

Marzan v American United Transp. Inc.

2020 NY Slip Op 35658(U)

May 15, 2020

Supreme Court, Bronx County

Docket Number: Index No. 25630/2018E

Judge: Mary Ann Brigantti

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, PART 15

-----X

Marzan, Ivan	Index №. 25630/2018E	
-against-	Hon.	MARY ANN BRIGANTTI
American United Transportation		Justice Supreme Court

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The following papers numbered 1-5 were read on this motion (Seq. No. 1)
for **SUMMARY JUDGMENT LIABILITY** noticed on Jan. 16, 2020, submitted on Feb. 28, 2020

Notice of Motion - Exhibits and Affidavits Annexed	No(s). 1-3
Answering Affidavit and Exhibits	No(s). 4-5
Replying Affidavit and Exhibits	No(s).

Upon the foregoing papers,
Plaintiffs' Motion is decided in the annexed memorandum decision and order.

Dated: 5/15 2020

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

-
- 1. CHECK ONE..... CASE STILL ACTIVE
 - 2. MOTION IS..... GRANTED IN PART
 - 3. CHECK IF APPROPRIATE..... _____

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
IVAN MARZAN and ZELIDETH VASQUEZ,

Plaintiffs,

-against-

Index No.: 25630/2018E

AMERICAN UNITED TRANSPORTATION INC and
DOMINGO RODRIGUEZ,

Defendants.

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HON. MARY ANN BRIGANTTI:

Plaintiffs move for partial summary judgment in their favor on the issue of Defendants' liability, and related relief.

This is an action to recover damages for alleged personal injuries sustained by Plaintiffs in a motor vehicle accident, which occurred on or about September 11, 2017, at about 8:00 p.m., on Prospect Avenue near the intersection of Macy Place, in the Bronx, New York. Plaintiff ZELIDETH VASQUEZ was the front seat passenger in the vehicle driven by Plaintiff IVAN MARZAN.

Defendant, DOMINGO RODRIGUEZ, was the driver of the vehicle owned by Defendant AMERICAN UNITED TRANSPORTATION INC.

In support of the motion, Plaintiffs' submissions include the pleadings, and the Plaintiffs' deposition transcripts. In opposition, Defendant, DOMINGO RODRIGUEZ, submits his Affidavit.

According to Plaintiff MARZAN, he was driving on Prospect Avenue, and brought his vehicle to a gradual stop at the red light at the intersection of Macy

Place. Plaintiffs' vehicle was stopped at that light for about 15 seconds when it was struck in the rear by Defendants' vehicle. (Plaintiff MARZAN's deposition transcript, p. 18-25, dated July 26, 2019).

Defendant, DOMINGO RODRIGUEZ, acknowledged that his vehicle struck the back of Plaintiffs' vehicle. Defendant alleges as follows: "I was traveling northbound on Prospect Avenue ... when suddenly and without warning, the ... [Plaintiffs' vehicle] stopped short causing my vehicle to come into contact with that motor vehicle. I immediately attempted to brake but was unable to come to a complete stop prior to contact". (Defendant DOMINGO RODRIGUEZ's Affidavit, dated February 24, 2020).

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 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]). The Court of Appeals has stated 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]).

Plaintiffs made a *prima facie* showing of their entitlement to partial summary judgment on the issue of Defendants’ negligence by attesting that Defendants’ vehicle rear-ended their vehicle while it was stopped (*see Vasquez v Chimborazo*, 155 AD3d 432 [1st Dept 2017]). Thus, they shifted the burden to Defendants to advance a non-negligent explanation for the accident.

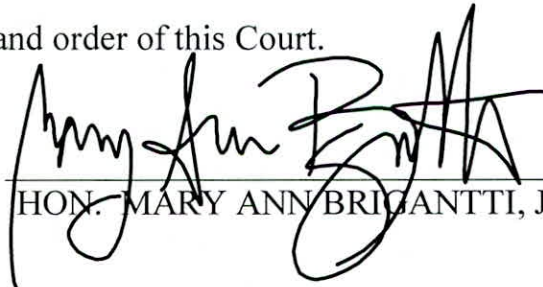
In response, Defendants seek to rebut the presumption of negligence by asserting that Defendants’ vehicle hit the Plaintiffs’ vehicle because it had suddenly stopped short. However, this is not a sufficient non-negligent explanation for the accident.

Defendant DOMINGO RODRIGUEZ’s contention is insufficient to rebut the presumption of his negligence because he was: “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 ... Defendants’ ... argument, that plaintiff stopped suddenly, is insufficient to rebut the presumption of [Defendant’s] negligence” (*Matos v Sanchez*, 147 AD3d 585, 586 [1st Dept 2017]; *see Elihu v Nicoleau*, 173 AD3d 578, 578 [1st Dept 2019]).

Accordingly, Plaintiffs' Motion, for partial summary judgment in their 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; and that Plaintiffs were 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 Plaintiffs' alleged injuries were proximately caused by the negligence of the Defendants, and whether Plaintiffs sustained "serious injuries" 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.