

Mirza v Tribeca Auto. Inc.

2019 NY Slip Op 35058(U)

August 2, 2019

Supreme Court, Bronx County

Docket Number: Index No. 33797/2018E

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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ALI MIRZA,

Plaintiff,

DECISION AND ORDER

- against -

Index No. 33797/2018E

TRIBECA AUTOMOTIVE INC. & CARLOS LAJARA-
LAJARA,,

Defendants.

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Shawndya L. Simpson, J.:

INTRODUCTION

On May 3, 2018, plaintiff operated a vehicle said to have been in a motor vehicle accident with a vehicle operated by defendant Lajara-Lajara, and owned by Tribeca Automotive. Plaintiff alleges he was rear-ended as his vehicle was stopped in heavy traffic on the Cross Bronx Expressway in Bronx county. By notice of motion dated March 26, 2019, and the affirmation and exhibits submitted in support thereof along with all the pleadings and proceedings heretofore, plaintiff seeks summary judgment pursuant to Civil Practice Law and Rules (CPLR) against defendants on the issue of liability. Defendants filed an affirmation in opposition dated May 13, 2019, and a reply dated June 18, 2019, was filed by 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 is granted.

In support of the motion, plaintiff submits the summons, complaint, answer, police accident report and plaintiff’s affidavit. In opposition, the defendants submit defendant driver’s affidavit, an affidavit from an expert, certified discovery demands and a letter from defendants’ counsel’s office concerning discovery.

DISCUSSION

Plaintiff has established his entitlement to summary judgment on the issue of liability against defendants (*see Bajrami v. Winkle Cab Corp.*, 147 A.D.3d 649 [App. Div., 1st Dept. 2017]). It is alleged that defendant Lajara-Lajara was driving too close to plaintiff's vehicle. Defendants do not dispute plaintiff's claim that defendant was driving too close. Defendants' vehicle is said to have struck plaintiff after failing to properly observe and maintain a reasonable safe distance from plaintiff's vehicle. It is said plaintiff's vehicle was in front of defendant and that defendant caused the rear-end collision. Plaintiff claims that as he was stopped in heavy traffic on the Cross Bronx Expressway he was suddenly struck without warning from behind by defendant. Plaintiff asserts that defendants are solely responsible for the accident.

In opposition, defendants argue that plaintiff's motion is premature. The defense states that there must be a minimum amount of discovery prior to a determination on the instant motion. The defense also contends that at the time of the accident he came around a bend in the road and suddenly and unexpectedly observed plaintiff's vehicle about one-hundred and fifty feet in front of him. The defense alleges that at the time of the accident there was slow traffic and that the damages to the vehicles were minor. The defendant driver states in his affidavit that when he first saw the plaintiff's vehicle plaintiff was traveling very slowly at around five or ten miles an hour and observed that the traffic was severely congested. Defendant states that he applied his breaks quickly when he observed the slowdown, but collided into plaintiff's vehicle, which resulted in the rear-end collision. The defense claims that there is a triable issue of fact as to whether defendant driver was faced with a hazard that constitutes a non-negligent excuse for the accident. However, defendants' argument and evidence do not overcome plaintiff's *prima facie* showing.

“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 sudden stop of the lead vehicle, without more (*see Cabrera v. Rodriguez*, 72 A.D.3d 553 [App. Div., 1st Dept. 2010]), “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]). 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 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, supra*). “[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]). Contrary to defenses contention, the account of the parties are not inconsistent and the evidence demonstrates that there are no material facts in dispute as to whether defendant was driving too close. Defendants have not proffered sufficient evidence to rebut the presumption of their negligence.

In this case, defendants' argument does not overcome the evidence that he was operating his vehicle too closely to plaintiff. The expert opinion of Bradford R. T. Silver, a Collision Reconstructionist, asserts that the distance the defendant claims he had of one-hundred and fifty feet to stop was insufficient to avert the collision if he was traveling at forty miles an hour. The expert also states that the damage of the vehicles indicates that it was a close impact speed below five miles per hour. However, the excuse offered that defendant had to stop short does not defeat the plaintiff's argument. Defendant has not provided a non-negligent excuse for the accident. The evidence submitted in opposition is insufficient as there is no showing of a true emergency. The accident report made by defendant Lajara-Lajara is self-serving and does not contradict the assertion that he was driving too closely to the plaintiff's vehicle. There is also no photo provided to establish that defendant was faced with an emergency condition. There is also no evidence that plaintiff was at fault for the accident and the certified police report documents that defendant's vehicle was the rearmost that collided with plaintiff's stopped vehicle in heavy traffic (*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 have not proffered sufficient evidence for denial of the motion.

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.*). Under these circumstances, plaintiff is entitled to summary judgment on the issue of liability against defendant given the undisputed fact that defendant was driving too close to

plaintiff's vehicle (*see Kuehne & Nagel, Inc. v. Baiden*, 36 N.Y.2d 539 [1975]). Additionally, plaintiff's motion was not premature due to the lack of discovery because the information as to why defendant's 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]). The evidence submitted in support of the motion has established a *prima facie* case that defendant Lajara-Lajara failed to keep a safe distance to avert the collision.

Defendants 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 rear-ended driver (*see Francisco v. Schoepfer*, 30 A.D.3d 275 [App. Div., 1st Dept. 2006]; *Woodley v. Ramirez*, 25 A.D.3d 451, 452). Plaintiff is entitled to a judgment of liability as a matter of law (*see Cabrera v. Rodriguez, supra; Myrie v. Atehortua*, 275 A.D.2d 699 [App. Div., 2nd Dept. 2000]; *Gladstone v. Hachuel*, 225 A.D.2d 730 [App. Div., 2nd Dept. 1996]; *Reid v. Courtesy Bus Co.*, 234 A.D.2d 531 [App. Div., 2nd Dept. 1996]; *see also, Carlos Rodriguez v. City of NY*, 31 N.Y.3d 312 [2018]). Consequently, the motion for summary judgment against the defendants on the issue of liability is granted.

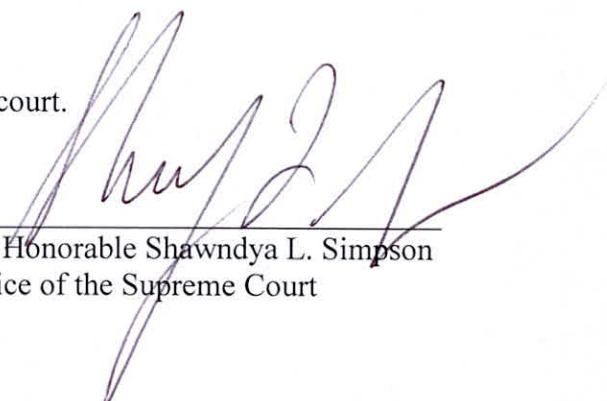
CONCLUSION

Accordingly, it is:

ORDERED, that plaintiff's motion for summary judgment on the issue of liability against the defendants for the subject accident is granted.

This constitutes the decision and order of the court.

Dated: Bronx, New York
August 2, 2019


The Honorable Shawndya L. Simpson
Justice of the Supreme Court