

Hall v Kamara

2019 NY Slip Op 35018(U)

May 24, 2019

Supreme Court, Bronx County

Docket Number: Index No. 25048/2018E

Judge: ShawnDya L. Simpson

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART 17

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HOPE MONIQUE HALL & LARRY FARMER,

Plaintiffs

- against -

DECISION AND ORDER

Index No. 25048/2018E

AMINATA A. KAMARA, DJIBA DJOUMANDE &
F.H.A.I WORLD INC.,

Defendants.

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Shawndya L. Simpson, J.:

INTRODUCTION

The plaintiffs were passengers in a vehicle said to have been rear-ended by defendants' negligence that resulted in their serious personal injury. By notice of motion dated February 22, 2019, and the affirmation and exhibits submitted in support thereof along with all the pleadings and proceedings heretofore, plaintiffs seek summary judgment asserting they have no liability and a jury could not find any percentage of liability against them. Defendant Kamara filed an affirmation in opposition dated April 15, 2019, and defendants Djoumande and F.H.A.I. World jointly filed their affirmation dated March 14, 2019. For the foregoing reasons, after review and consideration of the filings and proceedings, plaintiffs' motion for summary judgment on the issue of their lack of liability is granted.

In support of the motion, plaintiffs submit the summons, verified answer from defendants Djoumande and F.H.A.I. World, verified answer and bill of particulars from defendant Kamara, and the deposition transcript of both plaintiffs. In opposition, the defendants submit their counsels' affirmations. No exhibits or other documents are attached or submitted along with defendants' affirmations in opposition.

DISCUSSION

On March 1, 2018, plaintiffs allege that they were passengers in defendants Djoumande and F.H.A.I. World's van in a vehicular accident, struck by defendant Kamara's vehicle. The accident is said to have occurred at or near 907M East bound Grand Central Parkway and 69th Road in the county of Queens. Plaintiffs allege that as they sat in defendant Djoumande and F.H.A.I. World's van in heavy traffic moving straight on the road, they were struck hard from the back of their vehicle. Plaintiffs allege after the accident they observed front damage to defendant Kamara's vehicle and the vehicle they drove in was damaged to the rear. Defendants Djoumande and F.H.A.I. World's counter that plaintiffs' motion must be denied as a matter of law since they were hit in the rear by defendant Kamara. Defendants Djoumande and F.H.A.I. World allege that plaintiffs are not entitled to summary judgment as against them because their negligence has not been established and assert that they were not negligent. Djoumande and F.H.A.I. World argue that the submissions provided by plaintiffs do not establish that they were the proximate cause of the accident. Djoumande and F.H.A.I. World further argue that plaintiffs confirmed that their vehicle was hit in the rear while it was stopped. Djoumande and F.H.A.I. World argue that there is nothing under oath that demonstrates that they were negligent.

Defendant Kamara asserts that the motion should be denied because there are genuine issues of material fact that preclude summary judgment. Defendant Kamara states that there has been no discovery at this juncture and relevant facts are not yet available. Defendant Kamara argues that it was not a party to the depositions and did not get to participate. Kamara argues that the motion is premature and the assertion without more that plaintiffs were passengers in a rear ended vehicle is not enough without discovery. Defendant Kamara asserts that the other defendant stopped short and is at fault for what he termed a "minor accident".

Plaintiffs have established their entitlement to summary judgment on the issue of their lack of negligence (*see Bajrami v. Winkle Cab Corp.*, 147 A.D.3d 649 [App. Div., 1st Dept 2017]). It is undisputed that plaintiffs' actions did not contribute to the happening of the accident and they may be granted summary judgment on the issue of their lack of culpable conduct (*see Ramirez v. Elias-Tejada*, 168 A.D.3d 401 [App. Div., 1st Dept 2019]; *Oluwatayo v. Dulinayan*, 142 A.D.3d 113 [App. Div., 1st Dept 2016]). Additionally, plaintiffs' motion was not premature due to the lack of discovery because the information as to why defendants' car collided reasonably rests within the drivers' own knowledge (*see Castaneda v. DO&CO N.Y. Catering, Inc.*, 144 A.D.3d 407 [App. Div., 1st Dept 2016]; *Johnson v. Phillips*, 261 A.D.2d 269, 272 [App. Div., 1st Dept. 1999]), *Rodriguez v. Garcia*, 154 A.D.3d 581 [App. Div., 1st Dept 2017]; *see also Castaneda v. DO&CO N.Y. Catering, Inc.*, 144 A.D.3d 407 [App. Div., 1st Dept 2016]). "Facts appearing in the movant's papers which the opposing party does not controvert, may be deemed to be admitted" (*Kuehne & Nagel, Inc. v. Baiden*, 36 N.Y.2d 539, 544 [1975]; *Tortorello v. Carlin*, 260 A.D.2d 201 [App. Div., 1st Dept. 1999]), and defendants did not rebut plaintiffs' assertion of their lack of culpable conduct.

Consequently, they are entitled to summary judgment on the issue of their lack of culpable conduct (*see Ramirez v. Elias-Tejada*, 168 A.D.3d 401 [App. Div., 1st Dept. 2019]; *Oluwatayo v. Dulinayan, supra*). However, there are triable issues of fact as to who is at fault for the accident requiring denial of that part of the motion that may be seeking a judgment of liability against defendants. The instant motion was noticed for a determination on plaintiff's lack of fault. There are significant facts in dispute as to who is at fault (*see e.g., Oluwatayo v. Dulinayan, supra*). Plaintiff's motion for summary judgment is granted only to the extent of finding no culpable conduct by plaintiff on the issue of liability (*Id.* at 121). Consequently, the motion is granted as to plaintiffs lack of fault, but not as to liability against defendants.

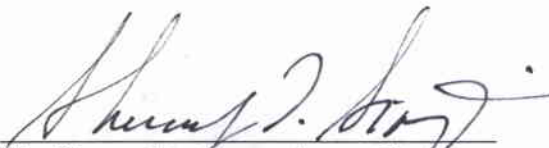
CONCLUSION

Accordingly, it is:

ORDERED, that plaintiffs' motion for summary judgment on the issue of their lack of liability for the subject accident is granted.

This constitutes the decision and order of the court.

Dated: Bronx, New York
May 24, 2019


The Honorable Shawndya L. Simpson
Justice of the Supreme Court