

**Saduzy v Mazumder**

2019 NY Slip Op 35050(U)

October 15, 2019

Supreme Court, Bronx County

Docket Number: Index No. 21769/2018E

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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SANNAH SADUZY,

Plaintiff,

DECISION AND ORDER

- against -

Index No. 21769/2018E

FARHAD A. MAZUMDER,

Defendant.

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John R. Higgitt, J.

Upon plaintiff’s September 11, 2019 notice of motion and the affirmation, affidavit and exhibits submitted in support thereof; defendant’s October 9, 2019 affirmation in opposition and the affidavit submitted therewith; plaintiff’s October 10, 2019 affirmation in reply; and due deliberation; plaintiff’s motion for partial summary judgment on the issue of defendant’s liability and for dismissal of defendant’s affirmative defense alleging plaintiff’s culpable conduct is granted.

In support of the motion, plaintiff submits her affidavit, in which she avers that her vehicle was stopped at a red light when suddenly struck from behind by defendant’s vehicle. Plaintiff also submits the police accident report which, while uncertified, contains a statement, ostensibly from defendant, that plaintiff stopped short for the red traffic signal, causing defendant’s vehicle to rear-end plaintiff’s vehicle. Such statement is admissible as a party admission (*see Liburd v Lulgjuraj*, 156 AD3d 532 [1st Dept 2017]; *Pivetz v Brusco*, 145 AD3d 806 [2d Dept 2016]; *Jackson v Trust*, 103 AD3d 851 [2d Dept 2013]; *Penn v Kirsh*, 40 AD2d 814 [1st Dept 1972]; *see also Delgado v Martinez Family Auto*, 113 AD3d 426 [1st Dept 2014]).

Plaintiff’s proof was sufficient to meet her prima facie burden (*see Garcia v McCrea*, 170 AD3d 513 [1st Dept 2019]; *Santana v Danco Inc.*, 115 AD3d 560 [1st Dept 2014]). “A rear-end collision with a stationary vehicle creates a prima facie case of negligence requiring a judgment

in favor of the stationary vehicle unless defendant proffers a nonnegligent 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]). The happening of a rear-end collision is itself a prima facie case of negligence on the part of the rearmost driver in a chain confronted with a stopped or stopping vehicle (*see Cabrera v Rodriguez*, 72 AD3d 553 [1st Dept 2010]).

The general rule regarding liability for rear-end accidents “has been applied when the front vehicle stops suddenly in slow-moving traffic; even if the sudden stop is repetitive; when the front vehicle, although in stop-and-go traffic, stopped while crossing an intersection; and when the front car stopped after having changed lanes” (*Johnson v Phillips*, 261 AD2d 269, 271 [1st Dept 1999]). The sudden stop of the lead vehicle, without more (*see Cabrera, supra*), “is generally insufficient to rebut the presumption of non-negligence on the part of the lead vehicle” (*Woodley v Ramirez*, 25 AD3d 451, 452 [1st Dept 2006] [citations omitted]). The fact that the lead vehicle is stopped when rear-ended is prima facie evidence that its driver was not negligent (*see Falcone v Dorius*, 160 AD3d 578 [1st Dept 2018]). Thus, the claim of the sudden stop of the lead vehicle, without more, is insufficient to overcome the dual presumptions of the negligence of the rear driver and the non-negligence of the front driver (*see Giap v Hathi Son Pham*, 159 AD3d 484 [1st Dept 2018]).

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 (*id.*).

In opposition, defendant averred that plaintiff's vehicle stopped short while approaching the traffic light, which was changing from yellow to red, and that defendant was unable to stop before contacting plaintiff's vehicle. Defendant thus failed to rebut the presumption of his negligence (*see Dattilo v Best Transp. Inc.*, 79 AD3d 432 [1st Dept 2010]), or the presumption of plaintiff's non-negligence (*see Francisco v Schoepfer*, 30 AD3d 275 [1st Dept 2006]; *Woodley, supra*).

Accordingly, it is


ORDERED, plaintiff's motion for partial summary judgment on the issue of defendant's liability and for dismissal of defendant's affirmative defense alleging plaintiff's culpable conduct, contributory negligence and assumption of risk is granted; and it is further

ORDERED, that defendant's second affirmative defense is dismissed.

The parties are reminded of the December 13, 2019 compliance conference before the undersigned.

This constitutes the decision and order of the court.

Dated: October 15, 2019

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