

Colarossi v Shah

2020 NY Slip Op 35523(U)

August 13, 2020

Supreme Court, Bronx County

Docket Number: Index No. 25726/2019E

Judge: Ben R. Barbato

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.



SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, PART 14

-----X

CHRISTOPHER M. COLAROSSO and
RAMON COLON,

Index No. 25726/2019E

Plaintiffs,

-against-

Hon. BEN R. BARBATO

HITESHKUMAR J. SHAH and JIGNESH
SHAH,

Justice Supreme Court

Defendants.

-----X

The following papers numbered 1 to 2 were read on this motion (Seq. No. 1) for **SUMMARY JUDGMENT LIABILITY** noticed on **July 15, 2020**, Submitted on **July 15, 2020** Motion Calendar.

Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed	No(s).	1,2
Answering Affidavit and Exhibits	No(s).	
Replying Affidavit and Exhibits	No(s)	.

This is an action to recover for personal injuries sustained by Plaintiffs on October 22, 2018 at approximately 10:15am, as a result of a motor vehicle accident which occurred on South Broadway near the intersection with Old Country Road, Town of Oyster Bay, New York. At the time of the accident, Plaintiff Christopher M. Colarossi, the operator of a motor vehicle in which Plaintiff Ramon Colon was a passenger, was struck in the rear by Defendants' vehicle. Plaintiffs claim that the vehicle operated by Plaintiff Colarossi was at a full and complete stop for a red traffic light on South Broadway when Defendants' vehicle approached Plaintiffs' from the rear, failed to properly stop their vehicle, and struck Plaintiffs' vehicle in the rear. Plaintiffs claim that as a result of the accident, Plaintiffs sustained numerous serious physical injuries.

Plaintiffs move for an order pursuant to (1) CPLR 3212 granting summary judgment as a matter of law against Defendants on the issue of liability. Plaintiffs also move for dismissal of affirmative defenses raised by Defendants alleging contributory

and/or comparative negligence of Plaintiffs. Defendants argue that since it is undisputed that Defendants' vehicle struck Plaintiffs' vehicle in the rear while in a stopped position, Defendants are required to come forward with a non-negligent explanation for their actions in causing the collision. Plaintiffs further argue that the fact that Defendants' vehicle struck Plaintiffs' vehicle in the rear while stopped, constitutes negligence as a matter of law and a violation of Vehicle and Traffic Law section 1129(a).

In support of their motion, Plaintiffs submitted an Affidavit of Merit from Plaintiff Christopher M. Colarossi as depositions have not yet been conducted. Plaintiff Colarossi states that he was the operator of a 2007 Dodge owned by his brother Michael Colarossi, on October 22, 2018 at about 10:15am. He stated that Plaintiff Ramon Colon was a front seated passenger on that day, and that the roadway was dry and the weather was clear that morning. Plaintiff Colarossi stated that while he was driving on South Broadway, he was in the left turn lane, approached an intersection on Old Country Road and observed the traffic light to be red. He stated that he brought his vehicle to a stop behind a vehicle that was immediately in front of him, stopped for approximately thirty (30) seconds with his foot on the brake, and felt a hard impact to the rear of his vehicle which propelled his vehicle forward. Plaintiff Colarossi stated that he exited his vehicle and observed that Defendants' dark beige Honda, operated by Defendant Hiteshkumar Shah, had damage to the front of the vehicle and the Dodge vehicle which Plaintiff Colarossi was driving had damage to the rear. He also stated that he observed Defendant Shah attempting to push the deployed airbag back into the steering wheel of his Honda.

Plaintiffs submitted an uncertified copy of the police report which documented that both Plaintiffs' and Defendants' vehicles were in a collision, and Defendants' airbag deployed. The police report noted that the points of contact were the front of Defendants' vehicle with the rear of Plaintiffs' vehicle.

Since summary judgment is a drastic remedy, it should not be granted where

there is any doubt as to the existence of a triable issue. (See Rotuba Extruders v Ceppos, 46 N.Y.2d 223 [1978]). A rear end collision with a vehicle establishes a prima facie case of negligence against the rear most driver (see Woodley v Ramirez, 25 A.D.3d 451 [1st Dept 2006]) as the “rule is that a driver must maintain a safe distance between his vehicle and the one in front of him...” (Johnson v Phillips, 261 A.D.2d 269, 271; Leal v Wolff, 224 A.D.2d 392; see also Vehicle and Traffic Law Section 1129[a] “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 vehicle and the traffic upon the condition of the highway”).

In a rear-end collision, there is a presumption of non-negligence of the driver of the lead vehicle. (See Soto-Marouquin v Mellet, 63 A.D.3d 449 [1sr Dept 2009]). “[U]nless the driver of the following vehicle presents a non-negligent explanation for the accident, or a non-negligent reason for his failure to maintain a safe distance between his car and the lead car [a] claim that the lead vehicle ‘stopped suddenly’ is generally insufficient to rebut the presumption of non-negligence on the part of the lead vehicle” (Woody v Ramirez, 25 A.D.3d at 452).

Plaintiffs argue that based on the Affidavit of Plaintiff Christopher M. Colarossi, in conjunction with the police report, they have made their prima facie showing of liability against Defendants as a matter of law. Plaintiffs also argue that violation of Vehicle and Traffic Law section 1129(a) constitutes negligence per se. Plaintiffs claim that Defendants will not be able to rebut the presumption of negligence caused by virtue of this rear-end collision and will not be able to proffer a non-negligent explanation for how this accident happened.

Plaintiffs also argue that since their vehicle was lawfully stopped for a red traffic light upon a roadway when they were hit in the rear, Plaintiff Colarossi had no duty or ability to avoid the accident with Defendants’ vehicle which was approaching from the rear. Plaintiffs also argue that with regard to passenger Plaintiff Ramon Colon, there is no proof he did anything to cause or contribute to the happening of this accident by

virtue of merely sitting in the front passenger seat. Plaintiffs argue that Defendants' affirmative defenses alleging comparative negligence, contributory negligence, and/or culpable conduct of Plaintiffs should be dismissed since there is no factual basis in support of them.

Plaintiffs also argue that their motion for summary judgment is not premature even though depositions have not yet been conducted, since the facts surrounding this action are within the personal knowledge of Defendant operator (see Thompson v Pizzaro, 155 A.D.3d 423 [1st Dept 2017]; Avant v. Cepin Livery Corp., 74 A.D.3d 533 [1st Dept 2019]). Plaintiffs claim that Defendants will not be able to put forth an evidentiary basis to suggest that discovery might lead to relevant evidence.

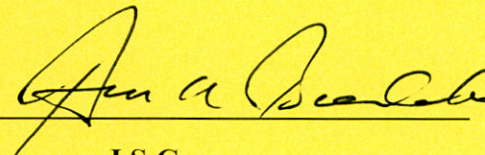
Defendant has not opposed Plaintiff's Motion for Summary Judgment.

Accordingly, Plaintiffs' motion is granted without opposition and Defendants' affirmative defenses alleging comparative negligence, contributory negligence, and/or culpable conduct of Plaintiffs are dismissed.

This constitutes the Decision and Order of this Court.

Dated: August 13, 2020

Hon. _____


J.S.C.