

Acosta v Missale

2019 NY Slip Op 32499(U)

July 30, 2019

Supreme Court, Dutchess County

Docket Number: 2016-50437

Judge: Hal B. Greenwald

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SUPREME COURT- STATE OF NEW YORK
DUTCHESS COUNTY

Present:

Hon. HAL B. GREENWALD

Justice.

SUPREME COURT: DUTCHESS COUNTY

RALPH L. ACOSTA,

Plaintiff,

-against-

STEVEN J. MISSALE,

Defendant.

DECISION AND ORDER
AFTER TRIAL
Index No. 2016-50437

The following papers were considered by the Court in deciding Plaintiffs complaint against Defendant.

PLAINTIFF’S COMPLAINT AGAINST DEFENDANT

DEFENDANTS VERIFIED ANSWER

TRIAL TRANSCRIPT

RELEVANT BACKGROUND

On November 23, 2015 at approximately 3:50 AM an automobile accident occurred involving Plaintiff Ralph Acosta and Defendant Steven Missale. (See, Trial Transcript p. 6:24-7:1). The accident took place at an intersection of the 184 7A ramp and the northbound lane of New York State Route 300. (See, *id.* at p. 7:3-13). Plaintiff testifies that he was driving the route he has driven every day to work for the past three (3) years, was not in a rush, and was not using his cellphone. (See, *id.* at p. 8:11-13, p. 11:20-23, p. 14:4-9). There was no precipitation, the roads were dry, and there were no visual problems that morning. (See, *id.* p. 12:10-23). Plaintiff also testifies that he approached a red light at the intersection of 184 7A ramp and route 300 with no one in front of him and stopped for approximately twenty (20) seconds. (See, *id.* p. 18:4-11). When the light turned green plaintiff states that he did not look to either direction of the intersection, put his car into first gear, tapped the gas, and moved forward about twenty (20) feet. (See, *id.* p. 18:21-24, p. 19:20-25, p. 67: 1-3). He saw headlights through his driver side window and was hit by the respondent.

Plaintiff’s testimony is refuted by Defendant in both his deposition and testimony. He states that he was going approximately forty (40) to forty-five (45) miles per hour towards the intersection and reduced his speed when he observed Plaintiffs vehicle coming off of the ramp.

(*See, id.* p. 75:6-25). He goes on to state that he observed a green light for his direction and shifted his focus to a pickup truck on the other side of the road. (*See, id.* p. 78:6-12). He again looked and observed the Plaintiffs vehicle on the ramp within fifty (50) to one hundred (100) feet of the intersection and estimated his speed to be about thirty-five (35) to forty (40) miles per hour. (*See, id.* p. 81:5-12). Defendant states that he did not observe a turn signal and estimated the car to be slowing. (*See, id.* p. 81:17-24). He goes on to state in his deposition that after making this observation that he looked at the traffic light and once again confirmed that it was green. (*See, id.* p. 82:7-9). Defendant then looked back over at the pickup truck and noted it slowing down. (*See, id.* p. 82:11-14). Defendant states in his deposition that he then began accelerating through the intersection and could still see that the light was green. (*See, id.* p. 82:22-83:16). The collision between the Plaintiff and Defendant then occurred in the intersection.

Eckert Phillips is a witness to the accident and testifies that he was driving a pickup truck on the southbound side of route 300 at the time of the accident. (*See, id.* p. 34:14-15). Mr. Phillip's testimony states that he noticed Plaintiffs car going too fast on the ramp approximately fifty (50) yards ahead of him. (*See, id.* p. 35:12-14, 22-24). He explains that even though he had a green light he stopped because he thought Plaintiff would hit his vehicle. (*See, id.* p. 35:24- 36:4). Mr. Phillips also asserts that Plaintiff never stopped on the ramp before the accident and estimates his speed coming down the ramp to be about thirty-five (35) to forty-five (45) miles per hour. (*See, id.* p. 38:1-3, 11-14).

Plaintiff initiated this suit on March 1, 2016 claiming that the Defendant acted with negligence, failed to operate his vehicle in a reasonably safe manner, failed to yield the right-of-way, caused a major motor vehicle accident with the Plaintiff, and that as a result of Defendant's negligence the Plaintiff suffered serious injuries as that term is defined in the New York State Insurance Law. (*See, Plaintiffs Complaint against Defendant*).

Defendant filed his verified answer on July 7, 2016. Defendant denies Plaintiff's allegations and asserts that the Plaintiffs negligence in the operation of a motor vehicle, failure to obey traffic laws, and failure to observe what was to be seen caused or contributed to the happening of the accident. Defendant requests judgment dismissing the complaint, or that the relative culpability of each person causing or contributing to the total liability be determined and that any liability of the defendant be limited according to CPLR, Article 14. (*See, Defendant's Verified Answer*).

DISCUSSION

Plaintiff argues that Defendant acted negligently, failed to yield the right-of-way, and caused a major motor accident. Specifically, Plaintiff alleges that Defendant did not stop at a red light in violation of Vehicle and Traffic Law § 1110 and failed to yield the right-of-way to the Plaintiff. (Vehicle and Traffic Law § 1110 (Consol., Lexis Advance through 2019 released Chapters 1-34, 50-59)). Defendant contends that Plaintiffs own negligence in the operation of a motor vehicle caused or contributed to the accident. Accordingly, Defendant argues that because of the Plaintiffs culpable conduct the Complaint should be dismissed, or that liability on the part of the defendant should be limited according to CPLR Article 14. (CPLR § 1402 (Consol., Lexis Advance through 2019 released Chapters 1-34, 50-59)).

Both Plaintiff and Defendant offer credible testimony stating that each of their directions of the intersection had a green light as they drove through. However, the testimony of the dispassionate witness Eckert Phillips offers clarity to the events of the incident. Phillips supports Defendant's assertion that the north and southbound direction of Route 300 had a greenlight at the time of the accident. (*See*, Trial Transcript p. 36:10-12). Philips also testifies that he watched the Plaintiff drive too fast down the ramp, through a red light without stopping, and into the intersection where the accident then occurred. (*See, id.* at p. 35:21-25, p. 37:3-8, p. 38:1-3, p. 38:20-23). When a driver causes an accident by driving through a red light and fails to yield the right-of-way they are negligent as a matter of law. (*See, Sheehan v Marshall*, 9 A.D.3d 403 [2d Dep't. 2004]). Additionally, a driver who has the right-of-way is entitled to anticipate that another driver will obey the traffic laws which require him to yield. (*See, Jacino v Sugerman*, 10 A.D.3d 593 [2d Dep't. 2004]). Defendant was allowed to drive through the intersection because he had the right-of-way even though he observed the Plaintiff going faster than he should.

According to CPLR § 1412, culpable conduct "shall be an affirmative defense to be pleaded and proved by the party asserting the defense." (CPLR § 1412 (Consol., Lexis Advance through 2019 released Chapters 1-34, 50-59). Through the testimony of Eckert Phillips, his own deposition, and his own testimony, Defendant has proven that Plaintiffs negligent operation of his vehicle caused the happening of the accident.

As such, it is hereby

ORDERED that Plaintiff s Complaint is dismissed

The foregoing constitutes the decision and order of this court

Dated: July 30, 2019
Poughkeepsie, New York

ENTER:



HON. HAL B. GREENWALD, J.S.C.

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Pursuant to CPLR Section 5513, an appeal as of right must be taken within thirty days after service by a party upon the appellant of a copy of the judgment or order appealed from and written notice

of its entry, except that when the appellant has served a copy of the judgment or order and written notice of entry, the appeal must be taken within thirty days thereof.

Counsel are directed to pick up their exhibits within thirty (30) days after which those exhibits will be destroyed.