SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: I.A.S. PART 14

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ROSAURA PEREZ,

Plaintiff,

- against -

JUAN EMRIQUE MEDRANDA-LOOR, TERESA HELEN FOTINO, ROSE FOTINO and JEFFREY ERBER,

Defendants.

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DECISION AND ORDER

Index No. 33594/2018E

John R. Higgitt, J.

Upon plaintiff's February 3, 2020 notice of motion and the affirmation and exhibits submitted in support thereof; the February 16, 2020 affirmation in opposition of defendants Teresa Helen Fotino and Rose Fotino ("the Fotino defendants") and the exhibits submitted therewith; plaintiff's February 26, 2020 affirmation in reply; and due deliberation; plaintiff's motion for partial summary judgment on the issue of the Fotino defendants' liability for causing the subject accident is granted.

This is a negligence action to recover damages for personal injuries that plaintiff allegedly sustained in a motor vehicle accident that took place on November 5, 2017. In support of her motion, plaintiff submitted the pleadings and her affidavit. Plaintiff averred that she was a passenger in a vehicle operated by defendant Medrada-Loor. The vehicle was stopped due to traffic on the lower level of the George Washington Bridge when the Fotino defendants' vehicle struck the rear of the vehicle plaintiff occupied.

"A rear-end collision with a stationary vehicle creates a prima facie case of negligence requiring a judgment in favor of the stationary vehicle unless defendant proffers a non-negligent explanation for the failure to maintain a safe distance . . . A driver is expected to drive at a sufficiently safe speed and to maintain enough distance between himself [or herself] and cars ahead

of him [or her] so as to avoid collisions with stopped vehicles, taking into account weather and road conditions" (*LaMasa v Bachman*, 56 AD3d 340, 340 [1st Dept 2008]). The happening of a rear-end collision is itself a prima facie case of negligence of the rearmost driver in a chain confronted with a stopped or stopping vehicle (*see Cabrera v Rodriguez*, 72 AD3d 553 [1st Dept 2010]).

Vehicle and Traffic Law § 1129(a) states that a "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" (*see Darmento v Pacific Molasses Co.*, 81 NY2d 985, 988 [1993]). Based on the plain language of the statute, a violation is clear when a driver follows another too closely without adequate reason and that conduct results in a collision (*id.*).

In opposition to plaintiff's prima facie showing of entitlement to judgment as a matter of law on the issue of liability, defendants failed to provide a non-negligent explanation for the accident or otherwise raise a triable issue of fact as to their liability. The Fotino defendants submit the affidavit of defendant Teresa Helen Fotino, who averred that she was traveling behind the vehicle that plaintiff occupied when defendant Medranda-Loors' vehicle came to a sudden stop. The Fotino defendants assert that the accident occurred because of the sudden emergency created by defendant Medranda-Loors' sudden stop. The Fotino defendants' conclusory assertion that the vehicle that plaintiff occupied made a sudden stop is insufficient to raise a triable issue of fact as to defendants' liability.

Generally, driver who is involved in an accident because he or she faced an emergency is not liable if the emergency was sudden and unforeseen (*see Rivera v New York City Tr. Auth.*, 54 AD3d 545, 549 [1st Dept 2008]) However, the emergency doctrine is typically inapplicable to routine rear-end traffic accidents (*see Johnson v Phillips*, 261 AD2d 269, 271 [1st Dept 1999]). Furthermore, they are precluded from raising the emergency doctrine as an affirmative defense because the Fotino defendants failed to include it as an affirmative defense in the answer (*see Bello v Transit Auth.*, 12 AD3d 58, 61 [2nd Dept 2004]).

Moreover, a claim that the driver of a rear-ended vehicle made a sudden stop is insufficient to constitute a non-negligent explanation for the accident (*see Bajrami v Twinkle Cab Corp.*, 147 AD3d 649[1st Dept 2017]). Thus, the general rule regarding liability for rear-end accidents "has been applied when the front vehicle stops suddenly in slow-moving traffic; even if the sudden stop is repetitive; when the front vehicle, although in stop-and-go traffic, stopped while crossing an intersection; and when the front car stopped after having changed lanes" (*Johnson v Phillips*, 261 AD2d 269, 271 [1st Dept 1999]). Furthermore, "[a] driver of a vehicle approaching another vehicle from the rear is required to maintain a reasonably safe distance and rate of speed under the prevailing conditions to avoid colliding with the other vehicle" (*Nsiah-Ababio v Hunter*, 78 AD3d 672, 672 [2d Dept 2010]). This is not a situation where an accident occurred on a highway with normal traffic conditions, i.e., where traffic was flowing uninterrupted (*cf. Baez-Pena v MM Truck & Body Repair, Inc.*, 151 AD3d 473 [1st Dept 2017]).

Under the circumstances, the "innocent passenger" plaintiff is entitled to dismissal of the defendants' affirmative defenses alleging plaintiff's comparative fault (*see Oluwatayo v Dulinayan*, 142 AD3d 113 [1st Dept 1999]).

Accordingly, it is

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

ORDERED, that defendants' affirmative defense alleging plaintiff's comparative fault is dismissed.

This constitutes the decision and order of the court.

Dated: April 28, 2020

John R. Higgitt, J.S.C.