

Bajana v Mohabir

2019 NY Slip Op 35092(U)

November 29, 2019

Supreme Court, New York County

Docket Number: Index No. 715250/18

Judge: Richard G. Latin

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Short Form Order

NEW YORK SUPREME COURT – NEW YORK COUNTY

Present: Honorable RICHARD G. LATIN
Justice

IA PART 40

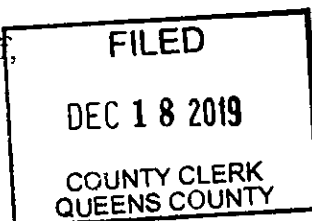
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ROSA AMELIA RUGEL BAJANA,

Plaintiff,

-against-

NEHRU MOHABIR, et al.,

Defendants.
-----X



Index No.: 715250/18
Motion Date: 10/3/19
Motion Cal. No.: 25
Motion Seq. No.: 3

The following numbered papers read on this motion by defendant, Angelica del Rocio Matias-Rugel, and cross-motion by plaintiff, for summary judgment.

PAPERS	NUMBERED
Notice of Motion-Affidavits-Exhibits.....	1 - 3
Affirmation in Opposition.....	4 - 5
Notice of Cross-Motion-Affidavits-Exhibits.....	6 - 8
Replying.....	9 - 10

As a preliminary matter, the Court extended the parties' time to file summary judgment motions to September 5, 2019 in a so-ordered stipulation dated May 30, 2019. Both the motion and cross-motion were filed before the deadline and are timely.

Upon the foregoing cited papers, it is ordered that the motion by defendant, Angelica del Rocio Matias-Rugel (Defendant-Movant), and the cross-motion by plaintiff, for summary judgment on the issue of liability, pursuant to CPLR 3212, are determined as follows:

Plaintiff, Rosa Amelia Rugel Bajana, commenced the instant action to recover for injuries she allegedly sustained in a motor vehicle, which occurred on October 23, 2017 on 149th Street at or near its intersection with Hawthorne Avenue, Queens, NY. At the time of the accident, Plaintiff was a passenger in a vehicle owned and operated by Defendant-Movant, which collided with a vehicle owned by defendant, Nehru Mohabir (Defendant-Owner), and operated by defendant, Nadira Mohabir s/h/a John Doe (Defendant-Driver; collectively: Defendants-Mohabir).

Now, Defendant-Movant seeks summary judgment on the issue of liability claiming that Defendants-Mohabir's vehicle made a left-turn within an intersection and failed to yield the right-of-way to her vehicle. Plaintiff also seeks summary judgment on the issue of liability

claiming that she was an innocent passenger of Defendant-Movant's vehicle at the time of the accident.

The proponent of a summary judgment motion has the initial burden of establishing entitlement to judgment as a matter of law, submitting evidence in admissible form demonstrating the absence of any triable issues of fact (*see Giuffrida v. Citibank Corp.*, 100 NY2d 72 [2003]; *see also Alvarez v. Prospect Hosp.*, 68 NY2d 320 [1986]). Only when the movant satisfies its prima facie burden will the burden shift to the opponent "to lay bare his or her proof and demonstrate the existence of triable issues of fact" (*Alvarez*, 68 NY2d at 324; *see also Zuckerman v City of New York*, 49 NY2d 557 [1980]; *Chance v. Felder*, 33 AD3d 645, 645-46 [2d Dept 2006]). Thus, where the movant fails to meet this initial burden, summary judgment must be denied regardless of the sufficiency of the opposing papers (*see Voss v. Netherlands Ins. Co.*, 22 NY3d 728, 734 [2014]).

VTL § 1141 provides, in relevant part, that the operator of a vehicle intending to turn left within an intersection must yield the right-of-way to any oncoming vehicle, which is within the intersection or so close to it as to constitute an immediate hazard (*see Enriquez v. Joseph*, 169 AD3d 1008, 1009 [2d Dept 2019]; *Lebron v. Mensah*, 161 AD3d 972, 974 [2d Dept 2018]). A violation of VTL § 1141 constitutes negligence per se (*id.*). Furthermore, a driver who has the right-of-way is entitled to anticipate that other drivers will obey traffic laws that require them to yield (*id.*).

The right of an innocent passenger to summary judgment is not restricted by potential issues of comparative negligence as between the two defendant drivers (*see Choi v. Schwabenbauer*, 124 AD3d 574, 575 [2d Dept 2015]; *Pinilla v. New York City Transit Authority*, 122 AD3d 703, 705 [2d Dept 2014]; *Anzel v. Pistorino*, 105 AD3d 784, [2d Dept 2013]).

In support of the motion, Defendant-Movant submits, inter alia, the transcripts of the examination before trial (EBT) of Plaintiff, Defendant-Movant, and Defendant-Driver.

Plaintiff testified that on the date of the accident, she was a passenger in her daughter's, Defendant-Movant, vehicle. She testified that she was in the backseat next to her newborn granddaughter. Plaintiff stated that on the day of the accident, they were bringing her newborn granddaughter home from the hospital for the first time. Plaintiff testified that at the time of the accident, her daughter, Defendant-Movant, was not distracted and was not in any rush. She further testified that Defendant-Movant was driving really slowly prior to the accident. Plaintiff stated that she did not hear any horn prior to the impact. Plaintiff, Defendant-Movant, and Defendant-Driver all testified that on the day of the accident the roads were dry, and that neither vehicle was experiencing mechanical issues.

Defendant-Movant testified that on the day of the accident she was driving on 149th Street and at the subject intersection she was continuing straight with the right-of-way. At the subject intersection, Hawthorne Avenue is governed by a stop sign and 149th Street is not governed by any traffic control device. Defendant-Movant testified that she first saw

Defendant-Driver's vehicle approaching the stop sign governing Hawthorne Avenue. Defendant-Movant testified that she never saw Defendants-Mohabir's vehicle stop before it collided with the passenger's side of her vehicle. She further stated that she applied the brakes to avoid the collision. Defendant-Movant testified that her passenger's side of her vehicle, including but not limited to, the headlight and tire, had damage from the impact. Defendant-Driver's testimony corroborated this, as she testified that the entire front bumper of Defendants-Mohabir's vehicle collided with part of the front bumper and the front door of the passenger's side of Defendant-Movant's vehicle.

Defendant-Driver testified that on the date of the accident, she was driving on Hawthorne Avenue and planned to make a left-turn at the subject intersection. She stated that there was a stop sign controlling traffic from her direction. Defendant-Driver testified that she stopped her vehicle at the stop sign and then inched up passed the stop sign and stopped. Defendant-Driver stated that she looked in both directions before turning left, and that she did not see any oncoming vehicles. Defendant-Driver also testified that she never saw Defendant-Movant's vehicle prior to the collision. However, moments later Defendant-Driver stated that she saw Defendant-Movant's vehicle approximately five seconds prior to the collision. Defendant-Driver also testified that she told her father that it was too late for her to stop by the time she saw Defendant-Movant's vehicle. Notably, Defendant-Driver testified that from the moment she saw Defendant-Movant's vehicle (five seconds prior to the collision) to the moment of collision, the latter's vehicle did not move more than a car-length.

Here, Defendant-Movant and Plaintiff established their prima facie entitlement to judgment as a matter of law on the issue of liability by demonstrating that Defendant-Driver violated VTL § 1141 by driving into an intersection controlled by a stop sign without yielding the right-of-way to their approaching vehicle (*see Enriquez*, 169 AD3d at 1009-10 [2d Dept 2019]; *Lebron*, 161 AD3d at 974 [2d Dept 2018]). In opposition, Defendants-Mohabir failed to raise a triable issue of fact (*id.*).

Furthermore, neither Plaintiff nor Defendant-Movant is required to show an absence of comparative fault to be entitled to summary judgment on the issue of liability (*see Rodriguez v. City of New York*, 31 NY3d 312 [2018]; *Marks v. Rieckhoff*, 172 AD3d 847, 848 [2d Dept 2019]). Nevertheless, the evidence demonstrates that Plaintiff was an innocent passenger who did not engage in any culpable conduct that contributed to the happening of the accident (*see Edgerton v. City of New York*, 160 AD3d 809, 811 [2d Dept 2018]). Moreover, the evidence shows that Defendant-Movant is free from comparative fault and Defendants-Mohabir have failed to prove any comparative fault on behalf of Defendant-Movant (*id.*).

Accordingly, the summary judgment motion by Defendant-Movant, Angelica del Rocio Matias-Rugel is granted, and Plaintiff's cross-motion for summary judgment on the issue of liability, is granted as against Defendants-Mohabir; and it further

ORDERED that Plaintiff's complaint as against Defendant-Movant, Angelica del Rocio Matias-Rugel, is dismissed; and it is further

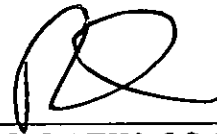
ORDERED that any and all cross-claims and/or counterclaims against Defendant-Movant, Angelica del Rocio Matias-Rugel, are dismissed; and it is further

ORDERED that Plaintiff is found to be free of comparative fault; and it is further

ORDERED that Plaintiff shall serve a copy of this order with notice of entry shall be served on defendants, within thirty (30) days of the date of entry.

This constitutes the decision and order of the Court.

Dated: November 29, 2019



RICHARD G. LATIN, J.S.C.

FILED
DEC 18 2019
COUNTY CLERK
QUEENS COUNTY