

**Hiraldo v Hossain**

2020 NY Slip Op 35660(U)

June 29, 2020

Supreme Court, Bronx County

Docket Number: Index No. 26951/2018E

Judge: John R. Higgitt

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX: **PART 14**

-----X  
**HIRALDO, RAYMOND**

Index No. **26951/2018E**

- against -

Hon. **JOHN R. HIGGITT,**

**HOSSAIN, NAJMUL, et ano**  
-----X

**J.S.C.**

The following papers numbered **51** to **57** in the NYSCEF System were read on this motion for **SUMMARY JUDGEMENT (LIABILITY)**, noticed on **June 8, 2020** and duly submitted as No.    on the Motion Calendar of **June 8, 2020**

	<u>NYSCEF Doc. Nos.</u>
Notice of Motion – Exhibits and Affidavits Annexed	51-57
Notice of Cross-Motion – Exhibits and Affidavits Annexed	
Answering Affidavit and Exhibits	
Replying Affidavit and Exhibits	
Filed Papers	
Memoranda of Law	
Stipulations	

Upon the foregoing papers, plaintiff’s motion for partial summary judgment on the issue of defendants’ liability and for summary judgment dismissing defendants’ first affirmative defense alleging culpable conduct is granted, in accordance with the annexed decision and order.

Dated: **06/29/2020**

Hon.   
**JOHN R. HIGGITT, J.S.C.**

**Check one:**

- Case Disposed in Entirety
- Case Still Active

**Motion is:**

- Granted  GIP
- Denied  Other

**Check if appropriate:**

- Schedule Appearance  Settle Order
- Fiduciary Appointment  Submit Order
- Referee Appointment

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

-----X  
RAYMOND HIRALDO,

Plaintiff,

DECISION AND ORDER

- against -

Index No. 26951/2018E

NAJMUL HOSSAIN and ABDUR RAHAMAN,

Defendants.

-----X

John R. Higgitt, J.

Upon plaintiff's May 5, 2020 notice of motion and the affirmation and exhibits submitted in support thereof; there being no opposition to the motion; the court having advised the parties, by email directed to the addresses associated with the action on the NYSCEF site, on June 5, 2020 that the motion would be decided on the basis of the papers e-filed as of the close of business on the return date, and having received no indication that the court's communication was not received by the parties; the court not having received any response to its communication; the court's review of the records relating to this matter indicating that the matter has not been settled, discontinued or otherwise disposed; and due deliberation; plaintiff's motion for partial summary judgment on the issue of defendants' liability and for summary judgment dismissing defendants' first affirmative defense alleging culpable conduct 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 January 25, 2018. In support of his motion, plaintiff provided the pleadings, the police accident report, and the transcripts of the parties' deposition testimony.

Plaintiff testified that he was traveling on an entrance ramp of the Bruckner Expressway when he began to slow down due to traffic ahead of him. Plaintiff testified that he was originally

traveling at 20 miles per hour at a distance of approximately 8 car lengths behind the vehicle ahead of him. Plaintiff noticed that the vehicle ahead of him was coming to a stop, so he began slowing his vehicle down to a speed of approximately 6 miles per hour; defendant's vehicle then struck plaintiff's vehicle in the rear.

Defendant Rahaman testified that prior to the accident he was traveling behind plaintiff's vehicle at approximately 50 miles per hour. Defendant Rahaman testified that, as he entered the ramp, the "ramp curve" made it difficult to see plaintiff's vehicle ahead, but after passing the curve of the ramp, he saw plaintiff's vehicle and slowed down his vehicle to 30 miles per hour. Defendant Rahaman was unable to stop his vehicle and struck plaintiff's vehicle in the rear.

"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]). 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 (*see id.*).

Plaintiff made a prima facie showing that defendants violated Vehicle and Traffic Law § 1129 and that such violation was a proximate cause of the accident.

Defendants did not oppose plaintiff's motion and thus failed to raise a triable issue of fact in opposition to plaintiff's prima facie showing.

As to the aspect of plaintiff's motion seeking dismissal of defendants' first affirmative defense alleging plaintiff's comparative fault, plaintiff made a prima facie showing that he bears no such fault (*see Soto-Marquin v Mellet*, 63 AD3d 449 [1st Dept 2009]). Because defendants failed to raise a triable issue of fact, the aspect of plaintiff's motion seeking dismissal of defendants' first affirmative defense alleging plaintiff's comparative fault is granted.

To the extent that the first affirmative defense alleges plaintiff's assumption of risk, the court notes that the doctrine of primary assumption of risk does not apply to the facts of this matter (*see Custodi v Town of Amherst*, 20 NY3d 83 [2014]; *Valder v Weston*, 57 AD2d 862 [2nd Dept 1977]).

Accordingly, it is

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

ORDERED, that the aspect of plaintiff's motion seeking dismissal of defendants' first affirmative defense is granted, and that defense is dismissed.

The parties are reminded that a compliance conference has been scheduled before the undersigned on August 28, 2020 at 9:30 a.m. in courtroom 407.

This constitutes the decision and order of the court.

Dated: June 29, 2020

  
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John R. Higgins, J.S.C.