

Acevedo v Ji Hee You

2020 NY Slip Op 35551(U)

May 15, 2020

Supreme Court, Bronx County

Docket Number: Index No. 27759/2019E

Judge: Mary Ann Brigantti

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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GLADYS M. ACEVEDO,

Plaintiff,

-against-

Index No.: 27759/2019E

JI HEE YOU and INSOOK KIM,

Defendants.

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HON. MARY ANN BRIGANTTI:

Plaintiff moves for partial summary judgment in her favor of the issue of liability, and related relief. This is an action to recover damages for alleged personal injuries sustained by Plaintiff, GLADYS M. ACEVEDO, in a multi-vehicle motor vehicle accident, which occurred on, or about, December 10, 2018, at 4:30 p.m., on the northbound Major Deegan Expressway, near its intersection with East 233rd Street, in the Bronx, New York. Plaintiff was the driver of a vehicle owned by nonparty Carlos J. Medina. Defendant JI HEE YOU was the operator of the vehicle owned by Defendant INSOOK KIM.

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

According to Plaintiff, she was traveling on the Major Deegan Expressway, at 10-15 m.p.h., in the right lane, in stop-and-go heavy traffic. Each time she stopped, she

gradually applied her brakes. Plaintiff's foot was on the brake, and her vehicle was at a complete stop for five seconds, when the rear of her vehicle was struck by the front of Defendants' vehicle. As a result, Plaintiff's vehicle was pushed forward into the stopped vehicle of nonparty Hines. (See Plaintiff's Affidavit, dated January 27, 2020. 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."

It has been established that:

"Plaintiffs met their prima facie burden by demonstrating that they were stopped or stopping in stop-and-go traffic when they were rear-ended by the defendants' vehicle (see e.g. *Bajrami v Twinkle Cab Corp.*, 147 AD3d 649, 46 NYS3d 879 [1st Dept 2017]; *Chowdhury v Matos*, 118 AD3d 488, 987 NYS2d 132 [1st Dept 2014]; *Cartagena v Martinez*, 112 AD3d 521, 976 NYS2d 662 [1st Dept 2013]; *Johnson v Phillips*, 261 AD2d 269, 271, 690 NYS2d 545 [1st Dept 1999]). Defendants' allegation that plaintiffs' vehicle stopped suddenly in stop-and-go traffic is not a sufficient non-negligent explanation for the accident, and therefore fails to raise a triable issue of material fact in opposition" (*Elihu v Nicoleau*, 173 AD3d 578, 578 [1st Dept 2019]).

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]).

Accordingly, Plaintiff made a *prima facie* showing of her entitlement to partial summary judgment on the issue of Defendants' liability by attesting that Defendant rear-ended her vehicle while it was stopped in traffic. Thus, the burden shifted to Defendants to advance a non-negligent explanation for the accident.

In response, however, Defendant driver, JI HEE YOU, the person having knowledge of the relevant facts concerning the circumstances surrounding the happening of the accident, has not submitted her own affidavit. In her 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]).

Moreover: "In a chain-reaction collision, responsibility presumptively rests with the rearmost driver" (*Mustafaj v Driscoll*, 5 AD3d 138, 138 [1st Dept 2004]; see *Chang v Rodriguez*, 57 AD3d 295[1st Dept 2008]). In a case with similarities to the instant matter, the Court properly granted a plaintiff summary judgment against the rear-most vehicle, in a three-vehicle collision, where plaintiff was the driver of the middle vehicle, stating as follows:

"the un rebutted evidence demonstrates that defendant, in approaching and hitting plaintiff's truck from the rear, did not maintain the reasonable distance mandated by law (Vehicle and Traffic Law § 1129 [a]). Nothing submitted by defendant ... raises a triable issue of fact in this regard ... Defendant has thus failed to offer a non-negligent explanation for his own inability to stop in time. The rule is that a driver must maintain a safe distance between his vehicle and the one in front of him, and any rear-end collision establishes a prima facie case of negligence on the part of the rear-ending driver (*Johnson v Phillips*, 261 AD2d 269, 271, 690 NYS2d 545 [1999]). Indeed, the rearmost driver in a chain-reaction collision bears a presumption of responsibility" (*De La Cruz v Ock Wee Leong*, 16 AD3d 199, 200 [1st Dept 2005]).

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."

Therefore, Plaintiff's Motion, for partial summary judgment in her favor on liability, is granted 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. 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.