

Ayele v Valentine

2019 NY Slip Op 35053(U)

May 30, 2019

Supreme Court, Bronx County

Docket Number: Index No. 27934/2018E

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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NEBI G. AYELE,

Plaintiff,

DECISION AND ORDER

- against -

Index No. 27934/2018E

ANDY A VALENTINE, ANGEL OJEDA &
CT LIMO LLC.,

Defendants.

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Shawndya L. Simpson, J.:

INTRODUCTION

The plaintiff was a passenger in a vehicle said to have been rear-ended by defendants' negligence that resulted in his serious personal injury. By notice of motion dated March 28, 2019, and the affirmation and exhibits submitted in support, along with all the pleadings and proceedings heretofore, plaintiff seeks summary judgment on the issue of liability against the defendants.

Defendants Ojeda and CT Limo crossed moved for relief seeking dismissal of the complaint and cross claim alleging plaintiff's failed to provide discovery. An affirmation in partial opposition to plaintiff's motion, dated April 12, 2019, was filed by defendant Valentine. A reply affirmation, dated April 15, 2019, was submitted by the plaintiff. For the foregoing reasons, after review and consideration of the filings and proceedings, plaintiff's motion for summary judgment on the issue of liability against defendant is granted and defendant's cross motion is granted.

In support of the motion, plaintiff submits the summons and verified complaint, verified answers, cross claim and demand for bill of particulars by defendant Valentine, a certified police department accident report, and plaintiff's affidavit. Defendants Ojeda and CT limo attached to their cross motion a letter dated January 30, 2019, concerning their bill of particulars request. Defendant Valetine submits the plaintiff's affidavit along with his affirmation in partial opposition.

DISCUSSION

Plaintiff established his entitlement to summary judgment on the issue of defendant's liability (*see Bajrami v. Winkle Cab Corp.*, 147 A.D.3d 649 [App. Div., 1st Dept. 2017]). It is undisputed that plaintiff's actions did not contribute to the happening of the accident and that he was a passenger in a stopped vehicle that was rear-ended by defendant Ojeda. Under these circumstances, plaintiff may be granted summary judgment on the issue of liability against the rear most vehicle (*see Johnson v. Phillips*, 261 A.D.2d 269, 272 [App. Div., 1st Dept. 1999]).

"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 A.D.3d 340, 340 [App. Div., 1st Dept. 2008], *citing Mitchell v. Gonzalez*, 269 A.D.2d 250, 251 [App. Div., 1st Dept. 2000]). The rear-end collision of a vehicle itself provides a *prima facie* showing of negligence on the part of the rearmost driver in a collision with a stopped or stopping vehicle (*see Cabrera v. Rodriguez*, 72 A.D.3d 553 [App. Div., 1st Dept. 2010]). "[T]he burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to raise material issues of fact which require a trial of the action" (*Id.* at 553, *citing Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324, [1986]).

The certified police report documents that defendant Ojeda's vehicle was the rearmost that collided with a stopped or stopping vehicle. The report indicates that the rear most part of the vehicle in which plaintiff was a passenger was impacted by defendant Ojeda's vehicle and that plaintiff was transported to the hospital.

The general rule on 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 A.D.2d 269, 271 [App. Div., 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 A.D.3d 451, 452 [App. Div, 1st Dept. 2006] [citations omitted]). 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 N.Y.2d 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.*).

Furthermore, defendants Ojeda and CT limo did not attach firsthand sworn testimony to controvert plaintiff’s evidence that the vehicle he was in was stopped and that defendant Ojeda unreasonably caused the accident. 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 Ojeda and CT limo did not rebut with firsthand evidence plaintiff’s

assertion that Ojeda unreasonably caused the accident.

The evidence submitted in support of the motion has established that plaintiff's vehicle was stopped and that defendant Ojeda collided into the rear of his stopped vehicle. There is no reliable evidence as to why a safe distance could not be maintained to avert collision (*see Cabrera, supra* at 553). Plaintiff also submitted a certified police accident report that corroborates evidence that defendant Ojeda's vehicle struck the rear of the vehicle in which plaintiff was a passenger and caused the collision (*see Liburd v. Lulgjuraj*, 156 A.D.3d 532 [App. Div., 1st Dept. 2017]; *Pivetz v. Brusco*, 145 A.D.3d 806 [App. Div., 2nd Dept. 2016]; *Penn v. Kirsh*, 40 A.D.2d 814 [App. Div., 1st Dept. 1972]).

Defendants Ojeda and CT Limo LLC failed to rebut the presumption of their negligence (*see Dattilo v. Best Transp. Inc.*, 79 A.D.3d 432 [App. Div., 1st Dept. 2010]), and the presumption of the non-negligence of the driver of the vehicle in which plaintiff was a passenger (*see Francisco v. Schoepfer*, 30 A.D.3d 275 [App. Div., 1st Dept. 2006]; *Woodley, supra*). Defendants Ojeda and CT Limo LLC have failed to raise any factual issue to relieve them of liability or provide a credible non-negligent explanation for the collision (*see Johnson v. Phillips, supra*). Plaintiff has failed to provide a *prima facie* showing as to defendant Valentine's negligence and Valentine has asserted and provided evidence to counter the claim of liability against him. Consequently, the motion for partial summary judgment against defendants Ojeda and CT Limo LLC on the issue of liability is granted, but not against defendant Valentine.

CONCLUSION

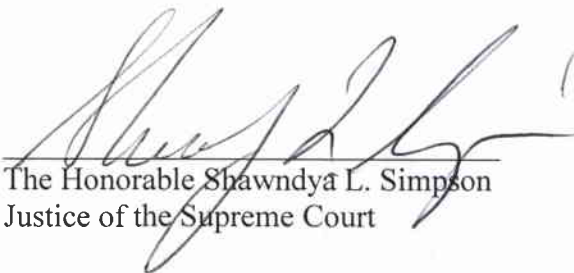
Accordingly, it is:

ORDERED, that plaintiff's motion for summary judgment on the issue of defendants' liability for causing the subject accident is granted only as against defendants Ojeda and CT Limo

LLC, and not defendant Valentine.

This constitutes the decision and order of the court.

Dated: Bronx, New York
May 30, 2019



The Honorable Shawndya L. Simpson
Justice of the Supreme Court