

Rodriguez v Castilla

2019 NY Slip Op 35169(U)

July 29, 2019

Supreme Court, Bronx County

Docket Number: Index No. 28101/2018E

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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EDDIEBIEL RODRIGUEZ,

Plaintiff,

- against -

DECISION AND ORDER

Index No. 28101/2018E

MIGUEL A. CASTILLA & HM RAHMUZZAMAN,

Defendants.

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Shawndya L. Simpson, J.:

INTRODUCTION

On July 28, 2016, plaintiff operated a vehicle said to have been in an accident with a vehicle operated by defendant Castilla, said to be owned by defendant Rahimuzzaman. Plaintiff alleges he was rear-ended as he was driving his vehicle northbound on the FDR drive in New York county. By notice of motion dated April 23, 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 June 14, 2019. 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 his affidavit, a certified police report, the summons, complaint, answer, bill of particulars, notice for discovery and demands. In opposition, the defendants submit their counsel’s affirmation along with a Report of Motor Vehicle Accident submitted by defendant driver. No other documents or exhibits are attached.

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 Castilla 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 drove on the FDR he was suddenly struck without warning from behind by defendant. Plaintiff alleges that he was driving straight in his lane for about ten seconds prior to being struck. It is alleged that at the time of the accident there was heavy traffic moving at a slow speed and that the damages to the vehicles were minor. Plaintiff asserts that defendants are solely responsible for the accident.

In opposition, defendants argue that plaintiff's motion is premature. The defense also contends that at the time of the accident plaintiff suddenly stopped in front of him in slow, heavy traffic and that this caused the defendant to stop-short to prevent "serious destruction", which resulted in the rear-end collision into plaintiff's vehicle. Defendants claims that his version of the accident is inconsistent with plaintiffs and that there are material issue of facts that require denial of the motion. The defense states that there must be a minimum amount of discovery prior to a determination on the instant motion. However, defendants' argument and evidence do not overcome plaintiff's *prima facie* showing.

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 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 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*). 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.

In this case, defendants’ argument does not overcome the evidence that he was operating his vehicle too closely to plaintiff. The excuse offered that defendant had to stop short does not defeat the plaintiff’s argument. The evidence submitted in opposition is also insufficient. The accident report made by defendant Castilla is self-serving, is not corroborated and does not contradict the assertion that he was driving too closely to the plaintiff’s vehicle. “[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]). 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 defendants 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]).

Furthermore, defendants did not attach firsthand sworn testimony to controvert plaintiff's evidence that defendants unreasonably caused the accident. 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]). "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; *Tortorello v. Carlin*, 260 A.D.2d 201 [App. Div., 1st Dept. 1999]), and defendants did not rebut with firsthand evidence plaintiff's assertion that defendant Castilla unreasonably caused the accident.

The evidence submitted in support of the motion has established a *prima facie* case that defendant Castilla 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.

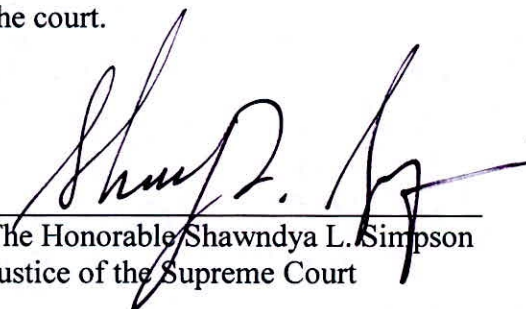
CONCLUSION

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
July 29, 2019



The Honorable Shawndya L. Simpson
Justice of the Supreme Court