

Marsh v Jaya

2021 NY Slip Op 33052(U)

November 5, 2021

Supreme Court, Bronx County

Docket Number: Index No. 25544/2020E

Judge: Veronica G. Hummel

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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, IAS PART 31**

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KRISHANA MARSH and MUFEENA MARSH, Index №. 25544/2020E

-against-

Hon. VERONICA G. HUMMEL

**ANGEL TORRES JAYA, ANTHONY
GENOVESE, and 2BD SERVICES INC.,**

Acting Justice Supreme Court

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The following papers were read on this motion (Mot. Seq. No. 2), for Summary Judgment Liability, noticed on March 8, 2021, and submitted on April 15, 2021.

Notice of Motion - Affirmation and Exhibits	NYSCEF Doc. No. 25-32
Affirmation in Opposition and Exhibits	NYSCEF Doc. No. 37-38

Upon the foregoing papers, plaintiffs KRISHANA MARSH and MUFEENA MARSH move [Mot. Seq. 2], pursuant to CPLR 3212, for partial summary judgment in their favor on the issue of liability and dismissal of defendants ANGEL TORRES JAYA’s, ANTHONY GENOVESE’s, and 2BD SERVICES INC.’s first affirmative defense of based on comparable negligence.

This is an action to recover damages for alleged personal injuries sustained by plaintiffs in a motor vehicle accident that occurred on February 26, 2020, at about 2:00 p.m., near the intersection of Horace Harding Expressway, and 99th Street, in the County of Queens, State of New York. The motor vehicle owned and operated by defendants (the Defendants’ Vehicle) came into contact with the read end of the vehicle operated by plaintiff Krishana Marsh in which plaintiff Mufeena Marsh was a passenger (the Plaintiffs’ Vehicle).

In support of the motion, plaintiffs submit the pleadings, personal affidavits, and an uncertified copy of the police accident report. As the police report is not certified, it does not constitute competent evidence and will not be considered by the court. In opposition, defendants submit the affidavit of defendant Jaya.

In sum and substance, plaintiffs aver that, at the time of the Accident, plaintiff Krishana Marsh was driving the Plaintiffs’ Vehicle and Mufeena Marsh was a passenger. The Plaintiffs’ Vehicle came to a full stop at a red light. The car was in good mechanical order and the brake lights were working. The Plaintiffs’ Vehicle was completely stopped for approximately five seconds when, suddenly and without warning, the car was impacted to the rear by the Defendants’ Vehicle. The plaintiff driver avers that: “[d]uring the entire period my vehicle was

stopped, including when I was hit in the rear, my vehicle remained at a complete stop and I did not take my foot off the brake pedal at any time”.

A plaintiff in a negligence action moving for summary judgment on the issue of liability must establish, *prima facie*, that the defendant breached a duty owed to the plaintiff and that the defendant's negligence was a proximate cause of the alleged injuries (*Tsyganash v Auto Mall Fleet Management, Inc.*, 163 A.D.3d 1033 [2d Dept 2018]; *see Rodriguez v City of New York*, 31 N.Y.3d 312 [2018]). A plaintiff is no longer required to show freedom from comparative fault in establishing his or her *prima facie* case (*see Rodriguez v City of New York, supra*). Importantly, once this showing has been made, 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 (*Alvarez v Prospect Hosp.*, 68 N.Y.2d 320 [1986]; *Alvarex v Madeline D'Anthony Enterprises, Inc. v Sokolowsky*, 101 A.D.3d 606 [1st Dept 2012]).

It is well established that a rear-end collision with a stopped or stopping vehicle creates a *prima facie* case of negligence against the operator of the rear vehicle, unless the rear-most driver can proffer a non-negligent explanation for the accident (*see Santos v Booth*, 126 A.D.3d 506, 506 [1st Dept 2015]; *see also Woodley v Ramirez*, 25 A.D.3d 451 [1st Dept 2006]; *Urena v. GVC LTD* 160 A.D.3d 467[1st Dept 2018]; *Matos v. Sanchez*, 147 A.D.3d 585[1st Dept 2017]). Under statutory law, a driver must maintain a safe distance between his vehicle and the one in front of him (*See Vehicle and Traffic Law* Section 1129[a] “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 vehicle and the traffic upon the condition of the highway”). A violation of Vehicle and Traffic Law section 1129(a) is *prima facie* evidence of negligence (*see Rodriguez v Budget Rent A-Car Sys., Inc.*, 44 A.D.3d 216, 223-224 [1st Dept 2007]).

In a rear-end collision, there is a presumption of non-negligence of the driver of the lead vehicle (*See Soto-Marquin v Mellet*, 63 A.D.3d 449 [1st Dept 2009]). “[U]nless the driver of the following vehicle presents a non-negligent explanation for the accident, or a non-negligent reason for his failure to maintain a safe distance between his car and the lead car [a] claim that the lead vehicle ‘stopped suddenly’ is generally insufficient to rebut the presumption of non-negligence on the part of the lead vehicle” (*Woodley v Ramirez*, 25 A.D.3d at 452). First Department case law is clear that a claim by the rear driver that the lead vehicle made a sudden stop, standing alone, is insufficient to rebut the presumption of negligence (*Bajrami v Twinkle Cab Corp.*, 147 A.D.3d 649 [1st Dept 2017]; *Cabrera v. Rodriguez*, 72 A.D.3d 553, 553 [1st Dept 2010]; *Ly Giap v Hathi Son Pham*, 159 A.D.3d 484, 485 [1st Dept 2018]).

In this case, plaintiffs establish entitlement to summary judgment on the issue of defendants' liability based on their affidavits in which they aver that their vehicle was stopped in traffic when Defendants' Vehicle rear-ended it. Plaintiffs state that the vehicle was at a full stop at the red light for about five seconds, when suddenly and without warning, it was impacted to the rear by Defendants' Vehicle. Accordingly, plaintiffs make a *prima facie* showing of their entitlement to partial summary judgment on the issue of defendants' liability (*Vasquez v Chimborazo*, 155 A.D.3d 432, 433 [1st Dept 2017]; see *Rodriguez v Garcia*, 154 A.D.3d 581 [1st Dept 2017]).

Furthermore, here the plaintiff driver is an innocent driver as plaintiff did not contribute to the happening of the accident in any way (*Oluwatayo v Dulinayan*, 142 A.D.3d 113, 119 [1st Dept 2016]) (typical example is the case at bar where plaintiff driver, while stopped, was rear-ended by the following driver). Moreover, as for the plaintiff passenger, since she was an innocent passenger and there is no basis for finding that she did anything to cause the accident or could have prevented it, the plaintiff passenger has no culpable conduct on the issue of liability (*Mello v Narco Cab Corp.*, 105 A.D.3d 634, 634-5 [1st Dept 2013])¹. As such, plaintiffs also set forth a *prima facie* case for the dismissal of the comparative negligence affirmative defense.

Thus, the burden shifted to defendants to advance a nonnegligent explanation for the accident, which defendants fail to do. Defendants submit the affidavit of defendant Jaya, who admits that his vehicle rear-ended the Plaintiffs' Vehicle ahead of him. He alleges that:

"Right before the accident, I intended to drive through the green traffic light, when I heard emergency sirens. I then tried to locate where the emergency vehicles and sirens were coming from. While doing so, I was driving with the flow of traffic at an appropriate distance from the Nissan vehicle in front of me.

However, without warning or signal, the Nissan vehicle in front of me suddenly and unexpectedly stopped short. I immediately applied the brakes, but *I could not avoid hitting the Nissan vehicle in front of me that had stopped short.*" [emphasis added]

The allegation by defendant Jaya that plaintiffs' vehicle stopped abruptly is insufficient to constitute a nonnegligent explanation. It is also noted that defendant Jaya did not refute plaintiffs' allegation that the light was red at the time of impact. A contention that an assertion that the lead vehicle stopped suddenly is insufficient to rebut the presumption of negligence on the part of the offending vehicle (*Chowdhury v Matos*, 118 A.D.3d 488, 488 [1st Dept 2014]). A driver is expected to maintain enough distance between himself and cars ahead of him

¹ "CPLR 3212 (g) permits the court to limit issues of fact for trial, by specifying which facts are not in dispute or are incontrovertible, and such facts shall be deemed established for all purposes in the action" (*Garcia v Tri County Ambulette Serv.*, 282 AD2d 206, 207 [1st Dept 2001]).

so as to avoid collisions with stopped vehicles, considering weather and road conditions (*Matos v Sanchez*, 147 A.D.3d 585, 586 [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 A.D.3d 467, 467 [1st Dept 2018]). Nor do defendants set forth any basis for finding plaintiffs' actions constituted negligence that contributed to causing the Accident. As such the motion is appropriately granted.

The court has considered the additional contentions of the parties not specifically addressed herein. To the extent any relief requested by either party was not addressed by the court, it is hereby denied. Accordingly, it is hereby

ORDERED that the part of the motion by plaintiffs [Mot. Seq. 2] that seeks an order granting plaintiffs partial summary judgment on the issue of liability is granted; and it is further

ORDERED that the part of the motion by plaintiffs [Mot. Seq. 2] that seeks the dismissal of defendants' first affirmative defense of comparative negligence is granted and the affirmative defense is stricken.

This constitutes the decision and order of this Court.

Dated: November 5, **2021**

Hon. s/Hon. Veronica G. Hummel/signed 11/05/2021
VERONICA G. HUMMEL, A.J.S.C.

1. CHECK ONE.....	<input type="checkbox"/> CASE DISPOSED IN ITS ENTIRETY <input checked="" type="checkbox"/> CASE STILL ACTIVE
2. MOTION IS.....	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED <input checked="" type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
3. CHECK IF APPROPRIATE.....	<input type="checkbox"/> SETTLE ORDER <input type="checkbox"/> SUBMIT ORDER <input type="checkbox"/> SCHEDULE APPEARANCE
	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFEREE APPOINTMENT