

Moore v Johnson

2019 NY Slip Op 35043(U)

October 9, 2019

Supreme Court, Bronx County

Docket Number: Index No. 22945/2019E

Judge: John R. Higgitt

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: I.A.S. PART 14

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CLARENCE MOORE,

Plaintiff,

DECISION AND ORDER

- against -

Index No. 22945/2019E

SAMANTHA R JOHNSON and ALLIVENA AA
BROOKS,

Defendants.
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John R. Higgitt, J.

Upon plaintiff’s July 17, 2019 notice of motion and the affirmation, affidavit, and exhibits submitted in support thereof; defendants’ August 7, 2019 affirmation in opposition and the exhibit submitted therewith; and due deliberation; plaintiff’s motion for partial summary judgment on the issue of defendant’s liability for causing the accident is granted.

This is a negligence action to recover damages for personal injuries that plaintiff allegedly sustained in a motor vehicle accident that took place on September 28, 2018. In support of his motion, plaintiff submitted the pleadings, the police accident report and his affidavit. Plaintiff averred that at the time of the accident, he was stopped at a red traffic signal when his vehicle was suddenly struck in the rear by defendants’ vehicle.

In opposition, defendants submit the affidavit of defendant Johnson, who averred that she was stopped behind plaintiff’s vehicle at the red traffic light before the light turned green; that plaintiff’s vehicle began to forward; and that suddenly, without any warning, plaintiff made a sharp right turn. At that time, defendant Johnson was unable to stop her vehicle and struck the rear right corner of plaintiff’s vehicle.

“A rear-end collision with a stationary vehicle creates a prima facie case of negligence requiring judgment in favor of the stationary vehicle unless defendant proffers a non-negligent

explanation for the failure to maintain a safe distance . . . A driver is expected to drive at a sufficiently safe speed and to maintain enough distance between himself [or herself] and cars ahead of him [or her] so as to avoid collisions with stopped vehicles, taking into account weather and road conditions” (*LaMasa v Bachman*, 56 AD3d 340, 340 [1st Dept 2008]). A rear-end collision constitutes a prima facie case of negligence against the rearmost driver in a chain confronted with a stopped or stopping the vehicle (*see Cabrera v Rodriguez*, 72 AD3d 553 [1st Dept 2010]).

Vehicle and Traffic Law § 1129(a) states that a “driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway” (*see Darmento v Pacific Molasses Co.*, 81 NY2d 985, 988 [1993]). Based on the plain language of the statute, a violation is clear when a driver follows another too closely without adequate reason and that conduct results in a collision (*see id.*).

Through his affidavit, plaintiff made a prima facie showing that defendants violated Vehicle and Traffic Law § 1129 and that such violation was a proximate cause of his injuries.¹

In opposition to plaintiff’s prima facie showing of entitlement to judgment as a matter of law on the issue of defendants’ liability, defendants failed to raise a triable issue of fact.

Defendant Johnson’s affidavit failed to provide a non-negligent explanation for the accident. Regardless of whether plaintiff’s vehicle was stopped or moving at the moment of impact, defendant Johnson failed to maintain a reasonably safe distance between her vehicle and the vehicle directly in front of her. “A driver of a vehicle approaching another vehicle from the rear is required to maintain a reasonably safe distance and rate of speed under the prevailing

¹ The court notes that the police report is hearsay and contain no party admissions.

conditions to avoid colliding with the other vehicle” (*Nsiah-Ababio v Hunter*, 78 AD3d 672, 672 [2nd Dept 2010]).

At most, defendant Johnson’s affidavit raises an issue of fact as to plaintiff’s comparative fault, e.g., whether plaintiff violated Vehicle and Traffic Law § 1163 by turning without giving an appropriate signal. However, as the Court of Appeal has made plain, a plaintiff is not required to demonstrate his or her freedom from comparative fault to obtain summary judgment on the issue of defendants’ liability (*Rodriguez v City of New York*, 31 NY3d 312 [2018]).

The court notes that plaintiff did not seek (and the court has not considered) dismissal of defendants’ affirmative defense of comparative fault (*see* CPLR 2214[a]; *cf. Poon v Nisanov*, 162 AD3d 804 [2nd Dept 2018]).

Accordingly, it is

ORDERED, that plaintiff’s motion for summary judgment on the issue of defendants’ liability is granted.

The parties are reminded of the October 25, 2019 compliance conference before the undersigned.

This constitutes the decision and order of the court.

Dated: October 9, 2019



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