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| <b>Alleyne v Joseph</b>                                                                                                                                                                                                        |
| 2022 NY Slip Op 31812(U)                                                                                                                                                                                                       |
| June 7, 2022                                                                                                                                                                                                                   |
| Supreme Court, Kings County                                                                                                                                                                                                    |
| Docket Number: Index No. 509549/2020                                                                                                                                                                                           |
| Judge: Debra Silber                                                                                                                                                                                                            |
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS : PART 9

X

MIRLENCA ALLEYNE,

Plaintiff,

DECISION/ORDER

-against-

Index No. 509549/2020

Motion Seq. No. 3, 4

Date Submitted: 5/26/2022

RAHEEM JOSEPH,  
OLUWATOSIN ESINSINADE,  
ALUWANTONI SADARE,  
and ABDUL WAHAB O. OSHODI,

Defendants.

X

*Recitation, as required by CPLR 2219(a), of the papers considered in the review of plaintiff's motion for summary judgment on the issue of liability and defendants Esinsinade and Oshodi's motion for summary judgment dismissing the complaint as against them on the issue of liability.*

## Papers

## NYSCEF Doc.

|                                                                       |                      |
|-----------------------------------------------------------------------|----------------------|
| Notice of Motion, Affirmations, Affidavits, and Exhibits Annexed..... | <u>38-44; 52-62</u>  |
| Affirmations in Opposition and Exhibits Annexed.....                  | <u>45-46, 47-51;</u> |
|                                                                       | <u>63-66, 67-68</u>  |
| Reply Affirmation.....                                                | <u>69-74</u>         |

**Upon the foregoing cited papers, the Decision/Order on this application is as follows:**

In this personal injury action arising from an automobile accident that occurred on January 14, 2020 in Brooklyn, New York, the plaintiff moves this court (MS #3) for an order granting her summary judgment on the issue of liability, and defendants Esinsinade (driver) and Oshodi (owner) move (MS #4) for summary judgment dismissing the complaint as against them on the issue of liability. Plaintiff alleges in her complaint that defendant Sadare was a co-owner of the vehicle with defendant Oshodi, but only the two defendants/movants have answered the complaint [Doc 37]. In Motion Seq. #1, plaintiff moved for permission to serve Sadare by serving her insurance carrier, but the motion was

“marked off” and this defendant was never served. Therefore, this action has been abandoned with regard to this defendant, so the action is dismissed as against her, and her name is hereby removed from the caption to avoid future confusion.

The court notes that in the notice of motion, plaintiff’s counsel seeks summary judgment solely against defendants Esinsinade and Oshodi, but the affirmation in support makes it clear that the request is a determination that she was an innocent passenger and not at fault, with regard to all defendants.

Plaintiff’s motion for summary judgment on the issue of liability is granted to the extent that plaintiff Alleyne, who was a passenger in the vehicle operated by defendant Esinsinade, has established that she bears no fault for the happening of this accident. Any affirmative defenses of comparative fault asserted against her by any of the defendants are stricken. The court is thus not limiting the relief to what was requested in the notice of motion, as it is contradicted by counsel’s affirmation in support. However, this firm is admonished to proofread their papers. To the extent that plaintiff seeks any other relief, it is denied.

Turning to defendants Esinsinade and Oshodi’s motion, the court finds that the movants have not met their burden of proof. The court also notes that counsel for movants provides five exhibits to her affirmation, but fails to identify what the nature of the exhibits are in NYSCEF, e.g., calling Exhibit A “Exhibit A.” Then, when one opens the exhibits, the first page is not the first page of the exhibit, but two extraneous pieces of paper, the first of which tells you that you have reached “Exhibit A.” This requires scrolling down past the first two pages to see what the exhibit is. This is infuriating.

Movants provide the pleadings (Exhibits A-C), and a certified police report (D), which states that Esinsinade told the officer that she had a green light and the other driver

(Joseph) ran a red light on the intersecting street, causing the collision. The other driver, defendant Raheem Joseph, stated that “he didn’t know what happened.” The officer described the contact points as the front of Joseph’s car and the mid-point of movant’s car on the passenger side. This alone does not establish that Esinsinade was completely free of fault for the happening of the accident, as is required of a defendant to prevail on a motion for summary judgment.

“Under the doctrine of comparative negligence (see CPLR 1411), a driver who lawfully enters an intersection with a green light ‘must exercise reasonable care and could still be found partially at fault for an accident if he or she fails to use reasonable care to avoid a collision with another vehicle in the intersection.’” *Miles v Walsh*, 195 AD3d 924 (2d Dept 2021), citing *Cox v Weil*, 66 AD3d 634; *Siegel v Sweeney*, 266 AD2d 200 (2d Dept 1999). In *Siegel v Sweeney*, supra, the court notes that PJI 2:79 “advises jurors that although a driver who has a green light has the right to assume that the light is red for cross traffic and that other drivers will stop for the red light, ‘a driver who has a green light must still use reasonable care under the circumstances.’” The jury charge further instructs jurors that if the driver with a green light “saw or should have seen another vehicle in the intersection or so near the intersection that a collision was likely to occur, the driver was required to use reasonable care to avoid the collision”.

Movants also provide an affidavit (Exhibit E) from the plaintiff, from her motion [Doc 44], which is of minimal use, as she just states that when the light turned green, the car she was riding in proceeded to move forward and was struck by Joseph’s vehicle. Defendant Esinsinade provides an affidavit, Document 61, which states that “prior to the collision, I did not hear any horns, brakes, or screeching tires that would have alerted me that an accident was about to happen. Because my vehicle was struck on the passenger side toward the

rear of my vehicle as I was driving straight through the intersection of Troy Avenue and Lenox Road in response to a green light, I could not have done anything to avoid the accident.” This statement is somewhat contradicted by the statement she gave the police officer, that she “had a green light when she saw Driver 1 (Joseph) approaching the intersection.” It can be inferred that she could have slowed down to make sure Joseph stopped, as she saw him approaching. Had the impact to her car been in the front portion of the passenger side, it would be more likely that she could not have avoided the contact.

This motion is opposed by plaintiff, who states that it is premature, as EBTs have not been held. Plaintiff’s attorney also points out that Esinsinade’s affidavit “fails to address any evasive action or the speed of the movants’ (Esinsinade’s ) vehicle at the time of the accident.”

The motion is also opposed by defendant Joseph, whose attorney also argues that the motion is premature, the police report is inadmissible, and that summary judgment is a drastic remedy.

Accordingly, it is **ORDERED** that the portion of the plaintiff’s motion (MS # 3) seeking summary judgment on the issue of liability is granted to the extent that she has established that she bears no fault for the happening of the accident. Any affirmative defenses of comparative fault are stricken. Defendants Esinsinade and Oshodi’s motion (MS #4) is denied.

This constitutes the decision and order of the court.

Dated: June 7, 2022

ENTER:



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Hon. Debra Silber, J.S.C.