers that the vehicle in which he was a passenger was stopped in the roadway when struck from behind by defendants' vehicle. He avers that the weather, visibility and roadway conditions were clear and dry, and the vehicle in which he was a passenger was operated "in a normal and reasonable manner" at the time of the accident.

"A rear-end collision with a stationary vehicle creates a prima facie case of negligence requiring a judgment in favor of the stationary vehicle unless defendant proffers a nonnegligent explanation for the failure to maintain a safe distance . . . A driver is expected to drive at a sufficiently safe speed and to maintain enough distance between himself [or herself] and cars

ahead of him [or her] so as to avoid collisions with stopped vehicles, taking into account weather and road conditions" (*LaMasa v Bachman*, 56 AD3d 340, 340 [1st Dept 2008]). The happening of a rear-end collision is itself a prima facie case of negligence on the part of the rearmost driver in a chain confronted with a stopped or stopping vehicle (*see Cabrera v Rodriguez*, 72 AD3d 553 [1st Dept 2010]).

The general rule regarding liability for rear-end accidents "has been applied when the front vehicle stops suddenly in slow-moving traffic; even if the sudden stop is repetitive; when the front vehicle, although in stop-and-go traffic, stopped while crossing an intersection; and when the front car stopped after having changed lanes" (*Johnson v Phillips*, 261 AD2d 269, 271 [1st Dept 1999]). The sudden stop of the lead vehicle, without more (*see Cabrera*, *supra*), "is generally insufficient to rebut the presumption of non-negligence on the part of the lead vehicle" (*Woodley v Ramirez*, 25 AD3d 451, 452 [1st Dept 2006] [citations omitted]).

Even though the statements in the accident report were not in admissible form, plaintiff's unrefuted affidavit was sufficient to meet his prima facie burden (*see Santana v Danco Inc.*, 115 AD3d 560 [1st Dept 2014]). Defendants failed to rebut the presumption of their negligence (*see Dattilo v Best Transp. Inc.*, 79 AD3d 432 [1st Dept 2010]).

Defendants argue the motion is procedurally defective for plaintiff's failure to append all pleadings, as he did not submit his bill(s) of particulars. A bill of particulars, however, is not a pleading but an amplification of one, and its omission does not require denial of the motion (*see Osgood v KDM Dev. Corp.*, 92 AD3d 1222 [4th Dept 2012]; *D'Auria v Kent*, 80 AD3d 956 [3rd Dept 2011]).

Defendants next argue that it cannot be discerned from the motion papers which affirmative defenses plaintiff seeks to have dismissed. The foregoing proof established plaintiff's

freedom from negligence (*see Perez v Steckler*, 157 AD3d 445 [1st Dept 2018]) and defendants failed to raise a triable issue of fact. Plaintiff is thus entitled to dismissal of any affirmative defense alleging plaintiff's comparative negligence – here, the first and eighth affirmative defenses.

Defendants finally argue that an immediate trial on damages is premature, regardless of the disposition of the motion. Given the issues remaining in the action, including the issue of "serious injury," the court agrees.

Accordingly, it is

ORDERED, that plaintiff's motion for partial summary judgment on the issue of defendants' liability for causing the subject motor vehicle accident and for dismissal of defendants' affirmative defenses premised upon plaintiff's comparative negligence, contributory negligence and culpable conduct is granted; and it is further

ORDERED, that defendants' first and eighth affirmative defenses are dismissed; and it is further

ORDERED, that the motion is otherwise denied.

This constitutes the decision and order of the court.

Dated: September 5, 2018

John R. Higgitt, A.J.S.C.