

Abid v Corporate Express Inc.
2019 NY Slip Op 30822(U)
March 26, 2019
Supreme Court, Kings County
Docket Number: 507988/2018
Judge: Carolyn E. Wade
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At Part 84 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at Civic Center, Brooklyn, New York on the 26th day of March 2019

PRESENT:
HON. CAROLYN E. WADE,

Justice

-----X

SAMIRA ABID,

Plaintiff,

Index No. 507988/2018

-against-

DECISION and ORDER

CORPORATE EXPRESS INC. and ANCIL RICHARDSON, JR.

Defendants.

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Recitation, as required by CPLR §2219(a), of the papers considered in the review of Defendants' Motion:

<u>Papers</u>	<u>Numbered</u>
Order to Show Cause/Notice of Motion and Affidavits/Affirmations Annexed.....	1 _____
Cross-Motion and Affidavits/Affirmations.....	_____
Answering Affidavits/Affirmations.....	2 _____
Reply Affidavits/Affirmations.....	3 _____
Memorandum of Law.....	_____

Upon the foregoing cited papers, and after oral argument, plaintiff SAMIRA ABID moves for an Order granting her summary judgment on liability against defendants CORPORATE EXPRESS INC. and ANCIL RICHARDSON, JR.

The underlying action was commenced by plaintiff SAMIRA ABID (“Plaintiff”), who alleges that she was injured on January 12, 2018, by a bus owned by defendant CORPORATE EXPRESS INC. and operated by defendant ANCIL RICHARDSON, JR. (“Richardson”) (collectively “Defendants”). At the time of the accident, Plaintiff was crossing the street on East 42nd Street in New York County.

In support of the instant motion, Plaintiff, by affidavit, avers that on the day of the accident, she walked to the intersection of East 42nd Street and 3rd Avenue, New York, NY. Plaintiff states that before she crossed the street she saw that the pedestrian-control signal was green, and that the vehicles were stopped on East 42nd Street for a red light. As she was in the crosswalk, she “observed a large bus on Third Avenue travelling [sic] toward [her] approaching the intersection while its turn signal indicat[ed] that it intended to make a left turn from Third Avenue onto 42nd Street.” Plaintiff further recounts:

When I was approximately half way past the second lane of East 42nd Street, I looked to my left and I observed the bus suddenly speed up and proceeded to approach me very quickly from my left. I attempted to move away from the vehicle to avoid getting hit. However, this happened in a split second and I was unable to avoid being hit. I was struck by the driver’s side front of the vehicle on the left side of my body.

Plaintiff submits a copy of the certified police report to buttress her contention that Defendants are solely liable for the accident. The accident description reads as follows:

OPERATOR OF VEHICLE 1 STATES HE WAS TURNING FROM NORTH BOUND 3 AVENUE ON TO W/B EAST 42 STREET BEHIND A LARGE TRUCK WHEN THE TRUCK WAS OBSTRUCTING HIS VIEW OF THE PEDESTRIAN IN THE CROSS WALK AND HE DID STRIKE THE PEDESTRIAN WITH HIS SIDE VIEW MIRROR. PEDESTRIAN STATES SHE WAS ATTEMPTING TO CROSS EAST 42 STREET ON S/B 3 AVENUE WITH THE LIGHT WHEN THE BUS DID CONTINUE THROUGH THE CROSSWALK STRIKING HER LEFT SIDE. PO DID NOT OBSERVE. PEDESTRIAN REMOVED TO NYU MEDICAL CENTER.

In opposition, Defendants submit an affidavit from Richardson, who operated the bus owned by CORPORATE EXPRESS INC. Contrary to the police report, Richardson avers that the large truck in front of him was not obstructing his view. He also states that Plaintiff was rushing across the crosswalk on 42nd Street, while the pedestrian-control light was flashing an upraised hand. Richardson alleges that he slowed down his bus to make a turn when Plaintiff collided into him. Richardson asserts that “this accident was caused wholly or in part by Plaintiff [emphasis added] rushing into the sidewalk, without looking to see if the roadway was clear, or otherwise failing to comply with the upraised hand signal [...]”

Plaintiff, in rebuttal, submits an affidavit from Irwin Blye (“Blye”), a private investigator, hired by his counsel to obtain a recorded statement from Richardson regarding the accident. The affidavit is accompanied by a transcript of Richardson’s responses to Blye’s questions on January 15, 2018 (Exhibit “A” of Plaintiff’s reply). Consistent with the police report, the transcript documents that Richardson conceded that prior to the accident, his front view was obstructed by a large truck. Thus, Plaintiff maintains that he is entitled to summary judgment on liability. However, in the event, that the court finds that there is a question as to Plaintiff’s comparative negligence, she argues that she would be entitled to partial summary judgment on liability.

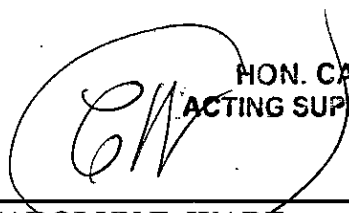
“A plaintiff in a negligence action moving for summary judgment on the issue of liability must establish, prima facie, that the defendant breached a duty owed to the plaintiff and that defendant’s negligence was a proximate cause of the alleged injuries” (*Tsyganash v. Auto Mall Fleet Mgt., Inc.*, 163 AD3d 1033 [2d Dept. 2018]). Significantly, the New York Court of Appeals in *Rodriguez v. City of New York*, 31 NY3d 312 [2018], recently held that to be entitled to partial summary judgment, “a plaintiff does not bear the double burden of establishing a prima facie case of the defendant’s liability and the absence of his or her own comparative fault” *Id.* at 324-325. In other words, a plaintiff can make a prima facie case without showing that he/she was not comparatively negligent.

In the instant case, the court notes that Richardson acknowledges that prior to the accident, he observed Plaintiff rushing in the crosswalk, allegedly walking against the pedestrian-controlled light. Moreover, the certified copy of the police report, as well as the transcript of Richardson’s recorded statements by the private investigator, document his admission that his view was obstructed by a large bus. As a result, this Court finds that Plaintiff established her

prima facie case to partial summary judgment as a matter of law. However, a triable issue of material fact remains as to whether Plaintiff was comparatively negligent.

Accordingly, based upon the above, Plaintiff's Motion for Summary Judgment is partially granted as to Defendants' liability. A triable issue of material fact exists as to whether Plaintiff was comparatively negligent.

This constitutes the Decision/Order of the Court.



HON. CAROLYN E. WADE
ACTING SUPREME COURT JUSTICE

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ACTING SUPREME COURT JUSTICE

KINGS COUNTY CLERK
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