

**Jimenez-Couret v Linzo**

2022 NY Slip Op 34669(U)

January 27, 2022

Supreme Court, Bronx County

Docket Number: Index No. 30073/2019E

Judge: Ben R. Barbato

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

-----X  
YOERLIN JIMENEZ-COURET and CHRISTOPHER  
COURET,

Plaintiffs,

-against-

Index No.: 30073/2019E

PATRICIA LINZO and ANTONIO LINZO,  
Defendants.

-----X  
HON. BEN R. BARBATO:

Plaintiffs, YOERLIN JIMENEZ-COURET and CHRISTOPHER COURET, move for partial summary judgment in their favor on the issue of liability as against Defendants, and for related relief.

This is an action to recover damages for alleged personal injuries sustained by Plaintiffs in a motor vehicle accident, which occurred on or about April 2, 2019, at about 7:30 a.m., on the southbound Major Deegan Expressway (I-87), in the Bronx, New York. The motor vehicle operated and owned by Defendants, PATRICIA LINZO and ANTONIO LINZO, respectively, came into contact with the motor vehicle operated by Plaintiff JIMENEZ-COURET, wherein her husband Plaintiff, CHRISTOPHER COURET, was a passenger.

In support of the motion, Plaintiffs' submissions include the pleadings, the Police Accident Report, and the deposition transcripts of Plaintiff JIMENEZ-COURET, and Defendant PATRICIA LINZO.

According to Plaintiff JIMENEZ-COURET, she was traveling in the left lane in heavy traffic. Due to the traffic ahead, she brought her new 2019 Nissan Pathfinder vehicle to a complete stop; and it remained stopped for less than one minute before the accident occurred. While her foot was on the brake, she heard tires screeching, and then she felt a heavy impact to the rear of her vehicle. As a result, her vehicle was pushed forward. When she exited her vehicle, she saw that the rear center of her vehicle was dented; and that the front of the other vehicle was "dented in and liquid was dripping from the vehicle". (See Plaintiff JIMENEZ-COURET's deposition, dated September 28, 2020).

Defendant PATRICIA LINZO testified, in relevant part, that, after she got on I-87, the traffic conditions changed from light to heavy. When she first saw Plaintiffs' vehicle, it was ahead of her vehicle, about two to four car lengths away; and she did not recall at what speed she was traveling. Defendant PATRICIA LINZO applied her brakes; and she did not recall if Plaintiffs' vehicle was stopped or moving. Then, the front of Defendants' vehicle hit the back bumper of

Plaintiffs' vehicle. Her 2011 Acura was deemed "totaled". (See Defendant PATRICIA LINZO's deposition, dated October 2, 2020).

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

"AT T/P/O V1 [Defendant LINZO] STATES THAT SHE WAS FOLLOWING BEHIND V2 [Plaintiff JIMENEZ-COURET] WHEN V2 CAME TO A STOP, AND WAS NOT ABLE TO STOP IN TIME CAUSING HER TO REAR END V2. V2 STATES THAT TRAFFIC FLOW WAS SLOW AND WHEN SHE CAME TO A STOP V1 REAR ENDED HER".

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".

In this regard, it has been established that:

"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]). 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 AD3d 467, 467 [1st Dept 2018]).

In a recent case, the Court held that a plaintiff established a prima facie case of negligence by showing that the vehicle driven and owned by defendants

“struck her vehicle in the rear while she was stopped in heavy traffic ... [Defendants’] contention that plaintiff unexpectedly stopped short was insufficient to rebut plaintiff's showing, especially in light of the fact that [defendant] conceded that traffic conditions were heavy” (*Edwards v Aponte*, 181 AD3d 484, 484 [1st Dept 2020]; see *Elihu v Nicoleau*, 173 AD3d 578, 578 [1st Dept 2019]).

Accordingly, Plaintiffs herein made a *prima facie* showing of entitlement to partial summary judgment on the issue of Defendants’ liability by the sworn testimony wherein it is alleged, *inter alia*, that Defendants’ vehicle rear-ended Plaintiffs’ vehicle while Plaintiffs’ vehicle was stopped in traffic. Thus, the burden shifted to Defendants to advance a non-negligent explanation for the accident.

However, Defendants, herein, did not present a non-negligent explanation for the happening of the accident.

In this regard, “a driver is expected to maintain enough distance between himself and cars ahead of him so as to avoid collisions with stopped vehicles, taking into account weather and road conditions” (*Matos v Sanchez*, 147 AD3d 585, 586 [1st Dept 2017]).

Accordingly, Plaintiffs' Motion, for partial summary judgment in their favor on liability, is granted, to the extent that Defendants are found liable for the happening of the accident and Defendant PATRICIA LINZO's negligence was a substantial factor in causing the accident; and that Plaintiffs were free from comparative fault for the happening of this rear-end collision.

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

This constitutes the decision and order of this Court.

Dated: JAN 27 2022, 2022

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