

**Baeza v Ayala-Navarrette**

2021 NY Slip Op 33938(U)

September 20, 2021

Supreme Court, Queens County

Docket Number: Index No. 717679/2018

Judge: Pam Jackman Brown

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This opinion is uncorrected and not selected for official publication.

**FILED**

**NEW YORK STATE SUPREME COURT  
QUEENS COUNTY-IAS PART 19**

**9/30/2021  
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**COUNTY CLERK  
QUEENS COUNTY**

**SHORT FORM ORDER**

**Present: HON. PAM JACKMAN BROWN  
Justice**

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**RAQUEL BAEZA,**

**Index No.717679/2018**

**Mot. Seq. #: 4**

**Plaintiff,**

**-against-**

**WILMER SAMUEL AYALA-NAVARRETTE,  
MD MUJIBUR RAHMAN, NOAM ADI and NAD  
TAXI CORP.,**

**Defendants.**

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Recitation, as required by CPLR § 2219(a), of the following papers e-filed numbered 73 to 74 and 80 read on this motion by Defendants MD Mujibur Rahman and NAD Taxi Corp. for an Order: (1) pursuant to CPLR § 3212, granting Defendant summary judgment on the issue of negligence on behalf of the Defendants, MD Mujibur Rahman and NAD Taxi Corp., (2) dismissing Plaintiff's Complaint and all cross-claims against said Defendants, and (3) granting such other and further relief as this Court deems just and proper.

	PAPERS E-FILE NUMBERED	
	Papers	Exhibits
Notice of Motion- Exhibits and Affidavits Annexed	73-74,80	75-79
Affirmation in Opposition- Exhibits Annexed	81,83 88,91	82 89-90
Reply Affirmation	84-85,93-94	

Upon the papers listed above, this Notice of Motion is hereby decided in accordance with this Decision/Order.

This is an action by Plaintiff to recover damages for personal injuries allegedly sustained by Plaintiff as a result of a rear-end motor vehicle accident on August 10, 2018, while traveling northbound on the Van Wyck Expressway near the intersection of 101<sup>st</sup>

Avenue in the County of Queens, New York. Plaintiff alleges that she was a passenger in a motor vehicle operated by Defendant MD Mujibar Rahman (hereinafter referred to as “Defendant Rahman”) but owned by NAD Taxi Corp (hereinafter referred to as “Defendant NAD”). The vehicle was struck by a motor vehicle operated by Defendant Wilmer Samuel Ayala- Navaraette (hereinafter referred to as “Defendant Ayala-Navaraette”) and owned by Defendant Noam Adi (hereinafter referred to as “Defendant Adi”). As a result of the motor vehicle accident, Plaintiff claims to have sustained serious physical injuries. Plaintiff commenced the instant proceeding with the filing of a summons and verified complaint on November 16, 2018. On January 12, 2019, Defendant Ayala-Navarrete and Defendant Adi interposed a joint verified answer with crossclaims. On February 13, 2019, Defendant Rahman and Defendant NAD interposed a joint verified answer with cross claims and demands.

A Preliminary Conference and Compliance Conference was held on March 14, 2019 and September 18, 2019, respectively. The Note of Issue indicates that discovery was complete. The Affirmation of Compliance annexed to the Note of Issue indicates that the depositions of the Defendants and the Independent medical examinations were still pending.

On March 23, 2019, Plaintiff moved for an issuance of judgment as a matter of law regarding the issue of liability asserted against Defendant Ayala- Navarrete and Defendant Adi. That motion was granted in the Order dated May 31, 2019. At that time, Defendants Rahman and NAD cross-moved seeking an order of summary judgment. By Decision and Order dated May 31, 2019, the Court denied the Defendants’ original motion as premature with leave to renew their application.

Here, Defendant Rahman and Defendant NAD renew their application seeking an order, pursuant to CPLR § 3212, granting Defendant Rahman and Defendant NAD summary judgment based on an absence of negligence on their behalf. Plaintiff opposes the motion based on untimeliness. Defendant Ayala- Navarrete and Defendant Adi oppose the motion based on their belief that an issue of fact remains and based on untimeliness.

“A driver of a vehicle approaching another vehicle from behind is required to maintain a reasonably safe distance and rate of speed under the prevailing conditions to avoid colliding with the other vehicle” (*Cajas-Romero v. Ward*, 106 AD3d 850, 851 [2d Dept. 2013]). “A rear-end collision with a stopped or stopping vehicle establishes a prima facie case of negligence on the party of the operator of the rear vehicle, thereby requiring that operator to rebut the inference of negligence by providing a non-negligent explanation for the collision” (*Id.*).

In the instant action, Defendant Rahman was the operator of the non-moving vehicle owned by Defendant NAD. Defendant Ayala-Navarrete was the operator of the moving vehicle owned by Defendant Adi. The Plaintiff has adequately proven their case

for a judgment as a matter of law regarding Defendant Ayala- Navarrete and has been previously awarded such relief. However, the Plaintiff has failed to prove negligence on behalf of Defendant Rahman and Defendant NAD as the vehicle was non-moving.

In support of the instant motion, Defendant Rahman and Defendant NAD submitted deposition transcripts sworn to on June 24, 2020, June 30, 2020 and August 24, 2020 which failed to substantiate any negligence on behalf of Defendant Rahman and Defendant NAD. Plaintiff affirmed there was no malfunction of seat belts within the vehicle and does not recall any actions that would prove negligence on behalf of Defendant Rahman. The depositions merely further highlighted the negligence on behalf of Defendant Ayala-Navarrete and Defendant Adi. Plaintiff contends that the motor vehicle was driving slowly and was struck in the rear by the moving vehicle owned by Defendant Adi but operated by Defendant Ayala-Navarrete. In the deposition of Defendant Ayala-Navarrete, he represented that he was close to the motor vehicle of Defendant Rahman. Further, he saw the brake lights within the length of a car between himself and Defendant Rahman and made contact with the non-moving vehicle. Upon the deposition testimony, Plaintiff has failed to prove any negligence on behalf of Defendant Rahman and Defendant NAD.

The Court now turns to the issue of timeliness. In the Decision and Order dated May 31, 2019, the Court granted leave to renew the original motion for summary judgment made by Defendant Rahman and Defendant NAD. The argument made by the Plaintiff is flawed as the Defendants' motion was filed in compliance with the Court's directive. Further, the depositions were not complete until August 24, 2020.

Upon review of the parties' submissions and considering the circumstances of this proceeding, the Court finds that the Plaintiff has failed to establish any negligence on the part of the Defendant Rahman and Defendant NAD. Accordingly, the motion of Defendant Rahman and Defendant NAD for summary judgment is granted.

**IT IS HEREBY ORDERED** that Plaintiff's Complaint against Defendants MD Mujibur Rahman and NAD Taxi Corp is dismissed and cross claims Defendants MD Mujibur Rahman and NAD Taxi Corp are likewise dismissed.

**IT IS FURTHER HEREBY ORDERED** that the caption is amended to remove Defendants MD Mujibur Rahman and NAD Taxi Corp.

**IT IS FURTHER HEREBY ORDERED** that Counsel for moving Defendants MD Mujibur Rahman and NAD Taxi Corp must serve a copy of this Order with Notice of Entry on Plaintiffs and all other Defendants within 30 days of this Date with the amended caption.

**IT IS FURTHER HEREBY ORDERED** that Counsel for moving Defendants MD Mujibur Rahman and NAD Taxi Corp must serve this Order with the amended caption on the Clerk of the Court.

The above constitutes the Decision and Order of the Court resolving motion sequence #004.

Dated: September 20, 2021

Jamaica, NY



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HON. PAM JACKMAN BROWN, JSC

**FILED**

**9/30/2021**

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**COUNTY CLERK  
QUEENS COUNTY**