

Tanner-Hoover v Jimenez

2019 NY Slip Op 35177(U)

September 18, 2019

Supreme Court, Bronx County

Docket Number: Index No. 25523/2018E

Judge: Shawndya L. Simpson

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, PART: 17

TANNER-HOOVER, TANYA

Index No. 0025523/2018E

-against-

Hon. Shawndya L. Simpson

JIMENEZ, EDUARDO A.

Justice Supreme Court

The following papers numbered 1 to _____ Read on this motion, (Seq. No. 1) for
SUMMARY JUDGMENT LIABILITY, noticed on **April 15 2019**.

| | |
|--|--------|
| Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed | No(s). |
| Answering Affidavit and Exhibits | No(s). |
| Replying Affidavit and Exhibits | No(s). |

Upon the foregoing papers, it is ordered that this motion is *granted in accordance to the
Attached decision.*

Motion is Respectfully Referred to Justice: _____
Dated: _____

Dated: 9/23/19

Hon. Shawndya L. Simpson 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: PART 17

-----X
TANYA TANNER-HOOVER,

Plaintiff,

- against -

DECISION AND ORDER

Index No. 25523/2018E

EDUARDO A. JIMENEZ.,

Defendants.

-----X
Shawndya L. Simpson, J.:

INTRODUCTION

On October 12, 2017, plaintiff was the operator of a vehicle said to have been in a motor vehicle accident with defendant on East 233rd street at its intersection with Bronx Boulevard, in Bronx county. Plaintiff alleges that as she was stopped at a red traffic light she was rear-ended by defendant which resulted in her serious personal injury. By notice of motion dated March 20, 2019, and the affirmation and exhibits submitted in support thereof along with all the pleadings and proceedings heretofore, plaintiff seeks summary judgment against defendant on the issue of liability. Plaintiff asserts that defendant is solely liable for causing the hit-in-the-rear motor vehicle accident. Defendant filed an affirmation in opposition dated April 1, 2019. Plaintiff filed a reply dated April 9, 2019.

In support of the motion, plaintiff submits a police accident report, summons, complaint, answer, and an affidavit from plaintiff. In opposition, the defendant submits his counsel's affirmation. No exhibits or other documents are attached or submitted along with defendant's counsel's affirmation in opposition. 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 the defendant is granted.

DISCUSSION

Plaintiff has established her entitlement to summary judgment on the issue of liability against the defendant (*see Bajrami v. Winkle Cab Corp.*, 147 A.D.3d 649 [App. Div., 1st Dept 2017]). It is undisputed that while plaintiff operated her vehicle she was stopped at a red light traffic sign on East 233 street at its intersection with Bronx Boulevard when she was struck by a vehicle owned and operated by defendant. Defendant's 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 directly in front of him and that defendant caused the rear-end collision. Plaintiff argues that defendant does not have a non-negligent excuse for the accident and is unable to explain why the accident occurred. Plaintiff's motion invites an explanation from the defendant as to the cause of the accident. However, no contrary version of the facts in the form of admissible evidence is offered by the defense to counter the instant motion. It is undisputed that defendant rear-ended the plaintiff's vehicle stopped at a red traffic light and that defendant is at fault for the accident. Under these circumstances, plaintiff is entitled to summary judgment on the issue of liability against the defendant (*see Kuehne & Nagel, Inc. v. Baiden*, 36 N.Y.2d 539 [1975]).

"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]). In this case, no admissible evidence is offered in opposition.

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.*).

As stated, defendant did not attach firsthand sworn testimony to controvert plaintiff’s evidence that the vehicle she drove was stopped and that he unreasonably caused the accident. No evidence is offered to controvert plaintiff’s evidence that defendant 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*, supra at 544,; *Tortorello v. Carlin*, 260 A.D.2d 201 [App. Div., 1st Dept. 1999]), and defendant did not rebut plaintiff’s assertion with any evidence to undermine the claim of culpability.

The evidence submitted in support of the motion has established a *prima facie* case that plaintiff was not at fault for the accident and defendant is the sole cause for the collision. Defendant failed to effectively rebut the presumption of his 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 stopped driver (*see Francisco v. Schoepfer*, 30 A.D.3d 275 [App. Div., 1st Dept. 2006]; *Woodley v. Ramirez*, 25 A.D.3d 451, 452 [App. Div, 1st Dept. 2006]). Consequently, the motion for summary judgment against the defendant on the issue of liability is granted.

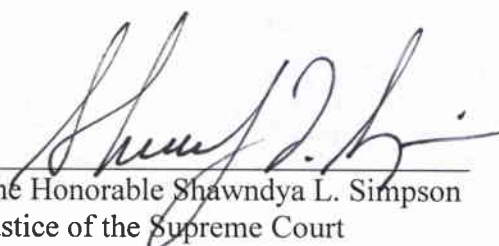
CONCLUSION

Accordingly, it is:

ORDERED, that plaintiffs’ motion for summary judgment on the issue of liability against the defendant for the subject accident is granted. A trial on the issues of damages and whether the threshold for serious injury has been established is ordered.

This constitutes the decision and order of the court.

Dated: Bronx, New York
September 18, 2019


The Honorable Shawndya L. Simpson
Justice of the Supreme Court