SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ADAM SILVERA** **PART** **IAS MOTION 22**

Justice

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SHAQUASHA SALEKA JAMES, AS ADMINISTRATOR OF THE ESTATE OF TASHA DENISE WILLIAMS, DECEASED,

Plaintiff,

- v -

NEW YORK CITY TRANSIT AUTHORITY, ALL TRANSIT, LLC,BYHEEM BROWN

Defendant.

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INDEX NO. 154554/2018

MOTION DATE 09/12/2018

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 17, 18, 19, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 53, 54, 55, 56

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER.

Before the Court is plaintiff Tasha Williams motion for summary judgment on the issue of liability as against defendants New York City Transit Authority, All Transit, LLC, and Byheem S. Brown and for an immediate trial for the purpose of assessing damages. Defendants oppose the motion and cross move for an Order for summary judgment in favor of defendants on the plaintiff's negligent hiring cause of action on the grounds that no such action exists in the instant matter.

The accident at issue occurred on October 17, 2017, on East 61st Street near York Avenue in the City, County, and State of New York when plaintiff, an Access-A-Ride passenger was allegedly seriously injured when the vehicle transporting plaintiff, owned by defendant New York City Transit Authority, registered to defendant All Transit, LLC and operated by defendant Byheem S. Brown rear ended another vehicle.

"The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any

material issues of fact from the case" (*Winegrad v New York University Medical Center*, 64 NY2d 851, 853 [1985]). Once such entitlement has been demonstrated by the moving party, the burden shifts to the party opposing the motion to "demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action or tender an acceptable excuse for his failure … to do [so]" (*Zuckerman v City of New York*, 49 NY2d 557, 560 [1980]).

"A rear-end collision with a stopped vehicle, or a vehicle slowing down, establishes a prima facie case of negligence on the part of the operator of the rear-ending vehicle, which may be rebutted if that driver can provide a non-negligent explanation for the accident" (*Baez v MM Truck and Body Repair, Inc.*, 151 AD3d 473, 476 [1st Dep't 2017]). Summary judgment in favor of the plaintiff is warranted where the defendant's own conduct inculpates him (*Uragrizza v Schmieder*, 46 NY2d 471 [1979]). "It is well settled that the right of an innocent passenger to summary judgment is not in any way restricted by potential issues of comparative negligence as between the drivers of the two vehicles" (*Garcia v Tri-County Ambulette Serv.*, 282 AD2d 206, 207 [1st Dept 2001] citing *Johnson v Phillips*, 261 AD2d 269, 272 [1st Dept 1990]).

Here, it is undisputed that plaintiff was an innocent passenger. Plaintiff attaches her affidavit in which she avers to having been a passenger in the back seat of defendants' Access-A-Ride vehicle when the vehicle rear-ended a Toyota motor vehicle (Mot, Exh D). Plaintiff testified that she observed the driver nodding off immediately prior to the impact (*id.*). Plaintiff further testified that the vehicle did not slow down prior to the impact (*id.*). Thus, plaintiff has demonstrated a prima facie showing of entitlement to summary judgment on the issue of liability and the burden shifts to defendants to raise an issue of fact or non-negligent excuse for the accident.

In opposition, defendants allege that an emergency situation existed at the time of the accident when another vehicle was speeding towards defendants' vehicle. Defendants attach the affidavit of defendant Brown who states that in order to avoid contact with the speeding vehicle, he returned to the center lane and rear-ended the stopped Toyota (Aff in Op, Exh B). Defendant Brown contests plaintiff's claim that he was nodding off prior to the accident (*id.*). Defendants' argument that the accident occurred because defendant Brown attempted to change lanes to avoid another vehicle does not constitute a nonnegligent explanation (*Urena v GVC Ltd.*, 160 AD3d 467 [1st Dept 2018] [finding that "[i]f he had to complete the attempted lane change to avoid striking the vehicle in front of him, he failed to maintain a safe distance, and the fact that another vehicle prevented him from completing the lane change does not constitute an emergency not of his own making"] citing *Renteria v Simakov,* 109 AD3d 749, 750 [1st Dept 2013]). Thus, defendants have failed to raise an issue of fact or provide a nonnegligent excuse for rear-ending plaintiff's vehicle and plaintiffs' motion for summary judgment on the issue of liability is granted.

Defendants' motion to dismiss plaintiff's negligent hiring cause of action on the grounds that no such action exists in the instant matter is granted. Where an employee is acting within the scope of his or her employment, thereby rendering the employer liable for any damages caused by the employee's negligence under a theory of respondeat superior, no claim may proceed against the employer for negligent hiring or retention (*Karoon v New York City Transit Authority*, 241 AD2d 323 [1st Dept 1997] citing *Eifert v. Bush*, 27 A.D.2d 950 [2d Dept 1967]). While an exception exists where an injured plaintiff seeks punitive damages from an employer based on allegations of gross negligence in the hiring or retention of the employee, the case at issue does not qualify for such an exception (*id.* citing *Bevilacqua v. City of Niagara Falls*, 66

A.D.2d 988, 989 [4th Dept 1978]). "The Court of Appeals has clearly held that the State and its political subdivisions, as well as public benefit corporations such as the instant Transit Authority defendants, are not subject to punitive damages" *Karoon*, 241 AD2d 323 citing [*Sharapata v. Town of Islip*, 56 N.Y.2d 332 [1997]; 452 N.Y.S.2d 347, 437 N.E.2d 1104; *Clark–Fitzpatrick, Inc. v. Long Island Rail Road*, 70 N.Y.2d 382 [1987]). Thus, because defendant Brown was working within the scope of his employment, and punitive damages do not apply to defendants, defendants' motion is granted and plaintiff's cause of action of negligent hiring is dismissed.

Accordingly, it is

ORDERED that plaintiff's motion for summary judgment on the issue of liability as against defendants New York City Transit Authority, All Transit, LLC, and Byheem S. Brown is granted; and it is further

ORDERED that defendants' cross motion for an Order for summary judgment in favor of defendants to dismiss plaintiffs' negligent hiring cause of action on the grounds that no such action exists in the instant matter is granted; and it is further

ORDERED that all parties shall appear for a previously scheduled compliance conference on December 16, 2019, at 9:30am in room 106 of 80 Centre Street, New York, NY; and it is further

ORDERED that within 30 days of entry, defendants serve plaintiff with a copy of this Decision/Order with notice of entry.

This constitutes the Decision/Order of the Court.

11/6/19
DATE

ADAM SILVERA, J.S.C.

CHECK ONE:		CASE DISPOSED		X	NON-FINAL DISPOSITION		
		GRANTED	X DENIED		GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE