SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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ANA ABAD,

Plaintiffs,

-against- Index No.: 27426/2019E

MARIO S. MARTIN and CAROL R. MARTIN,

Defendants.

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HON. MARY ANN BRIGANTTI:

Plaintiff moves for partial summary judgment in her favor on the issue of Defendants' liability, and dismissal of Defendants' affirmative defenses pertaining to Plaintiff's culpable conduct and comparative fault.

This is an action to recover damages for alleged personal injuries sustained by Plaintiff in a motor vehicle accident, which occurred on or about April 6, 2019, at about 9:00 a.m., on the westbound Bruckner Expressway, near Beach Avenue, in the Bronx, New York.

Defendant, MARIO S. MARTIN, was the driver of the vehicle owned by him and Defendant CAROL R. MARTIN. Defendants filed a Letter stating that they would not be submitting opposition papers on this motion (*see* Letter by Defendants' Counsel Moschetti, dated February 17, 2020).

In support of the motion, Plaintiff's submissions include the pleadings, Plaintiff's Affidavit, and the Police Accident Report.

According to Plaintiff, she was driving a truck in the course of her employment as a highway repair person with the NYC Department of Transportation, conducting back-up duties for a NYC DOT street sweeper performing road-cleaning operations directly in front of her. Immediately prior to the accident, Plaintiff was traveling westbound in the right lane of the Bruckner Expressway, at approximately five miles per hour. Both the emergency yellow flashing lights, and a large yellow directional arrow on top of her truck, were illuminated when Defendant crashed into the rear of her truck without warning. (Plaintiff's Affidavit, dated Feb. 4, 2020).

It is noted that Defendant, MARIO S. MARTIN, was allegedly traveling at a high rate of speed on the Bruckner; the police administered a field sobriety test at the scene and arrested him for DWI (*see* Police Accident Report).

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."

In this regard, it has been established that: "A driver is supposed to make **reasonable use of his or her senses** (*see Martinez v WE Transp. Inc.*, 161 AD3d 458, 76 NYS3d 152 [1st Dept 2018]), **drive at a safe rate of speed under existing conditions** (*see* Vehicle and Traffic Law § 1180 [a]; *Chepel v Meyers*, 306 AD2d

235, 762 NYS2d 95 [2d Dept 2003]), and **maintain a safe distance from other motor vehicles** (*see* Vehicle and Traffic Law § 1129 [a]; *Passos v MTA Bus Co.*, 129 AD3d 481, 13 NYS3d 4 [1st Dept 2015]), **which was not done in this case.**" [emphasis added] (*Miller v DeSouza*, 165 AD3d 550, 550 [1st Dept 2018]). In *Miller*, as here, traffic was flowing at about five miles per hour prior, and a defendant driver did not timely apply his brakes, prior to the rear-end collision. It is also axiomatic that:

> " "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])."

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

Plaintiff made a *prima facie* showing of her entitlement to partial summary judgment on the issue of Defendants' negligence by attesting that Defendants' vehicle rear-ended her vehicle. Thus, she shifted the burden to Defendants to advance a non-negligent explanation for the accident.

Defendant did not oppose this motion, and so did not offer a non-negligent explanation for the accident.

As far as the liability of Defendant owner of the vehicle, CAROL R. MARTIN, summary judgment against her 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."

Accordingly, Plaintiff's Motion, for partial summary judgment in her favor on liability, and for dismissal of Defendants' affirmative defenses pertaining to Plaintiff's culpable conduct and comparative fault, is granted, without opposition, to the extent that Defendants are found liable for the happening of the accident and Defendant's negligence was a substantial factor in causing the accident; and that Plaintiff 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.