

Diaz v Seniorcare Emergency Med. Servs., Inc.

2018 NY Slip Op 34525(U)

October 26, 2018

Supreme Court, Bronx County

Docket Number: Index No. 25256/2018E

Judge: John R. Higgitt

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: **PART 14**

-----X
DIAZ, ROSA

2018
Index No. **25256/1815E**

- against -

Hon. **JOHN R. HIGGITT**,

SENIORCARE EMERGENCY MEDICAL, et ano.
-----X

A.J.S.C.

The following papers numbered 7 to 14 and 22 in the NYSCEF System were read on this motion for **SUMMARY JUDGMENT (LIABILITY)** noticed on **August 21, 2018** and duly submitted as No. **20** on the Motion Calendar of **August 21, 2018**

	NYSCEF Doc. Nos.
Notice of Motion – Exhibits and Affidavits Annexed	7-14
Notice of Cross-Motion – Exhibits and Affidavits Annexed	
Answering Affidavit and Exhibits	
Replying Affidavit and Exhibits	
Stipulations	22

Upon the foregoing papers, plaintiff’s motion for partial summary judgment on the issues of defendants’ liability for causing the subject motor vehicle accident and plaintiff’s freedom from comparative fault is granted, in accordance with the annexed decision and order.

Dated: 10/26/2018

Hon. 
JOHN R. HIGGITT, A.J.S.C.

Check one:

- Case Disposed in Entirety
- Case Still Active

Motion is:

- Granted GIP
- Denied Other

Check if appropriate:

- Schedule Appearance Settle Order
- Fiduciary Appointment Submit Order
- Referee Appointment

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

-----X
ROSA DIAZ,

Plaintiff,

DECISION AND ORDER

- against -

Index No. 25256/2018E

SENIORCARE EMERGENCY MEDICAL SERVICES,
INC. and JOHN GONZALEZ,

Defendants.

-----X

John R. Higgitt, J.

This is a negligence action to recover damages for personal injuries plaintiff allegedly sustained in a motor vehicle accident that occurred on June 5, 2017. Plaintiff had been stopped at a red traffic light in the intersection of Zerega Avenue and Bruckner Boulevard in the Bronx when the vehicle operated by defendant Gonzalez and owned by Seniorcare Emergency Medical Services struck plaintiff’s vehicle in the rear. Plaintiff seeks summary judgment on the issues of defendants’ liability and plaintiff’s freedom from comparative fault. For the reasons that follow, plaintiff’s motion is granted.

“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]).

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]). Based on the plain language of the statute, a violation is clear when a driver follows another too closely without adequate reason and that conduct results in a collision (*id.*).

Plaintiff satisfied her prima facie burden of establishing her entitlement to judgment as a matter of law on the issue of liability (see CPLR 3212[b]). Plaintiff submitted a copy of the pleadings, a verified bill of particulars, a certified police report and an affidavit of merit. Plaintiff’s affidavit of merit sets forth sufficient details as to how the accident occurred, namely that plaintiff’s vehicle was stopped due to a red traffic light at the intersection of Zerega Avenue and Bruckner Boulevard when defendants’ vehicle impacted the rear of her vehicle without warning, causing the plaintiff’s injuries.

Defendants failed to submit timely opposition to plaintiff’s motion for summary judgment (see *Senise v Mackasek*, 174 AD2d 522, 551 [1st Dept 1991]; *Romeo v Ben-Soph Food Corp.*, 146 AD2d 688, 690 [2nd Dept 1989]). Plaintiff’s motion was returnable on September 28, 2017; however, defendants served the opposition on October 1, 2018. Even considering the untimely opposition, defendants failed to rebut the presumption of his negligence (see *Dattilo v Best Transp. Inc.*, 79 AD3d 432 [1st Dept 2010]). The police report submitted by defendants is inadmissible hearsay (see *Silva v Lakins*, 118 AD3d 556 [1st Dept 2014]). Defendant Gonzalez’s affidavit averring that the plaintiff had failed to move forward when the light changed to green and there was no traffic in front on plaintiff’s vehicle, fails to provide a nonnegligent explanation for the accident (see *Torres v Kalmar*, 136 AD3d 457 [1st Dept 2016]) plaintiff’s evidence established that she was free of comparative fault and defendants’ failed to raise a triable issue of fact.

Accordingly, it is

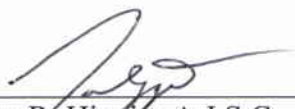
ORDERED, that plaintiff’s motion for partial summary judgment on the issues of defendants’ liability for causing the subject motor vehicle accident and plaintiff’s lack of comparative fault is

granted; and it further

ORDERED that defendants' first affirmative defense is dismissed.

This constitutes the decision and order of the court.

Dated: October 26, 2018



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