

Robinson v Oliveira

2019 NY Slip Op 35154(U)

November 18, 2019

Supreme Court, Bronx County

Docket Number: Index No. 28272/2018

Judge: Mary Ann Brigantti

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, PART: 15

ROBINSON, ALONDA

Index No. 0028272/2018E

-against-

Hon. MARY ANN BRIGANTTI,

OLIVEIRA, LEANDRO J.

Justice Supreme Court

The following papers numbered 1 to 9 Read on this motion, (Seq. No. 1) for
SUMMARY JUDGMENT LIABILITY, noticed on May 03 2019.

Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed	No(s). 1-4
Answering Affidavit and Exhibits	No(s). 5-7
Replying Affidavit and Exhibits	No(s). 8-9

Upon the foregoing papers, it is ordered that this motion is

Plaintiff's Motion is decided in the annexed memorandum decision and order.

Motion is Respectfully Referred to Justice:

Dated:

Dated: 11/18/2019

Hon. Mary Ann Briganti
MARY ANN BRIGANTTI J.S.C.

1. CHECK ONE..... CASE DISPOSED IN ITS ENTIRETY CASE STILL ACTIVE
2. MOTION IS..... GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE..... SETTLE ORDER SUBMIT ORDER SCHEDULE APPEARANCE
- FIDUCIARY APPOINTMENT REFEREE APPOINTMENT

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
ALONDA ROBINSON,

Plaintiff,

Index No.: 28272/2018

-against-

LEANDRO J. OLIVEIRA,

Defendant.

-----X
HON. MARY ANN BRIGANTTI:

Plaintiff moves for partial summary judgment in her favor on the issue of Defendant’s liability, and dismissal of Defendant’s affirmative defenses pertaining to Plaintiff’s comparative fault.

This is an action to recover damages for alleged personal injuries sustained by Plaintiff, ALONDA ROBINSON, in a motor vehicle accident, which occurred on or about April 11, 2018, at 7:27 a.m., on the northbound Hutchinson River Parkway, in New Rochelle, Westchester County, New York.

In support of the motion, Plaintiff’s submissions include the pleadings, Police Accident Report, and Plaintiff’s Affidavit. In opposition, Defendant submitted his Affidavit.

According to Plaintiff, while she was driving northbound on the Hutchinson River Parkway, “slowing down due to vehicular traffic ahead”, her vehicle was struck in the rear by Defendant’s vehicle (Plaintiff ROBINSON’s Affidavit, dated April 10, 2019).

Defendant LEANDRO J. OLIVEIRA acknowledged that he struck the Plaintiff's vehicle which was traveling directly ahead of him, but states that it was "due to Plaintiff's sudden and unexplained stop on the Hutchinson River Parkway"; he describes the circumstances as follows:

"As I proceeded along the roadway, the traffic in the right lane stopped completely, and I stopped approximately three feet behind the vehicle in front of me. When traffic ahead began to move, there was a gap of approximately four car lengths in front of the vehicle in front of me. The vehicle in front of me began to accelerate up to a speed of approximately 20 to 25 m.p.h. I followed Plaintiff's vehicle at a distance of approximately two car lengths.

Suddenly and without warning, Plaintiff applied her brake lights, even though there was space of approximately two car lengths in front of her vehicle. I immediately applied my brakes, but was unable to stop my vehicle before my vehicle made a single, slight impact to the vehicle ahead" (Defendant OLIVEIRA's Affidavit, dated April 25, 2019).

Vehicle and Traffic Law § 1129(a) "Following too closely", provides that: "The 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." In this regard, it has been established that:

" "A rear-end collision with a stopped or stopping vehicle establishes a prima facie case of negligence on the part of the driver of the rear vehicle, and imposes a duty on the part of the operator of the moving vehicle to come forward with an adequate, nonnegligent explanation for the accident" (Matos v Sanchez, 147 AD3d 585, 586, 47 NYS3d 307 [1st Dept 2017]). Here, defendant driver's assertion that plaintiffs' vehicle stopped abruptly does not explain why defendant driver failed to maintain a safe distance, and is insufficient to constitute a nonnegligent explanation"

(*Urena v GVC Ltd.*, 160 AD3d 467, 467 [1st Dept 2018]). The Court of Appeals has stated that: “It is well settled that a "rear-end collision with a stopped vehicle establishes a prima facie case of negligence on the part of the driver of the rear vehicle" ” (*Tutrani v County of Suffolk*, 10 NY3d 906, 908 [2008]).

Plaintiff ROBINSON made a prima facie showing of her entitlement to partial summary judgment on the issue of Defendant’s negligence by attesting that Defendant rear-ended her vehicle while she was slowing down in traffic. Thus, she shifted the burden to Defendant to advance a non-negligent explanation for the accident.

In response, Defendant OLIVEIRA seeks to rebut the presumption of his negligence, by asserting that he hit the Plaintiff’s vehicle ahead of his because it had suddenly stopped, and that he was unable to stop his vehicle in time to avoid the impact. However, this is not a sufficient non-negligent explanation for the accident. The Court has recently reiterated that:

“Plaintiffs met their prima facie burden by demonstrating that they were stopped or stopping in stop-and-go traffic when they were rear-ended by the defendants’ vehicle (see e.g. *Bajrami v Twinkle Cab Corp.*, 147 AD3d 649, 46 N.Y.S.3d 879 [1st Dept 2017]; *Chowdhury v Matos*, 118 AD3d 488, 987 N.Y.S.2d 132 [1st Dept 2014]; *Cartagena v Martinez*, 112 AD3d 521, 976 N.Y.S.2d 662 [1st Dept 2013]; *Johnson v Phillips*, 261 AD2d 269, 271, 690 N.Y.S.2d 545 [1st Dept 1999]). **Defendants’ allegation that plaintiffs’ vehicle stopped suddenly in stop-and-go traffic is not a sufficient non-negligent explanation for the accident, and therefore fails to raise a triable issue of material fact in opposition”**

(*Elihu v Nicoleau*, 173 AD3d 578, 578 [1st Dept 2019] [emphasis added]).

Likewise, herein, Defendant OLIVEIRA's similar contention is insufficient to rebut the presumption of his negligence because he was: "expected to maintain enough distance between himself and cars ahead of him so as to avoid collisions with stopped vehicles, taking into account weather and road conditions ... Defendants' ... argument, that plaintiff stopped suddenly, is insufficient to rebut the presumption of [his] negligence" (*Matos v Sanchez*, 147 AD3d 585, 586 [1st Dept 2017]).

Accordingly, Plaintiff's Motion, for partial summary judgment in her favor on liability against Defendant and for dismissal of Defendant's affirmative defense pertaining to Plaintiff's comparative fault, is granted, to the extent that Defendant, LEANDRO J. OLIVEIRA, is found negligent and his negligence was a substantial factor in causing the accident; and that Plaintiff was free from comparative fault for the happening of this rear-end collision. However, this Court makes no determination as to other issues herein, such as whether Plaintiff's alleged injuries were proximately caused by the negligence of the Defendant, and whether Plaintiff sustained a "serious injury" within the meaning of the Insurance Law. This constitutes the decision and order of this Court.

Dated: 11/18, 2019


HON. MARY ANN BRIGANTTI, J.S.C.