

Henao v Toribio

2020 NY Slip Op 34895(U)

January 29, 2020

Supreme Court, Westchester County

Docket Number: 52403/2018

Judge: Terry Jane Ruderman

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This opinion is uncorrected and not selected for official publication.

To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER
-----X
CYNTHIA HENAO and CHRISTIAN HENAO,

Plaintiffs,

DECISION and ORDER

-against-

Motion Sequence No. 1
Index No. 52403/2018

LUZ D. TORIBIO and KELVIN TORIBIO,

Defendants.
-----X

RUDERMAN, J.

The following papers were considered in connection with the motion by plaintiffs for summary judgment on the issue of liability against defendants:

<u>Papers</u>	<u>Numbered</u>
Notice of Motion, Affirmation, Exhibits A - K	1
Affirmation in Opposition	2
Reply Affirmation	3

This is an action for personal injuries allegedly sustained in a motor vehicle collision on May 5, 2015, on the southbound side of the Saw Mill River Parkway near its intersection with Hearst Street in Westchester County, New York. A vehicle driven by plaintiff Christian Henao, in which plaintiff Cynthia Henao was a passenger, was struck in the rear by a vehicle driven by defendant Luz Toribio and registered to defendant Kelvin Toribio, after the traffic light at which they had been stopped turned green.

In moving for summary judgment on the issue of defendants' liability, plaintiffs rely on the certified police report describing the officer's own observations of the collision, and the deposition testimony of plaintiffs and of defendant Luz Toribio. Plaintiffs, in their depositions,

asserted that their vehicle had not moved from the stopped position when it was hit from behind as soon as the light turned green. The reporting police officer described the following personal observation:

“[V]ehicle #2 accelerate[d] into the rear of vehicle #1 as traffic began to start at the traffic light at Hearst St. Vehicle # 1 started to move forward when the light turned green and let his foot off the gas, vehicle #2 accelerated right into vehicle #1. Driver of Vehicle #2 stated that she saw vehicle #1 start to go and did not see any brake lights.”

Luz Toribio described at her deposition that her vehicle had been stopped behind plaintiffs' vehicle at a red light at Hearst Street, and explained that when the light turned green, plaintiffs' vehicle first began to accelerate, then “slammed” on the brake, and that she, having begun to accelerate, was unable to brake fast enough to prevent a collision with plaintiffs' vehicle.

In opposing summary judgment, defendants suggest that the rule applicable to rear-end collisions, imposing on the operator of the rear vehicle “to rebut the inference of negligence by providing a nonnegligent explanation for the collision” (*Kuris v El Sol Contr. & Constr. Corp.*, 116 AD3d 675, 675-676 [2d Dept 2014]) only applies to collisions with a “stopped or stopping” vehicle, and is inapplicable where the forward vehicle has begun accelerating and then stopped. They propose that the evidence that plaintiffs' vehicle came to a sudden stop overcomes the inference of negligence on the part of the rear vehicle.

Analysis

Since plaintiffs' vehicle was stopping or decelerating when the collision occurred, this Court finds applicable the rule that “a rear-end collision with a stopped or stopping vehicle establishes a prima facie case of negligence on the part of the operator of the rear vehicle, thereby requiring that operator to rebut the inference of negligence by providing a nonnegligent explanation for the collision” (*see Kuris v El Sol Contr. & Constr. Corp.*, 116 AD3d at 675-676

[2d Dept 2014]). Moreover, even accepting as true Luz Toribio's description of how the accident occurred, the inference of negligence is not negated: "the defendant's contention, made in opposition to the plaintiffs' motion, that the plaintiff proceeded once the traffic light turned green but then suddenly stopped, did not rebut the inference of negligence by providing a non-negligent explanation for the collision" (*Ramirez v Konstanzer*, 61 AD3d 837, 837 [2d Dept 2009] [citations omitted]). Even if plaintiffs' vehicle began accelerating at the green light but then immediately braked, a violation of Vehicle and Traffic Law § 1129 (a) by defendant driver is established, since the statute requires a driver approaching another vehicle from the rear to maintain a reasonably safe distance and rate of speed, and to exercise reasonable care to avoid a collision with the vehicle in front.

Summary judgment against defendants on the issue of liability would be warranted even if defendants stated a valid defense of comparative negligence (*see Rodriguez v City of New York* (31 NY3d 312 [2018])). However, that defense is not supported here by the testimony of Luz Toribio that plaintiff driver braked after momentarily beginning to accelerate at the green light.

Although "not every rear-end collision is the *exclusive* fault of the rearmost driver" (*Gaeta v Carter*, 6 AD3d 576, 576 [2d Dept 2004] [emphasis added], citing *Chepel v Meyers*, 306 AD2d 235, 236 [2d Dept 2003]), to establish the existence of an issue of fact as to whether the lead driver was comparatively negligent, more must be shown than a mere assertion that the lead driver stopped after briefly proceeding, in the face of a green signal. In *Gaeta v Carter*, for example, an issue remained for trial as to the lead driver's comparative negligence based on the evidence that "the plaintiff stopped his car in traffic in an attempt to make a right-hand turn, from the left-hand lane, without signaling" (6 AD3d at 577). Similarly, evidence that the lead driver stopped suddenly and without warning in the left lane of moving traffic in order to make

an illegal left turn also sufficed (*see Ramos v TC Paratransit*, 96 AD3d 924, 925-926 [2d Dept 2012]). In such cases, since the rear driver could reasonably anticipate that the car in front would continue to proceed with the flow of traffic until conditions or circumstances changed, the lead driver could be found negligent for stopping suddenly in the roadway in the middle of the flow of traffic, in contravention of traffic regulations, without prior indication.

In contrast, in the present situation, the rear driver had no right to anticipate that the vehicle in front of it would proceed as soon as the light changed, or accelerate immediately to full speed. By accelerating before the vehicle ahead of her had completely proceeded, defendants' vehicle was the sole cause of the collision.

In view of the foregoing, it is hereby

ORDERED that plaintiff's motion for summary judgment on the issue of liability against defendants is granted, and it is further

ORDERED that all parties are directed to appear at 9:15 a.m. on Tuesday, March 17, 2020, in the Settlement Conference Part, room 1600 of the Westchester County Courthouse located at 111 Dr. Martin Luther King Jr. Boulevard, White Plains, New York, 10601, to schedule a trial on the issue of damages.

This constitutes the Decision and Order of the Court.

Dated: White Plains, New York
January 29, 2020


HON. TERRY JANE RUDERMAN, J.S.C.