Benjamin v Benbasset
2020 NY Slip Op 31038(U)
March 9, 2020
Supreme Court, Bronx County
Docket Number: 32571-2019E
Judge: Mary Ann Brigantti

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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CHRISTOPHER BENJAMIN,

Plaintiff,

-against- Index No.: 32571-2019E

MURRAY BENBASSET,

Defendant.

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HON. MARY ANN BRIGANTTI:

Plaintiff moves for partial summary judgment in his favor on the issue of liability. This is an action to recover damages for alleged personal injuries sustained by Plaintiff, CHRISTOPHER BENJAMIN, in a motor vehicle accident, which occurred on or about February 8, 2018, at 9:30 a.m., on the southbound side of the Westside Highway, near its intersection with West 46th Street, in Manhattan, New York.

In support of his motion, Plaintiff's submissions include the pleadings, and Plaintiff's Affidavit. In opposition, Defendant's Counsel submits his bare Affirmation.

According to Plaintiff, he was stopped at a red traffic light for approximately 20 seconds when he suddenly felt a strong and violent impact from the rear which propelled his vehicle forward. His vehicle was rear-ended by the vehicle owned and operated by Defendant MURRAY BENBASSET, causing Plaintiff to sustain personal injuries. (Plaintiff Affidavit, sworn to on December 30, 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."

The Court of Appeals has reiterated 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 established her entitlement to judgment as a matter of law by submitting evidence that her vehicle was stopped at a red light when it was rear-ended by defendants' vehicle" (*Vasquez v Chimborazo*, 155 AD3d 432, 433 [1st Dept 2017]; *see Rodriguez v Garcia,* 154 AD3d 581 [1st Dept 2017]; *see Castaneda v DO&CO NY Catering, Inc.*, 144 AD3d 407 [1st Dept 2016]).

> " "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])"

(*Urena v GVC Ltd.*, 160 AD3d 467, 467 [1st Dept 2018]).

Accordingly, Plaintiff made a prima facie showing of his entitlement to partial summary judgment on the issue of Defendant's liability by attesting that Defendant's vehicle rear-ended Plaintiff's vehicle while it was stopped at a red traffic light. Thus, the burden shifted to Defendant to advance a non-negligent

explanation for the accident.

Herein, however, Defendant, the person having knowledge of the relevant facts concerning the circumstances surrounding the happening of the accident, has not submitted his own affidavit; and, in his Counsel's Affirmation, there is merely a recitation of general principals; and so Defendant has not made the requisite showing.

It is well-established that where the submission on the part of the party opposing a summary judgment motion "consisted only of the bare affirmation of [his] ... attorney who demonstrated no personal knowledge of the manner in which the accident occurred [, s]uch an affirmation by counsel is without evidentiary value and thus unavailing" (*Zuckerman v New York*, 49 NY2d 557, 563 [1980]). In *Zuckerman*, as here, the opponent of the motion proffered no affidavit made by a party or eyewitness having knowledge of the relevant facts. There was no explanation for the failure to submit affidavits. (*Zuckerman v New York,* 49 NY2d at 563).

A plaintiff's motion for partial summary judgment on liability was properly granted, where, as here, in "opposition to plaintiff's prima facie showing, defendants failed to submit any evidence to raise a triable issue of fact, and instead relied solely upon ... the arguments of counsel ... [, who] claimed no personal knowledge of the accident, his affirmation has no probative value" (*Thompson v Pizzaro*, 155 AD3d 423, 423 [1st Dept 2017]). In *Thompson*, the Court also held

that "Plaintiff's motion was not premature. Depositions are unnecessary, since defendants have personal knowledge of the facts, yet "failed to meet their obligation of laying bare their proof and presenting evidence sufficient to raise a triable issue of fact" " (*Thompson v Pizzaro*, 155 AD3d at 423).

Defendant did not present a sufficient non-negligent explanation for the happening of the accident. In this regard, "a driver is 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" (*Matos v Sanchez,* 147 AD3d 585, 586 [1st Dept 2017]; *see Urena v GVC Ltd.*, 160 AD3d 467, 467 [1st Dept 2018]).

Accordingly, Plaintiff's Motion, for partial summary judgment in his favor on liability, is granted, to the extent that Defendant is found liable for the happening of this 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: 3/9, 2020

Mary Ann Brigantti

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