

**Rivera v Doshi**

2020 NY Slip Op 35675(U)

January 31, 2020

Supreme Court, Bronx County

Docket Number: Index No. 28560/2018E

Judge: John R. Higgitt

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This opinion is uncorrected and not selected for official publication.

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

-----X  
RIVERA, ROBERT

Index No. 28560/2018E

- against -

Hon. JOHN R. HIGGITT,

DOSHI, JINESH, et ano

J.S.C.

-----X  
The following papers numbered 26 to 33 and 35 in the NYSCEF System were read on this motion for SUMMARY JUDGMENT (LIABILITY), noticed on December 17, 2019 and duly submitted as No. 34 on the Motion Calendar of December 17, 2019

	NYSCEF Doc. Nos.
Notice of Motion – Exhibits and Affidavits Annexed	26-33
Notice of Cross-Motion – Exhibits and Affidavits Annexed	
Answering Affidavit and Exhibits	35
Replying Affidavit and Exhibits	
Filed Papers	
Memoranda of Law	
Stipulations	

Upon the foregoing papers, plaintiff’s motion for summary judgment on the issue of defendants’ liability for causing the subject motor vehicle accident is granted, in accordance with the annexed decision and order.

Dated: 01/31/2020

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

C

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

-----X  
ROBERT RIVARA,

Plaintiff,

DECISION AND ORDER

- against -

Index No. 28560/2018E

JINESH DOSHI and DILIP K. DOSHI,

Defendants.  
-----X

John R. Higgitt, J.

Upon plaintiff's November 25, 2019 notice of motion and the affirmation and exhibits submitted in support thereof; defendants' December 10, 2019 affirmation in opposition; and due deliberation; plaintiff's motion for partial summary judgment on the issue of defendants' liability for causing the subject accident 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 October 3, 2017. In support of his motion, plaintiff submitted the pleadings, the police accident report, and the transcripts of the parties' deposition testimony.

Plaintiff testified that he was traveling northbound on Grand Concourse in Bronx County when he had to bring his vehicle to a stop due to traffic. Plaintiff testified that he was stopped for about six seconds when his vehicle was struck in the rear by defendants' vehicle.

Defendant Jinesh Doshi testified that he brought defendants' vehicle to a stop behind plaintiff's vehicle, which was stopped due to traffic. When the light turned green, traffic began to move. However, defendant Jinesh Doshi heard a siren and glanced in his rearview mirror while defendants' vehicle was moving. When defendant Jinesh Doshi looked back out of his

windshield, he observed that plaintiff's vehicle had stopped abruptly. Defendant Jinesh Doshi activated his brakes, but was unable to avoid striking plaintiff's vehicle.

“A rear-end collision with a stationary vehicle creates a prima facie case of negligence requiring a 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]). The happening of a rear-end collision is itself a prima facie case of negligence of the rearmost driver in a chain confronted with a stopped or stopping 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 clear when a driver follows another too closely without adequate reason and that conduct results in a collision (*id.*).

In opposition to plaintiff's prima facie showing of entitlement to judgment as a matter of law on the issue of liability, defendants failed to provide a non-negligent explanation for the accident or otherwise raise a triable issue of fact as to their liability. Defendants assert that they are not negligent because there was an emergency situation created by the sudden sound of the siren of an emergency vehicle and due to plaintiff's sudden stop. Defendants, however, waived

the emergency doctrine as a defense because they failed to include it as an affirmative defense in their answer (*see Bello v Transit Auth.*, 12 AD3d 58, 61 [2d Dept 2004]).

In any event, the emergency doctrine applies when a defendant provides evidence that he or she was confronted with a sudden and unexpected situation that leaves little or no time for reflection or deliberation and that his or her reaction was reasonable under the circumstances (*see Caristo v Sanzone*, 96 NY2d 172 [2001]; *see also Ferrer v Harris*, 55 NY2d 285 [1982]). The emergency doctrine is typically inapplicable to rear-end traffic accidents (*see Johnson v Phillips*, 261 AD2d 269, 271 [1st Dept 1999]).

Additionally, defendants' conclusory assertion that plaintiff made a sudden stop is insufficient to raise a triable issue of fact as to defendants' liability. 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 at 271). Furthermore, "[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]). Thus, defendants' claim that plaintiff made a sudden stop is insufficient to raise a triable issue of fact as to defendant's liability.

The court notes that plaintiff did not seek (and the court has not considered) dismissal of defendants' affirmative defense of comparative fault (*see* CPLR 2214[a]; *cf. Poon v Nisanov*, 162 AD3d 804 [2nd Dept 2018]).

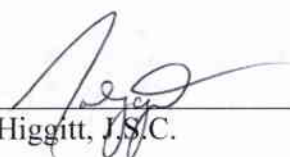
Accordingly, it is

ORDERED, that plaintiff's motion for summary judgment on the issue of defendants' liability is granted.

The parties are reminded of the March 16, 2020 pre-trial conference before the undersigned.

This constitutes the decision and order of the court.

Dated: January 31, 2020

  
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John R. Higgitt, J.S.C.