

Brown v Scott

2020 NY Slip Op 35664(U)

June 30, 2020

Supreme Court, Bronx County

Docket Number: Index No. 26545/2018E

Judge: John R. Higgitt

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

-----X
BROWN, ISAIAH

Index No. **26545/2018E**

- against -

Hon. **JOHN R. HIGGITT,**

SCOTT, JAMALL E., et ano
-----X

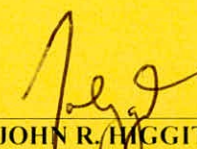
J.S.C.

The following papers numbered **11** to **23** and **25** to **28** in the NYSCEF System were read on this motion for **SUMMARY JUDGMENT (LIABILITY)**, noticed on **March 30, 2020** and duly submitted as No. on the Motion Calendar of **June 22, 2020**

	<u>NYSCEF Doc. Nos.</u>
Notice of Motion – Exhibits and Affidavits Annexed	11-23
Notice of Cross-Motion – Exhibits and Affidavits Annexed	
Answering Affidavit and Exhibits	25-26
Replying Affidavit and Exhibits	27, 28
Filed Papers	
Memoranda of Law	
Stipulations	

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

Dated: 07/30/2020

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
ISAIAH BROWN,

Plaintiff,

DECISION AND ORDER

- against -

Index No. 26545/2018E

JAMALL E. SCOTT and DAYBREAK INDEPENDANT
SERVICES INC.,

Defendants.
-----X

John R. Higgitt, J.

Upon plaintiff’s March 5, 2020 notice of motion and the affirmation, affidavit, and exhibits submitted in support thereof; defendants’ April 20, 2020 affirmation in opposition and the exhibit submitted therewith; plaintiff’s June 9, 2020 affirmation in reply; and due deliberation; plaintiff’s motion for partial summary judgment on the issue of defendants’ liability for causing the subject accident and dismissal of defendants’ affirmative defense alleging plaintiff’s 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 June 29, 2017. In support of his motion, plaintiff submits the pleadings, the certified police accident report, the transcripts of the parties’ deposition testimony, and his affidavit.

Plaintiff averred that he was a passenger in a non-party driver’s vehicle when the vehicle came to a stop due to a red traffic signal. Plaintiff averred that the vehicle he occupied was stopped for about 10 seconds when it was suddenly struck in the rear by defendants’ vehicle.

Defendant Scott testified that at the time of the accident his vehicle was traveling behind the vehicle occupied by plaintiff when the non-party driver’s vehicle stopped short.

Plaintiff also submits the police accident report containing defendant Scott’s admission that “when the light turned green his car rolled without hitting the gas and struck [the vehicle occupied by

plaintiff] in the rear” (*see Thompson v Coca-Cola Bottling Co.*, 170 AD3d 588 [1st Dept 2019]; *Niyazov v Bradford*, 13 AD3d 501 [2d Dept 2004]).

“A rear-end collision with a stationary vehicle creates a prima facie case of negligence requiring judgment in favor of the stationary vehicle unless defendant proffers a non-negligent explanation for the failure to maintain a safe distance . . . A driver is expected to drive at a sufficiently safe speed and to maintain enough distance between himself [or herself] and cars ahead of him [or her] so as to avoid collisions with stopped vehicles, taking into account weather and road conditions” (*LaMasa v Bachman*, 56 AD3d 340, 340 [1st Dept 2008]). A rear-end collision constitutes a prima facie case of negligence against the rearmost driver in a chain confronted with a stopped or stopping the vehicle (*see Cabrera v Rodriguez*, 72 AD3d 553 [1st 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 evident 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.

In opposition to plaintiff’s prima facie showing of entitlement to judgment as a matter of law on the issue of their liability, defendants failed to raise a triable issue of fact.

Defendants assert that questions of fact exist precluding summary judgment in favor of plaintiff. Defendants assert that plaintiff’s version of the accident is not credible because there are inconsistencies between plaintiff’s testimony, the police accident report, and plaintiff’s affidavit. Specifically, defendants assert that plaintiff provided different statements as to whether the traffic light was green or red at the time of the accident, and whether the vehicle he occupied was stopped or

moving. However, neither the status of the traffic signal nor the issue of whether the non-party driver's vehicle was stopped or moving is material on this motion; defendants were required to maintain a reasonably safe distance between their vehicle and the non-party driver's vehicle, but defendants failed to do so.

Defendants also assert that there is a question of fact as to whether the non-party driver's vehicle came to a sudden stop at the time of the accident. However, even if the non-party driver made a sudden stop, defendants do not have a non-negligent explanation for the accident. Generally, a claim that the driver of a rear-ended vehicle made a sudden stop is insufficient to constitute a non-negligent explanation for the accident (*see Bajrami v Twinkle Cab Corp.*, 147 AD3d 649 [1st Dept 2017]). Thus, the general rule regarding liability for rear-end accidents "has been applied when the front vehicle stops suddenly in slow-moving traffic; even if the sudden stop is repetitive; when the front vehicle, although in stop-and-go traffic, stopped while crossing an intersection; and when the front car stopped after having changed lanes" (*Johnson v Phillips*, 261 AD2d 269, 271 [1st Dept 1999]). Additionally, "[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]). Notably, this accident happened on a local roadway within the City of New York, not a highway with normal traffic conditions (*see Animah v Agyei*, 63 Misc 3d 783 [Sup Ct, Bronx County 2019]; *cf. Baez-Pena v MM Truck & Body Repair, Inc.*, 151 AD3d 473 [1st Dept 2017]).

The aspect of plaintiff's motion seeking dismissal of defendants' first affirmative defense alleging plaintiff's comparative fault is granted. Under the circumstances, the "innocent passenger" plaintiff is entitled to dismissal of defendants' affirmative defense of comparative fault (*see Oluwatayo v Dulinayan*, 142 AD3d 113 [1st Dept 2016]).

Accordingly, it is

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

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

This constitutes the decision and order of the court.

Dated: June 30, 2020



John R. Higgins, J.S.C.