Romero v Rahim
2020 NY Slip Op 35500(U)
May 15, 2020
Supreme Court, Bronx County
Docket Number: Index No. 32894/2018E
Judge: Mary Ann Brigantti
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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FRANKIE A. ROMERO,

Plaintiff,

-against- Index No.: 32894/2018E

ABDUR RAHIM and ORIO CAB CORP.,

Defendants.

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HON. MARY ANN BRIGANTTI:

Plaintiff moves for partial summary judgment in his favor of the issue of liability, and related relief. This is an action to recover damages for alleged personal injuries sustained by Plaintiff, FRANKIE A. ROMERO, in a motor vehicle accident, which occurred on or about March 9, 2016, at 2:45 a.m., on Atlantic Avenue, near the intersection of Vermont Street, in Brooklyn, New York. Plaintiff was a front-seat passenger in his own vehicle, which was being operated by his co-worker, nonparty Yogendia Adhin. Defendant ABDUR RAHIM was the driver of the vehicle owned by Defendant ORIO CAB CORP.

In support of his motion, Plaintiff's submissions include the pleadings, Police Accident Report, and Plaintiff's Affidavit and deposition transcript. In opposition, Defendants submitted their Counsel's Affirmation.

According to Plaintiff, his vehicle was traveling eastbound on Atlantic Avenue, in the middle lane, and gradually slowed and came to a complete stop at the red light at the intersection of Vermont Street. His vehicle was stopped for about two minutes

when he suddenly felt a heavy impact to the rear of his vehicle. It was rear-ended by the yellow taxi cab, owned and operated by Defendants. (*See* Plaintiff's Affidavit dated January 15, 2020, and Plaintiff's deposition dated June 18, 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]).

Accordingly, Plaintiff ROMERO made a *prima facie* showing of his entitlement to partial summary judgment on the issue of Defendants' liability by attesting that

Defendant rear-ended his vehicle while it was stopped at a red light. Thus, the burden shifted to Defendants to advance a non-negligent explanation for the accident.

In response, however, Defendant driver, RAHIM, the person having knowledge of the relevant facts concerning the circumstances surrounding the happening of the accident, has not submitted his own affidavit. In his Counsel's Affirmation, there is merely a recitation of general principals; and so Defendants have 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]).

It is noted that Defendant admitted that he rear-ended Plaintiff's vehicle, but contended that it was because it had stopped short at the red light (according to the Police Accident Report). However, even if this statement was submitted herein in admissible form, it does not constitute a non-negligent explanation for this accident.

> " "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]. Here, defendant driver's assertion that plaintiffs' vehicle stopped abruptly does not explain why defendant driver failed to maintain a safe distance, and is insufficient to constitute a nonnegligent explanation)"

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

Accordingly, Defendants herein did not present a sufficient non-negligent explanation for the happening of this 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]).

As far as the liability of Defendant owner of the vehicle, summary judgment is based upon Vehicle & Traffic Law § 388(1) "Negligence in use of operation of vehicle attributable to owner", which provides that: "Every owner of a vehicle used or

operated in this state shall be liable and responsible for ... injuries to person or property resulting from negligence in the use or operation of such vehicle, ... by any person using or operating the same with the permission, express or implied, of such owner."

In addition, where, as here, a plaintiff was an innocent passenger, 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, Plaintiff's Motion, for partial summary judgment in his favor on liability, is granted to the extent that Defendants are found liable and Defendant's negligence was a substantial factor in causing the accident; and that Plaintiff, an innocent passenger, 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 Defendants, and whether Plaintiff sustained a "serious injury" within the meaning of the Insurance Law.

This constitutes the decision and order of this Court.

Dated: 5/15, 2020

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