Nimako v Mohan
2018 NY Slip Op 34509(U)
November 27, 2018
Supreme Court, Bronx County
Docket Number: Index No. 29088/2017E
Judge: John R. Higgitt

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

----------X

KOFI NIMAKO and REGINA KONADU,

Plaintiffs,

- against -

HEMANT KUMAR MOHAN,

Defendant.

----------X

DECISION AND ORDER

Index No. 29088/2017E

John R. Higgitt, J.

This is a negligence action to recover damages for personal injuries plaintiffs sustained in a motor vehicle accident that occurred on June 12, 2016. Plaintiffs seek partial summary judgment on the issues of defendant's liability and plaintiffs' freedom from comparative fault. For the reasons that follow, plaintiffs' motion is granted in part.

"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 against the rearmost driver in a chain confronted with a stopped or stopping vehicle (*see Cabrera v Rodriguez*, 72 AD3d 553 [1st Dept 2010]). Moreover, Vehicle and Traffic Law § 1129(a) states that a "driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway" (*see Darmento v Pacific Molasses Co.,* 81 NY2d 985, 988 [1993]).

Plaintiffs satisfied their prima facie burden of establishing their entitlement to judgment as a matter of law on the issues of liability and comparative fault. Their respective affidavits in support of

their motion establish that they were involved in a hit-in-the-rear accident: their vehicle, which was being operated by plaintiff Nimako, was stopped at a red light when, without warning, it was struck in the rear by the vehicle driven by defendant.

In opposition, defendant raised triable issues of fact as to both his liability and plaintiff Nimako's comparative fault. In his affidavit, defendant averred that he had turned from Carpenter Avenue onto East 222nd Street when he encountered plaintiffs' vehicle, which was double-parked without its hazard lights or stop lights activated. Defendant further averred that, upon observing plaintiffs' vehicle, he hit the brakes of his vehicle, but did not have sufficient time to avoid striking the rear of plaintiffs' vehicle. Defendant's affidavit raises triable issues of fact as to whether plaintiffs' vehicle was double parked and, if it was, whether the double-parking violation was a proximate cause of plaintiffs' injuries (*see Pickett v Verizon New York Inc.*, 129 AD3d 641 [1st Dept 2015]; *cf. Barry v Pepsi-Cola Bottling Co. of New York, Inc.*, 130 AD3d 500 [1st Dept 2015]). In this connection, the court notes the observation of the First Department in *White v Diaz*, 49 AD3d 134, 139 (2008), which also involved a double-parked vehicle: "Ordinarily, issues of proximate cause are fact questions to be decided by a jury (*Derdiarian v Felix Contr. Corp.*, 51 NY2d 308, 315 [1980]). While it is appropriate to decide the question of legal cause as a matter of law 'where only one conclusion may be drawn from the established facts' (*id.*), where there is any doubt, confusion, or difficulty in deciding whether the issue ought to be decided as a matter of law, the better course is to leave the point for the jury to decide" (*see also DeAngelis v Kirschner*, 171 AD2d 593, 595 [1st Dept 1991] ["The facts in each negligence action will determine whether a double-parking violation was [a] proximate cause of [an] injury"] [internal quotation marks and asterisks omitted]).

Plaintiff Konadu, an "innocent passenger" in plaintiffs' vehicle, is entitled to summary judgment dismissing defendant's affirmative defense of comparative as asserted against her.

Accordingly, it is

ORDERED, that the aspect of plaintiffs' motion for partial summary judgment on the issue of plaintiff Konadu's freedom from comparative fault is granted; it is further

ORDERED, that defendant's first affirmative defense of culpable conduct is dismissed as to plaintiff Konadu only; and its further

ORDERED, that plaintiffs' motion is otherwise denied.

This constitutes the decision and order of the court.

Dated: November 27, 2018

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