

Perez v Ramnarine

2019 NY Slip Op 32547(U)

July 30, 2019

Supreme Court, Bronx County

Docket Number: 31841/2018E

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: I.A.S. PART 14

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RAYMOND PEREZ,

Plaintiff,

DECISION AND ORDER

- against -

Index No. 31841/2018E

RAZEEKA RAMNARINE and VISHNUE A.
RAMNARINE,

Defendants.

-----X

John R. Higgitt, J.

Upon plaintiff's April 3, 2019 notice of motion and the affirmation, and exhibits submitted in support thereof; defendants' April 23, 2019 affirmation in opposition and the exhibits submitted therewith; plaintiff's April 26, 2019 affirmation in reply; and due deliberation; plaintiff's motion for leave to reargue is granted, and, upon reargument, that aspect of plaintiff's prior motion seeking dismissal of defendants' affirmative defense alleging plaintiff's culpable conduct is granted.

In this personal injury action stemming from a motor vehicle accident, plaintiff moves to reargue the court's March 26, 2019 order. Plaintiff argues that the court overlooked the aspect of plaintiff's prior motion seeking dismissal of defendants' affirmative defense alleging plaintiff's culpable conduct. Upon granting reargument, plaintiff seeks dismissal of said affirmative defense.

A motion seeking reargument is addressed to the court's discretion and may be granted if it is shown that the court overlooked or misapprehended the facts or misapplied any controlling principle of law, or was otherwise mistaken in its earlier decision (*see CPLR 2221; Opton Handler Gottlieb Feiler Landau & Hirsch v Patel*, 203 AD2d 72 [1st Dept 1994]).

Plaintiff correctly argues that the court overlooked that aspect of his prior motion seeking dismissal of defendants' affirmative defense alleging plaintiff's culpable conduct.

Upon reargument, that aspect of plaintiff's prior motion seeking dismissal of defendants' affirmative defense alleging plaintiff's culpable conduct is granted and that defense is dismissed. In support of his prior motion, plaintiff submitted the pleadings, the police accident report and his affidavit.

Plaintiff averred that, at the time of the accident, he observed a walk signal controlling his direction of travel and that after he checked to make sure that there were no oncoming vehicles, he proceeded to cross the street. Also, he averred that as he reached the middle of the intersection defendants' vehicle struck him, causing him to hit defendants' vehicle's windshield. Plaintiff also averred that he noticed defendants' vehicle only one to two seconds before the impact.

A pedestrian crossing the street with the right of way has a duty to see what was there to be seen (*see Quintavalle v Perez*, 139 AD3d 182 [1st Dept 2016]). However, where a pedestrian was crossing the street within the crosswalk with the light in his or her favor, defendants' vehicle struck the pedestrian while making a left turn, and the pedestrian only saw the vehicle few seconds prior to being struck, the pedestrian bears no comparative fault (*see Rozon v Rosario*, 144 AD3d 597 [1st Dept 2016]).

In opposition to plaintiff's prima facie showing of entitlement to judgment as a matter of law dismissing of defendants' affirmative defense, defendants failed to raise a triable issue of fact as to plaintiff's culpable conduct.

Defendant Razeeka Ramnarine's affidavit is not sufficient to raise a triable issue of fact because it conflicts with her admission in the police accident report that she did not see the

plaintiff before striking him (*see Garzon-Victoria v Okolo*, 116 AD3d 558 [1st Dept 2014]).

Defendant Razeeka Ramnarine does not address in her affidavit her admission in the report that “she did not see pedestrian because of the blind spot and hit the pedestrian.”

Accordingly, it is

ORDERED, that plaintiff’s motion to reargue the decision and order of the undersigned dated March 26, 2019 is granted; and it is further

ORDERED, that, upon reargument, the aspect of plaintiff’s prior motion for summary judgment dismissing defendants’ affirmative defense alleging plaintiff’s culpable conduct is granted; and it is further

ORDERED, that defendants’ first affirmative defense is dismissed.

The parties are reminded of the November 15, 2019 compliance conference before the undersigned.

This constitutes the decision and order of the court.

Dated: July 30, 2019



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