

Belmar v Tineo-Lara
2020 NY Slip Op 35218(U)
May 6, 2020
Supreme Court, Westchester County
Docket Number: Index No. 65524/2019
Judge: Terry Jane Ruderman
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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
AYANNA BELMAR,

Plaintiff,

-against-

DECISION and ORDER
Motion Sequence No.1
Index No. 65524/2019

JOEL DARIO TINEO-LARA, STEPHANIE D. BELMAR
and GRIFFITH EVERTON,

Defendants.
-----X

RUDERMAN, J.

The following papers were considered in connection with plaintiff’s motion for an order pursuant to CPLR 3212 granting her summary judgment on the issue of liability against all defendants and directing an immediate trial on the issue of damages:

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

This action arises out of a two-vehicle collision that occurred on February 9, 2018, at the intersection of Hillside Avenue and the I-287 westbound exit ramp in the Town of Greenburgh, New York. Plaintiff, Ayanna Belmar was a passenger in a vehicle operated by defendant Stephanie D. Belmar and owned by defendant Griffith Everton, which was turning left from the I-287 exit ramp onto Hillside Avenue, when it was struck by the vehicle operated by defendant Joel Dario Tineo-Lara, who was traveling north on Hillside Avenue. While plaintiff’s claim alleges negligence by both drivers, each driver has interposed a cross-claim against the other.

In moving for summary judgment against all defendants, plaintiff maintains in her affidavit that “[t]he facts of this case are quite simple and undisputed.” She describes the accident as occurring after the vehicle in which she was a passenger, having stopped on the ramp at I-287 at the intersection with Hillside Avenue, proceeded into the intersection when the light turned green, at which time it was struck by the vehicle driven by defendant Tineo-Lara. She claims that Belmar failed to take appropriate evasive actions to avoid the accident. Additionally, her attorney, in his affirmation, asserts that Tineo-Lara was negligent for failing to yield the right of way.

The certified police accident report submitted by plaintiff sets forth how each party described the accident to the reporting officer:

“The operator of (v1 [Tineo-Lara]) states he was traveling North on Hillside Ave approaching a green traffic light at the intersection with the I-287 ramp. Per (v1), (v2) pulled into the intersection and stopped causing the vehicles to collide. Per the operator of (v2 [Belmar]) and the passenger they were stopped at a red light on the ramp, the light turned green and they proceeded into the intersection. They then saw the headlights of (v1) coming at them causing the driver to stop in a failed attempt to avoid the accident.”

Importantly, the officer concluded his notes regarding the accident with the statement, “(v2) found at fault for failure to yield right of way.”

Defendant Stephanie Belmar submitted an affidavit in opposition in which she emphasizes that she had been stopped at a red light behind two stopped vehicles ahead of her, all of which proceeded after the light changed to green, and that the accident was caused solely by Tineo-Lara running the red light. She elaborates:

“I began to enter the intersection because the light had turned green and the two cars ahead of me had traveled through the green light, through the intersection, and had turned left onto Hillside Street. Prior to entering the intersection, I

looked to my left and saw no oncoming cars. At the time that I looked left, I was approximately one to one-and-a-half car lengths behind the vehicle that was in front of me and had been stopped in front of me waiting for the red light to turn green. As I proceed into the intersection to turn left onto Hillside Street, the light was still green. [¶] Just prior to the accident, upon entering the intersection, I first noticed the other vehicle involved in this accident (operated by Joel Dario Tineo-Lara northbound on Hillside Avenue) when I saw that vehicle's headlights. [¶] Upon proceeding to enter the intersection, I drove carefully and slowly, and did not exceed five to ten mph prior to the point of the collision. In other words, I operated my vehicle appropriately and maintained a safe speed and distance from any other vehicles until the point when my vehicle was suddenly and unforeseeably struck by the other car. [¶] Perhaps most importantly, the co-defendant's conduct caused the accident. Specifically, the co-defendant caused this accident by running the red light.”

Defendant Tineo-Lara did not submit opposition to the motion.

In seeking partial summary judgment on the issue of liability as against all defendants, plaintiff relies on cases which have stated that the right of an innocent passenger to judgment may not be restricted by issues of comparative negligence as between the drivers of the two vehicles (citing, e.g., *Johnson v. Phillips*, 261 AD2d 269, 272 [1st Dept 1999]; *Silberman v Surrey Cadillac Limousine Serv.*, 109 AD2d 833 [2d Dept 1985]).

Analysis

Plaintiff's assertion that the facts of this case are undisputed is not entirely accurate. While there can be no dispute that there was no contributory or comparative negligence on

plaintiff's part, there are factual disputes of her claim that both drivers contributed to causation of the collision. Plaintiff's description of the accident matches that of defendant Stephanie Belmar, except, importantly, to the extent that plaintiff asserts that defendant Belmar failed to take appropriate evasive actions. Moreover, while both plaintiff's and defendant Belmar's descriptions of the accident support the conclusion of plaintiff's counsel that Tineo-Lara was negligent for failing to yield the right of way, the police report calls that contention into question, since the report indicates that driver v2 was found at fault for failure to yield right of way, and it identifies driver v2 as defendant Belmar.

The case law plaintiff cites in seeking partial summary judgment on the issue of liability against all defendants, does not support that relief in these circumstances. While numerous cases have repeated the assertion that innocent passengers may prevail on summary judgment by showing that they are free from liability, in such cases, the award of summary judgment has been granted against a defendant or defendants whose liability cannot be disputed. For example, in *Kiernan v Edwards* (97 AD2d 750 [2d Dept 1983]), where two vehicles had been proceeding toward each other from opposite directions, and one made a left turn in front of the other, resulting in a collision, the Court granted the innocent passenger summary judgment against the vehicle that, by turning left, had failed to yield the right of way. Similarly, in *Silberman v Surrey Cadillac Limousine Serv., Inc.* (109 AD2d 833 [2d Dept 1985]), the vehicle in which the plaintiff was a passenger ran into the rear end of the vehicle in front of it; the plaintiff was granted summary judgment as against the owner and operator of the vehicle in which he was a passenger. This Court may not make a determination of liability against defendants, notwithstanding the plaintiff's undisputed freedom from comparative fault, unless and until she demonstrates that each defendant against whom she seeks summary judgment was at fault; an

issue of fact on that point precludes a grant of summary judgment (*see Phillip v D&D Carting Co., Inc.*, 136 AD3d 18, 24 [2d Dept 2015]).

Because plaintiff's submissions fail to establish the absence of an issue of fact as to the fault of each of the two drivers, and defendant Belmar's submissions further establish the existence of questions of fact regarding her fault, plaintiff's motion for summary judgment on the issue of liability must be denied. However, as the Second Department pointed out in *Phillip v D&D Carting Co.*, the court may appropriately make an order pursuant to CPLR 3212 (g) to the effect that plaintiff's freedom from comparative fault is "deemed established for all purposes in the action" (136 AD3d at 25).

Based upon the foregoing, it is hereby

ORDERED that plaintiff's motion for partial summary judgment on the issue of liability pursuant to CPLR 3212 is denied, except to the extent that plaintiff's freedom from comparative fault is established, and it is further

ORDERED that the parties are directed to appear in the Preliminary Conference Part, 111 Dr. Martin Luther King Jr. Blvd., White Plains, New York on a date and time of which they will be notified by that Part.

This constitutes the decision and order of the Court.

Dated: White Plains, New York

May 6, 2020



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