

Watts v Gonzalez

2020 NY Slip Op 35316(U)

May 22, 2020

Supreme Court, Bronx County

Docket Number: Index No. 29973/2018E

Judge: Mary Ann Brigantti

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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GAIEA WATTS, and JANEIA M. GIBSON,
Plaintiffs,

-against-

Index No.: 29973/2018E

DORIS GONZALEZ, LESLEY MATTEI, CAMERON
SOSA and YADIRA PIMENTEL,
Defendants.

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HON. MARY ANN BRIGANTTI:

Plaintiffs move for partial summary judgment in their favor on the issue of liability, and related relief.

This is an action to recover damages for alleged personal injuries sustained by Plaintiffs, passengers in a motor vehicle accident which occurred on, or about, June 19, 2018, at about 10:30 p.m., on Gun Hill Road, in the Bronx, New York. Plaintiff GAIEA WATTS, and her daughter JANEIA M. GIBSON, were passengers in the vehicle driven by Defendant LESLEY MATTEI, and owned by Defendant DORIS GONZALEZ, which was involved in a sideswipe with the vehicle driven by Defendant YADIRA PIMENTEL, and owned by Defendant CAMERON SOSA.

In support of their motion, Plaintiffs’ submissions include the pleadings, Police Accident Report, and Plaintiffs’ deposition transcripts. In opposition, Defendants submitted their Counsel’s Affirmations.

Both Plaintiffs testified that they did not observe how the accident happened. Plaintiff GIBSON testified, in relevant part, that she, her mother (WATTS) and her

friend Hassan, were back-seat passengers, and someone named Chris was a front-seat passenger, in the vehicle driven by Defendant LESLEY MATTEI, on Gun Hill Road. LESLEY was driving 55 m.p.h. in the right lane, when GIBSON felt an impact to the left side of the vehicle. Plaintiff GIBSON did not know whether the impact occurred at the front, middle, or back of the vehicle, and she did not see where the vehicles sustained damaged. Plaintiff GIBSON did not observe how the accident occurred, because she “had [her] head on the door ‘cause [she] was tired” (Plaintiff GIBSON’s deposition, p. 31-38, 77-85, dated Oct. 8, 2019).

Plaintiff WATTS, likewise, testified, in relevant part, that: “the lady [in the other car] came on the [left] side of [LESLEY’s vehicle] ... all I know is I [was] bumped from the [left] side ... when the car hit ... she [LESLEY] swerved” (Plaintiff WATTS’ deposition, p. 41-50, dated Oct. 8, 2019). As an aside, it is noted that Plaintiff WATTS, also, stated that she had been convicted of several felonies involving drug sales and possession, of crack cocaine, between 1999 and 2013; that her most recent release from prison was in 2016; that she had not been employed since 2015; and that she had been involved in prior motor vehicle accidents in the years 2009 and 2017 (Plaintiff WATTS’ deposition, p. 13, 19-25).

Accordingly, Plaintiffs made out a *prima facie* showing of their entitlement to partial summary judgment only on the issue of their lack of culpable conduct for the happening of the collision, but not as to Defendants’ liability – inasmuch as movants

failed to proffer sworn testimony with relevant facts showing how the accident happened. Thus, the burden did not shift to Defendants to advance a non-negligent explanation on their liability for the happening of the accident.

“As we have stated frequently, the proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact (*Winegrad v New York Univ. Med. Center*, 64 NY2d 851, 853; *Zuckerman v City of New York*, 49 NY2d 557, 562; *Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404). Failure to make such prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposing papers (*Winegrad v New York Univ. Med. Center, supra*, at p 853). Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action (*Zuckerman v City of New York, supra*, at p 562)” [emphasis added]

(*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]).

In a recent leading First Department case, the Court denied summary judgment on liability as against either defendant driver because of the unresolved facts concerning the accident, holding as follows:

“Plaintiff has established his lack of culpable conduct as an undisputed innocent driver, which entitles him to summary judgment on lack of fault pursuant to CPLR 3212 (g) (*see e.g. Medina v Rodriguez*, 92 AD3d 850, 939 NYS2d 514 [2d Dept 2012]; *Mello v Narco Cab Corp.*, 105 AD3d 634, 963 NYS2d 581 [2013]; *Garcia v Tri-County Ambulette Serv.*, 282 AD2d 206, 723 NYS2d 163 [2001]). However, unlike in *Johnson*, plaintiff has not established entitlement to summary judgment on liability against either defendant driver because of the conflicting and unresolved facts concerning the accident and which vehicle was responsible for the accident” [emphasis added]

(*Oluwatayo v Dulinayan*, 142 AD3d 113, 120 [1st Dept 2016]).

In another recent case, where a plaintiff passenger did not see how the accident occurred, the Court held that: “plaintiffs established the injured plaintiff's lack of culpability as a matter of law”; however, the record did not establish the defendants' liability as a matter of law (*Kaplan v Tsirlin*, 164 AD3d 1150, 1150-1151 [1st Dept 2018]).

Defendants' Counsel aver that the motion for summary judgment is premature, because discovery has not been completed, including depositions of the four Defendants as well as the other two passengers. From the papers submitted, it appears that essential facts may exist, which cannot yet be stated, within the meaning of CPLR 3212 (f) “Facts unavailable to opposing party”, which provides that: “Should it appear from affidavits submitted in opposition to the motion that facts essential to justify opposition may exist but cannot then be stated, the court may deny the motion or may order a continuance to permit affidavits to be obtained or disclosure to be had and may make such other order as may be just.”

The parties herein should have the “opportunity to develop the record regarding the factual basis of defendants' [allegations,] ... the applicability of which is generally an issue of fact.” (*Nelson v Bestway Coach Express*, 36 AD3d 488, 488 [1st Dept 2007]; see *Diaz v Jadan*, 116 AD3d 600 [1st Dept 2014]); see *Belziti v Langford*, 105 AD3d 649 [1st Dept 2013]; see *Yant v Mile Sq. Transp., Inc.*, 89 AD3d 492 [1st Dept 2011]). Thus, the parties herein should have the opportunity, for example, to complete all

depositions; exchange relevant documents; and perform mechanic's examination of the Defendants' vehicle, if warranted. In this regard, Defendants point out that, according to the Police Accident Report, the "driver of vehicle 2 states ...[that] he[r] vehicle malfunctioned causing her collie [*sic* collision] with vehicle in the left lane" (*see* Police Accident Report).

Accordingly, Plaintiffs, innocent passengers, are entitled to a determination that they have no culpable conduct on the issue of their liability – irrespective of the unresolved issues of fact on Defendants' negligence.

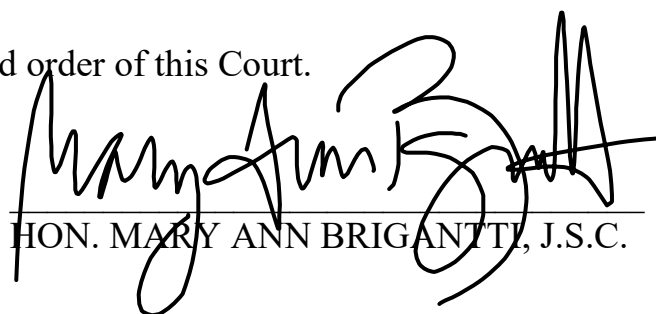
Where, as here, plaintiffs were innocent passengers, and "there is no basis for finding that plaintiff ... did anything to cause the accident or could have prevented it", the Court properly found no culpable conduct by a plaintiff passenger on the issue of liability (*Mello v Narco Cab Corp.*, 105 AD3d 634, 635 [1st Dept 2013]). "CPLR 3212 (g) permits the court to limit issues of fact for trial, by specifying which facts are not in dispute or are incontrovertible, and such facts shall be deemed established for all purposes in the action" (*Garcia v Tri County Ambulette Serv.*, 282 AD2d 206, 207 [1st Dept 2001]).

Therefore, Plaintiffs' motion, for partial summary judgment in their favor on liability, is granted only to the extent that Plaintiffs, innocent passengers, are found free from comparative fault for the happening of this collision. To the extent that Plaintiffs seek summary judgment in their favor on Defendants' liability, the motion is denied,

without prejudice to the making of a timely motion, if warranted, after the completion of the relevant discovery and the filing of the Note of Issue. Thus, this Court makes no determination as to other issues herein, such as: the, respective, liability, if any, of the Defendants; whether Plaintiffs' alleged injuries were proximately caused by the negligence of the Defendants; and whether Plaintiffs sustained "serious injuries" within the meaning of the Insurance Law.

This constitutes the decision and order of this Court.

Dated: 5/22, 2020



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