

Goodman v IEH Auto Parts, LLC
2022 NY Slip Op 35139(U)
April 7, 2022
Supreme Court, Bronx County
Docket Number: Index No. 25861/2018E
Judge: Ben R. Barbato
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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OLAYA Z. GOODMAN,

Plaintiff,

-against-

Index No.: 25861/2018E

IEH AUTO PARTS, LLC, and NATHANIEL JAMES

MIRANDA,

Defendants.

-----X

HON. BEN R. BARBATO:

Plaintiff, OLAYA Z. GOODMAN, moves for partial summary judgment in her favor on the issue of liability as against Defendants, and dismissal of Defendants' affirmative defenses alleging Plaintiff's culpable conduct, and for related relief.

This is an action to recover damages for alleged personal injuries sustained by Plaintiff in a motor vehicle accident, which occurred on or about February 8, 2018, at about 1:40 p.m., on the westbound Staten Island Expressway, in Richmond County, New York. The van owned and operated by Defendants, IEH AUTO PARTS, LLC, and NATHANIEL JAMES MIRANDA, respectively, came into contact with the Access-A-Ride bus operated by Plaintiff GOODMAN.

The submissions include the pleadings; the Police Accident Report; the Affidavit of Plaintiff GOODMAN; the deposition transcripts of Plaintiff GOODMAN

and Defendant MIRANDA; photographs of the vehicles; an FDNY Report; and the report of Defendant's expert engineer, by William J. Meyer, P.E.

Plaintiff GOODMAN states that Defendants' van hit her bus in the rear, and describes the happening of the accident as follows:

"I was struck in the rear by a large white van which I later came to learn was owned and operated by the defendants... The collision took place in the middle lane of the Staten Island Expressway in Staten Island, New York. The weather was cold but clear and dry...

The collision occurred on the Expressway between Exits 13 and 12, and initially, I was proceeding in the far-right lane of travel after I crossed the bridge. At this point, there were 3 moving lanes of travel and an additional lane to get on and off the highway. I continued in the far-right lane of travel for approximately 10 minutes and the traffic was moderate.

While still in the right lane, I saw for the first time a large white van which was advancing behind me in the same lane of travel. I was traveling approximately 45-50 miles per hour, and I noticed that the van kept advancing behind me as it sped up and was approximately 2 car lengths away. I then decided to change lanes from the right-hand lane of travel to the middle lane. After moving into the middle lane of traffic, I again noticed that the same **white van that was behind me in the right lane, moved over into the center lane and was traveling about 2-3 car lengths behind me in the middle lane.**

I continued driving in the middle lane of travel on the Staten Island Expressway for about 20-30 seconds looking straight ahead maintaining my speed of 45-50 mile per hour. Then, **all of a sudden, I felt my vehicle get hit from behind and heard a loud bang.** The force was hard and I held onto the steering wheel to maintain control. As I moved my vehicle to the right towards the shoulder, I saw the same large white van that was traveling behind me previously also heading towards the shoulder. We brought our respective vehicles to a stop on the shoulder with the Access-A-Ride bus being in front of the white van". [emphasis added]

(See Plaintiff GOODMAN's Affidavit, dated November 16, 2021).

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

"AT TPO DRIVER 1 CENTER LANE WB SIE 278 VO MANOR ROAD WAS HIT FROM BEHIND BY VEHICLE 2. NO APPARENT DAMAGE TO VEHICLE 1 (ACCESS A RIDE VAN), VEH 2 SMALL VAN HEAVY FRONTAL DAMAGE. TOWED BY BREEN TOW. DRIVER 1 TAKEN TO SIUNH NORTH VOA FDNY AMBULANCE 65 DAVID. NO TOW VEH 1. DRIVER 2 RMA AT SCENE"
[emphasis added]

The points of impact, set forth in the Police Accident Report, were to the rear (middle) of Plaintiff's bus, and to the front (middle) of Defendants' van. The post-accident photographs of the vehicles show that there was heavy frontal damage to Defendants' van, with more damage towards the front left.

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, the "rule is that a driver must maintain a safe distance between his vehicle and the one in front of him, and any rear-end collision establishes a prima facie case of negligence on the part of the rear-ending driver"

(*De La Cruz v Ock Wee Leong*, 16 AD3d 199, 200 [1st Dept 2005]). It has also 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]).

Accordingly, Plaintiff herein made a *prima facie* showing of entitlement to partial summary judgment on the issue of Defendants' liability by her sworn Affidavit and the testimony wherein it is alleged, *inter alia*, that Defendants' van rear-ended Plaintiff's bus while she was driving prudently in light of the van bearing down on her. Thus, the burden shifted to Defendants to advance a non-negligent explanation for the accident, and to support their affirmative defense alleging culpable conduct on the part of the Plaintiff.

Herein, in opposition to the motion, Defendants present the opinion of their expert engineer, who opines that the accident resulted from one, or both, vehicles changing lanes; he states as follows:

"It is my opinion that the motor vehicle accident at issue in this case involved lateral contact between the vehicles driven by Ms. Goodman and Mr. Miranda that **most likely resulted from a lane change maneuver by one or both vehicles...** It is further my opinion that the damage to the vehicle driven by Mr. Miranda is consistent with a laterally-directed force, which could only be produced by lateral relative motion between the vehicles. While driving in the same direction on a multi-lane highway, such lateral relative motion would only be produced by a lane change maneuver. Accordingly, based upon analysis of the characteristics of the damage to Mr. Miranda's van, it is my opinion that **the subject accident resulted from one or both of the involved vehicles changing lanes** (consistent with Ms. Goodman's first documented account of the accident) as opposed to Mr. Miranda's van hitting Ms. Goodman's bus in the rear while it was stopping or slowing". [emphasis added]

(See Affidavit of William Meyer, P.E., dated January 5, 2022). Mr. Meyer believes that the post-accident photographs of the vehicles show that the Plaintiff's bus sustained "scuff marks on the rear right side", and Defendants' van "sustained damage to the front left side that included the left front fender, the front grille, the engine compartment hood, and the windshield". (See Affidavit of William Meyer, P.E.).

Defendants further rely upon an FDNY report, in its Narrative History, where it sets forth that Plaintiff "states she checked her rear view and noticed a vehicle coming fast from behind her. *She switched lanes and at the same time the fast approaching vehicle switched lanes, colliding with her*". [emphasis added]

It is noted that hearsay may be considered in opposition to a summary judgment motion, if it is not the only evidence upon which denial of summary judgment would be based. (*Cf. Clarke v Empire Gen. Contr. & Painting Corp.*, 189 A.D.3d 611, 612 [1st Dept 2020]).

In this regard, Defendants invoke VTL§ 1128(a), "Driving on roadways laned for traffic", which provides that:

"Whenever any roadway has been divided into two or more clearly marked lanes for traffic the following rules in addition to all others consistent herewith shall apply: (a) A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety".

However, Defendants' aforesaid theory is not supported by Defendant MIRANDA, who testified that he was not sure if either vehicle had changed lanes. Defendant MIRANDA acknowledges that he hit Plaintiff's bus in the rear after seeing her brake lights illuminated. At his deposition, in pertinent part, he was asked the following questions, and gave the following answers:

"Q. Mr. Miranda, is it accurate to state that on the date of the accident, February 8, 2018, on the Staten Island Expressway, **the front of your IEH Auto, 2017 Nissan, hit the rear of the Access-A-Ride bus?**

[by Counsel] Mr. McCaffrey: Object to the characterization. You can answer it.

A. Yes...

Q. From that time until the collision between the two vehicles, did my client's vehicle stay in that same lane in front of you?

A. I'm not sure.

Q. Did you stay in the same lane of traffic from the time you first saw my client's vehicle until the time of the crash?

A. I'm not sure...

Q. So you're behind my client's vehicle. You're traveling whatever speed you are. No other vehicles in between you two, and you're continuing to travel, right, in that whatever lane you're in, right?

A. Yes...

Q. What happened next? You're behind her. She's traveling in front of you, no cars between you, what happened next?

A. Her brake lights come on, I hit the back of her vehicle...

Q. Were you attempting to pass the Access-A-Ride bus at any time from the time you first saw him until the crash?

A. No

Q. So you were always behind her, correct?

A. Correct". [emphasis added].

(See Defendant MIRANDA's deposition, p. 27-28, 99, 107-8, 112, dated July 19, 2021). Defendant MIRANDA, inexplicably, could not recall many key facts, including the speed of the vehicles, and how much time elapsed from the time that he first saw the Plaintiff's Access-a-Ride vehicle in front of him until the crash.

Nevertheless, under either version, Defendants would be liable for the happening of the accident. Even assuming, based on the hearsay statement, that that the subject accident resulted from the vehicles changing lanes, from the right to the middle lane, at the "same" time, Defendants' vehicle would still be liable,

for following too closely, in violation of Vehicle and Traffic Law § 1129(a)

“Following too closely”, as well as for changing lanes when it was not safe to do

so, in violation of VTL§ 1128(a), “Driving on roadways laned for traffic”, which

provides that:

“Whenever any roadway has been divided into two or more clearly marked lanes for traffic the following rules in addition to all others consistent herewith shall apply: (a) A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety”.

The Court of Appeals has now 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]).

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]).

A remaining issue is whether Defendants’ affirmative defense alleging a

plaintiff's culpable conduct should be dismissed, based upon Defendants' expert's theory that "the subject accident resulted from **one or both** of the involved vehicles changing lanes" [emphasis added]. (See Affidavit of William Meyer, P.E., dated January 5, 2022).

In support of their theory, Defendants cite a matter wherein "defendants raised issues of fact by submitting [defendant] Glover's affidavit stating that plaintiff had abruptly changed lanes and darted in front of the bus before stopping suddenly" (*Jimenez v Greyhound Lines*, 193 AD3d 548, 549 [1st Dept 2021]. See also *Beaubrun v Boltachev*, 111 AD3d 494 [1st Dept 2013]).

Such line of cases are distinguishable from the case at bar, because Defendant MIRANDA's sworn testimony does not support their theory. MIRANDA testified that he was not sure if either vehicle had changed lanes. Defendant MIRANDA acknowledges that he hit Plaintiff's vehicle in the rear.

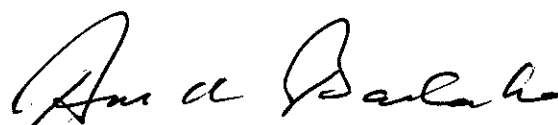
Moreover, even if the expert opinion of Defendants' expert is credited, the expert did not allege whether it was Plaintiff's vehicle, or Defendants' vehicle, which was the "one" which had changed lanes in an unsafe manner; rather, he vaguely refers to a lane change maneuver by "one or both" vehicles.

Accordingly, Plaintiff GOODMAN's Motion, for partial summary judgment in her favor on liability, is granted, to the extent that Defendants are found liable for the happening of the accident and Defendant MIRANDA's negligence was a substantial factor in causing the accident; and that Plaintiff was free from comparative fault for the happening of this collision.

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: APR 07 2022, 2022


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