

Pai v Reliant Transp., Inc.
2021 NY Slip Op 31008(U)
April 1, 2021
Supreme Court, New York County
Docket Number: 150116/2019
Judge: Lisa S. Headley
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LISA S. HEADLEY **PART** **IAS MOTION 22**

Justice

-----X

PRIYA PAI,

Plaintiff,

- v -

RELIANT TRANSPORTATION, INC.,MV
TRANSPORTATION, INC.,SONIA COLLADO

Defendant.

-----X

INDEX NO. 150116/2019

MOTION DATE 12/10/2020

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 49, 50, 51, 52, 53, 54, 55

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER).

Upon the foregoing documents, it is hereby ORDERED that the plaintiff's motion for summary judgment on the issue of liability pursuant to *CPLR §3212* is granted. In addition, plaintiff seeks to dismiss defendants' second, third and eighth affirmative defenses, with respect to comparative fault, culpable conduct, and the "emergency doctrine." Dismissal of the affirmative defenses is denied for the reasons stated herein.

In this action, plaintiff alleges that she was injured on December 21, 2018, when defendant Sonia Collado (Collado) was operating a school bus maintained and owned by defendant Reliant Transportation, Inc. (Reliant). Defendant MV Transportation, Inc. (MV) was the parent company of Reliant at that time of the accident. Plaintiff alleges that while Collado was driving the bus on East 104th Street at the intersection of Madison Avenue in New York, NY, "at an excessive and unlawful speed," Collado hit the plaintiff, who was walking within a pedestrian crosswalk with a pedestrian walk signal in her favor.

In support of her motion for summary judgment on the issue of liability, plaintiff relies on the legal precedent that "a pedestrian who demonstrates that they were walking within a crosswalk, with the light in their favor when struck by a turning vehicle, is entitled to a judgment as a matter of law on the issue of liability." *See, Saul v. Yan*, 2018 WL 2464110, *1 (Sup. Ct., NY County May 29, 2018, Silvera, J.) *citing, Perez-Hernandez v. M. Marte Auto Corp.*, 104 A.D.3d 48 (1st

Dep't 2013). Plaintiff relies on the two videotaped recordings of the accident to establish that she was lawfully walking westbound across Madison Avenue within the crosswalk and with a “walk” signal in her favor. In addition, plaintiff relies on her own deposition testimony that she was in the crosswalk when she was struck by defendants’ vehicle. Plaintiff further argues that Collado’s testimony is not credible and does not create a question of fact. Therefore, plaintiff is entitled to summary judgment.

Plaintiff further argues that “a violation of a standard of care imposed by the Vehicle and Traffic Law constitutes negligence *per se*.” See, *Barbieri v. Vokoun*, 72 A.D.3d 853, 856 (2d Dep’t 2010). Here, plaintiff asserts that Collado’s negligent failure to give plaintiff the right-of-way is in violation of *VTL* §§1111(a)(1) and 1112(a). The plaintiff also refers to the police report, which states that “the pedestrian was traveling in the crosswalk...when [the] bus was making a left turn from East 104 Street onto Madison causing collision with pedestrian.” The police report also states that the pedestrian had right of way and that the pedestrian suffered injuries to left leg and head and was taken to St. Luke’s Hospital.

In further support of the motion, plaintiff asserts that the defendant Collado was summoned to a hearing at the Office of Administrative Trials and Hearings (OATH) for failing “to yield to pedestrian with injuries.” After a hearing, the OATH judge determined that Collado failed to put forth meritorious claims. Specifically, the OATH judge held that Collado hit the pedestrian with a small bus, while the pedestrian had the light and was walking in the crosswalk; and that the pedestrian suffered injuries from the accident. As a result, defendant Collado was issued a \$250.00 fine.

“[T]he proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact.” *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 (1986) [internal citations omitted]. “Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action.” *Id.* In this case, plaintiff must establish that there are no factual issues with respect to the defendants’ liability only, in order to make the requisite *prima facie* showing on the grounds for which she seeks summary judgment.

Here, plaintiff has established through her own testimony that she was walking in the crosswalk at the time when defendants' vehicle struck her. Through the still photos annexed to plaintiff's reply papers, plaintiff has established that she was walking with the pedestrian signal in her favor. Further, in the still photograph depicting both plaintiff and the defendants' school bus, the light signal is the same white color. It is plaintiff's position that the evidence demonstrates that she was lawfully crossing Madison Avenue within the crosswalk, with the walk signal in her favor. Here, plaintiff has established *prima facie* evidence that she was struck by defendants' vehicle while she was in the crosswalk, with the light in her favor. The burden now shifts to defendant to establish the existence of material issues of fact.

In opposition, defendants argue, *inter alia*, that there is a question of fact as to whether plaintiff had the light when she proceeded across the street at the time of the accident. First, defendants argue that the "walk" signal cannot be seen in either of the two videos of the accident. Second, defendants' note that during her deposition, plaintiff testified that she did not recall if she had a "walk" signal at that time. In addition, defendants argue that plaintiff did not look at oncoming traffic before stepping into the crosswalk, and that she was walking with her head down under an umbrella. Further, defendant Collado submits her deposition testimony that while she went to make a left turn, she was travelling at zero to five miles per hour, and at the intersection, she observed that there was no one walking. Collado testified that she observed the plaintiff stopped in the middle of the street, and she stopped the bus because plaintiff was standing, and not moving. Collado further testified that when she stopped the bus, the plaintiff dropped on the floor, and tried to get up and the people around her told, her do not leave, to stay there. However, plaintiff argues that Collado falsely claimed that her bus never came into contact with plaintiff, and that Collado stopped the bus when she saw plaintiff in the middle of the street, and that plaintiff then dropped to the floor. This court finds that the plaintiff's motion for summary judgment on the issue of liability against defendants is granted in that the plaintiff has set forth a *prima facie* claim of defendants' liability by submitting sufficient evidence, including the OATH decision that determined the defendants' bus hit the plaintiff, while she was in the cross walk with the light in her favor, and plaintiff's testimony at the deposition where she asserts that she was within the crosswalk with the light in her favor when she was hit by defendants' bus.

The plaintiff also moves this court to dismiss the defendants' second, third and eighth affirmative defenses, which is denied at this time, and should be considered for the trier of fact.

Specifically, defendant Collado, in her deposition testimony, raises issues of fact as to whether the light was the plaintiff's favor, since Collado did not observe anyone in the crosswalk when she proceeded to turn into the intersection where the collision occurred.

Accordingly, it is hereby

ORDERED that plaintiff Priya Pai's motion for summary judgment is **GRANTED** with respect to defendants' liability; and it is further

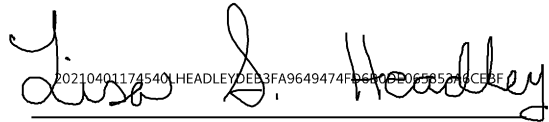
ORDERED that the plaintiff's motion to dismiss the comparative fault and defendants' second, third and eighth affirmative defense affirmative defenses is **DENIED**, and shall be determined at the trial of this action; and it is further

ORDERED that any relief sought not expressly addressed herein has nonetheless been considered; and it is further

ORDERED that within 30 days of entry, the movant-plaintiff shall serve a copy of this decision/order upon the defendants with notice of entry.

This constitutes the Decision and Order of the Court.

4/01/2021
DATE


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LISA S. HEADLEY, J.S.C.

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	
<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/> DENIED
<input type="checkbox"/>	SETTLE ORDER	
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER
<input type="checkbox"/>	SUBMIT ORDER	
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: