

Serrano v Gjura

2021 NY Slip Op 33068(U)

December 16, 2021

Supreme Court, Bronx County

Docket Number: Index No. 34726/2019E

Judge: Ben R. Barbato

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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LUIS SERRANO,

Plaintiff,

-against-

Index No.: 34726/2019E

DANJEL GJURA, EXPRESS PLUMBING SEWER
AND WATER MAIN CORP., and JOSEPH L.
NIEVES,

Defendants.

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HON. BEN R. BARBATO:

Plaintiff LUIS SERRANO moves for partial summary judgment in his favor on liability as against two of the Defendants, DANJEL GJURA and EXPRESS PLUMBING SEWER AND WATER MAIN CORP.; and for related relief.

This is an action to recover damages for alleged personal injuries sustained by Plaintiff in a multi-vehicle accident, which occurred on, or about, June 13, 2017, at about 3:50 p.m., near 1101 East 177 Street, and the corner of Devoe Avenue, in the Bronx, New York.

In this accident, the front-most vehicle, a Jeep, was operated and owned by Plaintiff SERRANO. Behind him, was the BMW vehicle operated and owned by Defendant JOSEPH L. NIEVES. The rear-most vehicle was a Ford van operated and owned by Defendants GJURA/EXPRESS.

The submissions include the pleadings, the Police Accident Report, and deposition transcripts of the parties: Plaintiff SERRANO, Defendant NIEVES, and Defendant GJURA.

Alleged Facts:

According to Plaintiff SERRANO, his Jeep Grand Cherokee was stopped, at a red traffic light, for about ten seconds. In the rearview mirror, he saw NIEVES' BMW behind him. While stopped, he heard a very loud crash behind NIEVES' vehicle. Then, Plaintiff felt one impact to the rear of his vehicle. According to Plaintiff, "the guy [GJURA] who was driving the van, he said that that was his fault, he wasn't paying attention". (See Plaintiff's deposition, p. 49, dated March 12, 2021).

Defendant NIEVES testified that his BMW was stopped, about ten to fifteen seconds, at a red light, behind Plaintiff's vehicle, at the intersection of Devoe Avenue, and 177th Street. NIEVES' vehicle was rear-ended by the van of Defendants GJURA/EXPRESS. This impact pushed NIEVES' vehicle forward, into the rear of the Plaintiff's vehicle which was stopped at the time of the impact. (See Defendant NIEVES' deposition, dated March 31, 2021).

Defendant GJURA states that he was operating his employer's Ford van.

While he was traveling on East 177th Street, he saw the vehicles in front of his vehicle were already stopped in traffic. GJURA's vehicle was a few feet away from NIEVES' vehicle ahead of him when he noticed that it had stopped completely; and so he hit his brakes very hard, to attempt to stop. However, he impacted the rear of the Defendant NIEVES' vehicle. This impact caused NIEVES' vehicle to hit Plaintiff's vehicle in front of it. GJURA was asked the following question, and gave the following answer:

"Q. Did the impact between your vehicle and [NIEVES'] BMW cause the BMW to hit another vehicle?

A. Yes".

(See Defendant GJURA's deposition, p.23-24, dated March 31, 2021).

In the Police Accident Report, the accident is described as follows:

"AT TPO VEH 1 [NIEVES] STATES THAT, WHILE STOPPED AT TRAFFIC LIGHT ON 177 STREET AND DEVOE WESTBOUND, HE WAS STRUCK BY VEH 2 [GJURA] IN THE REAR SUBSEQUENTLY CAUSING VEH 1 [NIEVES] TO STRIKE VEH 3 [SERRANO] IN THE REAR. VEH 1 [NIEVES] SUFFERED DAMAGE TO FRONT AND REAR CENTER, VEH 2 [GJURA] SUFFERED DAMAGE TO FRONT, AND VEHICLE 3 [SERRANO] SUFFERED DAMAGE TO CENTER REAR. NO PINS, NO INJURIES, NO AIRBAG DEPLOYMENT. OFFICERS DID NOT WITNESS. DRIVERS OF VEH 2 [GJURA] AND 3 [SERRANO] HAVE AGREED TO STATEMENT DOCUMENTED AS PER VEH 1 [NIEVES]".

Applicable Law/Analysis:

Vehicle and Traffic Law § 1129 (a) "Following too closely", provides that:

“The 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.”

Drivers are expected to maintain enough distance between themselves and the cars ahead of them, so as to avoid collisions with stopped vehicles, taking into account weather and road conditions. (*See Matos v Sanchez*, 147 AD3d 585, 586 [1st Dept 2017]).

"A rear-end collision with a stopped or stopping vehicle establishes a prima facie case of negligence on the part of the driver of the rear vehicle, and imposes a duty on the part of the operator of the moving vehicle to come forward with an adequate, nonnegligent explanation for the accident" (*Matos v Sanchez*, 147 AD3d 585, 586, 47 NYS3d 307 [1st Dept 2017]) ... 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 AD3d 467, 467 [1st Dept 2018]).

Furthermore, in “a chain-reaction collision, responsibility presumptively rests with the rearmost driver” (*Mustafaj v Driscoll*, 5 AD3d 138, 138 [1st Dept 2004]; *see Chang v Rodriguez*, 57 AD3d 295 [1st Dept 2008]).

Accordingly, Plaintiff SERRANO made a *prima facie* showing, of his entitlement to summary judgment, by the testimony, including that the vehicle of GJURA/EXPRESS rear-ended NIEVES' vehicle, which was pushed forward into

Plaintiff's vehicle.

Thus, the burden shifted to Defendants GJURA/EXPRESS to advance a non-negligent explanation. However, said Defendants did not provide a non-negligent explanation. Rather, GJURA's testimony is consistent with that of the other parties, in that GJURA acknowledged that he struck the rear of the Defendant NIEVES' vehicle, which caused NIEVES' vehicle to be propelled into Plaintiff's vehicle in front of him.

In fact, this Court recently granted NIEVES' motion for summary judgment dismissing this action as against him, and held that the proximate cause of the occurrence was the aforesaid negligent conduct of Defendant GJURA. (See Order, dated November 4, 2021, at NYSCEF Doc No 50). In this regard, this Court noted therein that, in multi-vehicle accidents, defendants may meet "their initial burden ... by demonstrating, prima facie, that their stopped vehicle was propelled forward into the ... vehicle [ahead] after their vehicle was struck in the rear by a third vehicle" (*Williams v Sala*, 152 AD3d 729, 730 [2d Dept 2017]).

Accordingly, Plaintiff SERRANO's Motion, for partial summary judgment in his favor on liability, is granted, to the extent that Defendants GJURA/EXPRESS are found liable for the happening of the accident and that Defendant GJURA's

negligence was a substantial factor in causing the accident; and that Plaintiff was free from comparative fault for the happening of this rear-end collision. Thus, Defendants' affirmative defenses of Plaintiff's contributory and comparative negligence are dismissed.

However, this Court makes no determination as to other issues herein, including, but not limited to, whether Plaintiff's alleged injuries were proximately caused by the negligence of the Defendants; and whether Plaintiff sustained a "serious injury" within the meaning of the Insurance Law.

This constitutes the decision and order of this Court.

Dated: 12/16, 2021



HON. BEN R. BARBATO, J.S.C.