

Pril v Sturrs
2022 NY Slip Op 35131(U)
April 25, 2022
Supreme Court, Bronx County
Docket Number: Index No. 21367/2017E
Judge: Ben R. Barbato
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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VANNAK PRIL,

Plaintiff,

-against-

Index No.: 21367/2017E

MARVIN STURRS and MIDLAND FARMS, INC.,
Defendants.

-----X

HON. BEN R. BARBATO:

Plaintiff VANNAK PRIL moves for partial summary judgment in his favor, on liability as against Defendants, MARVIN STUBBS s/h/a MARVIN STURRS and MIDLAND FARMS, INC., and for dismissal of Defendants' affirmative defenses alleging Plaintiff's culpable conduct, assumption of risk, failure to wear a seatbelt, and for related relief.

This an action to recover damages for alleged personal injuries sustained by Plaintiff in a motor vehicle accident, which occurred on, or about, December 10, 2016, at about 10:00 - 11:10 p.m., in the middle lane of the southbound Major Deegan Expressway, near Exit 11, in the County of Bronx, City and State of New York. The motor vehicle, a Honda sedan, operated and owned by Plaintiff, came into contact with the Mack truck operated and owned by Defendants, MARVIN STUBBS and MIDLAND FARMS, INC., respectively.

The submissions on the motion include the pleadings; the Police Accident Report; and the deposition transcripts of Plaintiff PRIL and Defendant STUBBS. The Note of Issue was filed on, or about, August 31, 2021.

Alleged Facts:

Plaintiff PRIL testified that he was wearing his seatbelt while driving. At the

place of the occurrence, the Major Deegan had 3 lanes for moving traffic southbound, and 3 lanes northbound, and the opposing lanes were separated by a divider. When the Plaintiff entered the middle lane, he was travelling at the speed of about 50 m.p.h. Defendants' truck was travelling behind him, about 3 car-lengths away. After Plaintiff was travelling in the middle lane for about 10 minutes, he reduced his speed to about 35-40 m.p.h., because the road became rough and bumpy. At that time, he saw, in his rear-view mirror, that the distance between the front of the Defendants' truck and the rear of Plaintiff's car was less than about 3 car lengths. Two seconds elapsed from the time Plaintiff slowed down, until the time of the impact. When the impact to the rear of his vehicle occurred, Plaintiff's vehicle was moving at a speed of about 30-40 m.p.h. Plaintiff felt the impact. (Plaintiff PRIL's deposition, dated October 2, 2018).

Defendant STUBBS testified that he was operating a Mack truck with a 45-foot long trailer; it was filled with milk that he was going to deliver. During the ten minutes prior to the accident, both his truck, and the Plaintiff's vehicle, were travelling at a speed of about 50-55 m.p.h, in the middle lane. STUBBS states that: "Traffic was flowing really good". Plaintiff's vehicle was about 6 or 7 car-lengths ahead of him, when Plaintiff's brake lights illuminated, and Plaintiff's vehicle suddenly slowed down. At the time of the accident, Plaintiff's rate of speed was about 10 m.p.h. Plaintiff allegedly slowed down because there were potholes in the road. STUBBS blew his horn, and depressed the brake pedal heavily, to try to stop. However, STUBBS' truck skidded, and the front of his truck struck the rear of Plaintiff's vehicle. There were other vehicles travelling on both sides. According to STUBBS, after the accident, Plaintiff had told the police, and STUBBS, that

Plaintiff slowed down because there was a pothole and he did not want to crack his vehicle's rims. (Defendant STUBBS' deposition, dated December 11, 2018).

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

"AT TPO, ALL VEHICLES WERE TRAVELING S/B ON MAJOR DEEGAN EXPRESSWAY. V1 [PRIL] WAS TRAVELING IN THE MIDDLE LANE AT A VERY LOW RATE OF SPEED BECAUSE V1 [PRIL] IS A VERY LOW IN HEIGHT VEHICLE COMPARED TO OTHER VEHICLES OF THE SAME MAKE AND MODEL, CAUSING V2 [STUBBS], WHICH IS A TRACTOR TRAILER TO EXCESSIVELY REDUCE SPEED. V2 [STUBBS] WAS TRAVELING IN THE MIDDLE LANE AS WELL, WAS UNABLE TO FULLY STOP AND REAR ENDED V1 [PRIL]. V4 WAS TRAVELING IN THE LEFT LANE APPROACHING V2 [STUBBS], BUT WAS UNABLE TO PASS V2 [STUBBS] BECAUSE OF SAFETY REASONS AND REDUCED ITS SPEED TO A VERY LOW RATE, WHICH LEAD TO A CHAIN REACTION ACCIDENT. V3 WAS TRAVELING IN THE LEFT LANE AND REAR ENDED V4, V5 WAS TRAVELING IN THE LEFT LANE AND REAR ENDED V3. V6 WAS TRAVELING IN THE LEFT LANE AND REAR ENDED V5".

With respect to "Apparent Contributing Factors", the Police Officer noted "unsafe speed" for the Plaintiff; and the Police Officer noted "following too closely" for the Defendant.

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. (*Matos v Sanchez*, 147 AD3d 585, 586 [1st Dept 2017]).

“It is well settled 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 (see *Tutrani v County of Suffolk*, 10 NY3d 906, 908, 891 NE2d 726, 861 NYS2d 610 [2008] ... Once such a *prima facie* showing has been made, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to raise material issues of fact which require a trial of the action”

(*Cabrera v Rodriguez*, 72 AD3d 553, 553-554 [1st Dept 2010]).

Accordingly, Plaintiff made a *prima facie* showing, of his entitlement to partial summary judgment in his favor on liability, as against the subject Defendants, and for dismissal of Defendants’ affirmative defenses alleging Plaintiff’s culpable conduct, assumption of risk, and failure to wear a seatbelt, by the evidence presented, including the testimony that Defendants’ truck rear-ended the Plaintiff’s vehicle.

Thus, the burden shifted to Defendants, to advance a non-negligent explanation for the accident, and to support their affirmative defenses.

As to Defendants’ liability for the happening of this rear-end collision, Defendants have not made the requisite showing.

It is well-established that a “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]).

Remaining issues include whether Plaintiff should be granted summary judgment dismissing Defendants’ subject affirmative defenses.

In this regard, the Court of Appeals has recently established that “that to

obtain partial summary judgment on defendant's liability he [plaintiff] does not have to demonstrate the absence of his own comparative fault" (*Carlos Rodriguez v City of NY*, 31 NY3d 312, 323 [2018]).

As to Defendants' affirmative defense alleging a plaintiff's culpable conduct, it would not be dismissed, on summary judgment, where there are questions of fact as to a plaintiff's comparative fault -- such questions remain for the jury to decide.

The First Department recently held as follows:

"plaintiff was not required to demonstrate the absence of fault on her part in support of her motion (see *Rodriguez v City of New York*, 31 NY3d 312, 76 N.Y.S.3d 898, 101 N.E.3d 366 [2018]). Nor was she required to establish that defendants' conduct was the sole proximate cause of the accident (see *Benny v Concord Partners 46th St. LLC*, 189 AD3d 572, 573, 139 N.Y.S.3d 15 [1st Dept 2020]). Any discrepancies between plaintiff's testimony and the ... [other evidence] may be considered by the jury in determining comparative fault (CPLR 1411)"

(*Simmons v Bergh*, 192 AD3d 547, 548 [1st Dept 2021]).

Regarding Plaintiff's culpable conduct, in opposition to this motion, Defendants allege that Plaintiff bears liability for the happening of the collision, for, *inter alia*, suddenly breaking his vehicle in a travel lane of the **expressway**, in the nighttime -- where Defendants expected that traffic would continue unimpeded.

In this regard, an applicable statute is VTL § 1181(a) "Minimum speed regulations" which provides that: "**No person shall drive a motor vehicle at such a slow speed as to impede the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with law**". [emphasis added]

Herein, based upon the evidenced adduced, including the sworn deposition transcripts, there are issues of fact as to whether Plaintiff may have, also, been negligent. For instance, at the relevant times, there is conflicting testimony regarding the speed at which the parties were traveling, and the distance between the vehicles. The parties contest whether Plaintiff was driving his vehicle as such a slow speed that he impeded the reasonable movement of traffic on the expressway, and whether such reduced speed was necessary for the safe operation of his vehicle, within the meaning of VTL § 1181(a).

The Court of Appeals established that, where a front-most driver “abruptly **slowed his vehicle to a near stop in a travel lane of a busy highway where vehicles could reasonably expect that traffic would continue unimpeded...** [that] the jury could have rationally found, as it did here, that his conduct " 'set into motion an eminently foreseeable chain of events that resulted in [the] collision' " between the vehicles” [emphasis added] (*Tutrani v County of Suffolk*, 10 NY3d 906, 907 [2008]).

Following *Tutrani*, the First Department held that the sudden stop of the front vehicle was sufficient to raise an issue of fact, to be decided by a jury, as to whether the actions of its driver were a proximate cause of the rear-end collision, in an accident which, also, occurred on the Major Deegan Expressway, where the evidence suggested that the rear-ending driver could have reasonably expected that traffic would continue unimpeded, since traffic was flowing smoothly. (*Baez-Pena v MM Truck & Body Repair, Inc.*, 151 AD3d 473, 477 [1st Dept 2017]). Further, the *Baez-Pena* Court noted there were no cases cited “where a sudden stop by a vehicle on a highway, with normal traffic conditions, resulted in

summary judgment in favor of that vehicle. Indeed, Court of Appeals precedent suggests that summary judgment is unwarranted in such a case” (*Baez-Pena v MM Truck & Body Repair, Inc.*, 151 AD3d at 476. *See Taveras v Ortiz*, 192 AD3d 611 [1st Dept 2021]).

As to Defendants’ affirmative defense alleging a plaintiff’s “assumption of risk”, Plaintiff’s motion to dismiss it, is granted. “Motorists traveling through public streets, as a general rule, do not assume the risk of other motorists negligently striking their vehicle” (*Webb v Scharf*, 191 AD3d 1353, 1355 [4th Dept 2021]; *see generally Scioli v Joseph*, ___AD3d___ [1st Dept 2022], 2022 NY Slip Op 02215 [2022]; *see De Diaz v Klausner*, 198 AD3d 475 [1st Dept 2021]).

As to Defendants’ affirmative defense alleging plaintiff’s failure to use a seat belt, Plaintiff’s motion to dismiss it, is granted. Plaintiff testified that he was wearing his seat belt at the time of the accident. Defendants fail to submit any evidence, beyond sheer speculation, that there is a genuine material issues of fact regarding the same.

It is noted that Defendants do not refute Plaintiff’s allegations that Defendant, MIDLAND FARMS, INC., would be vicariously liable for the negligence of the driver of its truck. In particular, the liability of the owner of the truck is based upon VTL § 388(1) “Negligence in use of operation of vehicle attributable to owner”, which provides that: “Every owner of a vehicle used or operated in this state shall be liable and responsible for death or injuries to person or property resulting from negligence in the use or operation of such vehicle, in the business of such owner or otherwise, by any person using or operating the same with the permission, express or implied, of such owner”.

Conclusion

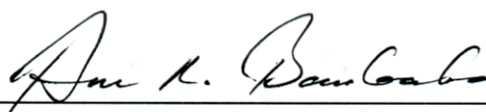
Plaintiff PRIL's motion for partial summary judgment in his favor, on liability, is granted to the extent that Defendants are found liable for the happening of the accident, and Defendant STUBB's negligence was a substantial factor in causing the accident; and Defendants' affirmative defenses of assumption of risk, and failure to wear a seatbelt, are dismissed.

However, that part of Plaintiff's motion seeking dismissal of Defendants' affirmative defense alleging Plaintiff's culpable conduct, is denied. There are questions of fact regarding the same, and whether there was more than one proximate cause of this accident.

Also, 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; whether Plaintiff sustained a "serious injury" within the meaning of the Insurance Law; and the percentage of fault, if any, attributable to Plaintiff.

This constitutes the decision and order of this Court.

Dated: APR 25 2022, 2022


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