

Asharman v Jesse Doe
2023 NY Slip Op 35179(U)
July 14, 2023
Supreme Court, Bronx County
Docket Number: Index No. 809982/2022E
Judge: Bianka Perez
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, PART 14**

-----X

DUNCAN ASHARMAN,

Index No. 809982/2022E

Plaintiff,

-against-

Hon. BIANKA PEREZ

Justice Supreme Court

JESSE DOE, said name being
fictitious, LUIS M. SUAREZ, JESSE
DOE, said name being fictitious,
KAYES W. ALI, UBER
TECHNOLOGIES INC., UBER USA,
LLC, UBER NEW YORK, LLC and
RAISER-NY LLC,

Defendants.

-----X

The following papers were read on this motion and cross-motions (Seq. No. #001) for
SUMMARY JUDGMENT submitted on **April 28, 2023.**

Notice of Motion – Affirmation in Support - Exhibits Annexed	No(s). 19-27
Affirmation in Opposition and Exhibits	No(s). 30, 31
Replying Affidavit and Exhibits	No(s). 33, 36

Upon the foregoing papers, defendant Kayes W. Ali (hereinafter “Ali”) moves for an Order granting summary judgment pursuant to CPLR 3212 dismissing plaintiff’s complaint and co-defendant’s cross-claims. Plaintiff cross-moves for an Order granting the plaintiff summary judgment on the issue of liability as against the defendant Luis M. Suarez. Defendants Uber Technologies Inc., Uber USA, LLC, and Raiser-NY LLC (collectively hereinafter “Uber”) cross-move for an Order granting summary judgment in favor of Defendants Uber, dismissing plaintiff’s Complaint and any co-defendant’s cross-claims against Defendants Uber. No opposition was filed for the motion or cross-motions.

Plaintiff commenced the instant action to recover for injuries he allegedly sustained in a motor vehicle on February 23, 2020 on Bedford Avenue intersecting President’s Street, County of Kings, New York. Plaintiff utilized Defendants Uber’s rideshare application to become a passenger in the vehicle owned and operated by Defendant Ali when the vehicle owned by

defendant Luis Suarez (hereinafter “Suarez”) and operated by defendant Jessie/John Doe rear-ended Defendant Ali’s vehicle.

The proponent of a summary judgment motion has the burden of submitting evidence in admissible form demonstrating the absence of any triable issues of fact and establishing entitlement to judgment as a matter of law (*Giuffrida v. Citibank Corp.*, 100 N.Y.2d 72 [2003]; *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320 [1986]). Only when the movant satisfies its prima facie burden will the burden shift to the opponent “to lay bare his or her proof and demonstrate the existence of triable issues of fact” (*Alvarez*, 68 N.Y.2d at 324; *Zuckerman v. City of New York*, 49 N.Y.2d 557 [1980]; *Chance v. Felder*, 33 A.D.3d 645, 645-646 [2d Dept 2006]). “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 non-negligent explanation for the accident.” (*Cabrera v. Rodriguez*, 72 A.D.3d 553 [1st Dept. 2010] citing *Tutrani v. County of Suffolk*, 10 N.Y.3d 906, 908 [2008]; *Agramonte v. City of New York*, 288 A.D.2d 75, 76 [1st Dept. 2001]; see also *Dattilo v. Best Transp. Inc.*, 79 A.D.3d 432 [1st Dept. 2010]).

Defendant Ali’s Motion for Summary Judgment

Defendant Ali now seeks summary judgment on the basis that his vehicle was struck in the rear by Co-defendant Suarez’s vehicle.

In support of his motion, Defendant Ali provides his sworn affidavit along with a certified copy of the MV-104 report. He states that his vehicle was stopped at a red light when Co-defendant Suarez’s vehicle rearended his vehicle, providing the facts necessary to trigger the prima-facie-case principle in this case.

As the burden shifted to Plaintiff and Co-defendants and no opposition filed, Defendant Ali’s motion is granted without opposition.

Plaintiff’s Cross-Motion for Summary Judgment

Plaintiff seeks summary judgment on the basis that Plaintiff was not at fault for the accident as an innocent passenger. Plaintiff also seeks dismissal of any of Defendant Suarez' affirmative defenses alleging comparative or contributory negligence at the time of the accident. Summary judgment in favor of the plaintiff is warranted where the defendant's own conduct inculcates him (*Uragrizza v Schmieder*, 46 NY2d 471 [1979]). "It is well settled that the right of an innocent passenger to summary judgment is not in any way restricted by potential issues of comparative negligence as between the drivers of the two vehicles" (*Garcia v Tri-County Ambulette Serv.*, 282 AD2d 206, 207 [1st Dept 2001] citing *Johnson v Phillips*, 261 AD2d 269, 272 [1st Dept 1990]).

Here, Plaintiff relies on Defendant Ali's submissions to establish he was an innocent, seat-belted passenger free of comparative fault for the accident at issue (*Anzel v Pistorino*, 105 AD3d 784, 786 [2013], quoting *Medina v Rodriguez*, 92 AD3d 850, 850 [2012]). As defendants submit no evidence contradicting these facts, plaintiff is entitled to summary judgment on liability and the defendants' affirmative defenses of comparative negligence are dismissed (*Guzman v. Desantis*, 148 A.D.3d 580 [1st Dept 2017]). The Court also dismisses the "irrelevant defense of assumption of risk" (*Vasquez v Strickland*, 211 A.D.3d 414, 415 [1st Dept 2022]). Motorists traveling through public streets, as a general rule, do not assume the risk of other motorists negligently striking their vehicle (see *Webb v. Sharf*, 191 A.D.3d 1353 [4th Dept. 2021]); also, generally *Trupia ex rel. Trupia v. Lake George Cent. Sch. Dist.*, 14 N.Y.3d 392 [2010]).

Defendants Uber Cross-Motion for Summary Judgment

Defendants Uber argue that the plaintiff's claims against them are ones of pure vicarious liability. They further argue that plaintiff's claims are solely based on the theory that co-defendant Ali was hired by defendants Uber. Defendants Uber rely on the affidavit of co-defendant Ali that clearly states he owned and operated the vehicle where plaintiff was a passenger, Exhibit B. In addition, the vicarious liability of co-defendants Uber is hereby moot based on this Court's decision above dismissing all claims as against defendant Ali on the issue of his liability. Thus, defendant, Uber's cross-motion is granted without opposition and rendered moot based on this Court's decision on the motion by Co-Defendant Ali.

Accordingly, it is hereby

ORDERED that Defendant Ali's motion for summary judgment is granted and the complaint and any cross-claims are hereby dismissed as against them, it is further,

ORDERED that Defendants Uber's cross-motion for summary judgment is granted and the complaint and any cross-claims are hereby dismissed as against them, it is further,

ORDERED, that the Clerk of the Court is directed to enter judgment in favor of Defendants Kayes W. Ali, Uber Technologies Inc., Uber USA, LLC, and Raiser-NY LLC and against plaintiff and Co-Defendants dismissing the complaint and any cross-claims as against said defendants.

ORDERED that Plaintiff's cross-motion that seeks an Order granting summary judgment to the Plaintiff against Defendant Suarez as to liability is granted, and it is further

ORDERED that the branch of plaintiff's cross-motion dismissing the affirmative defenses alleging comparative negligence on the part of the Plaintiff and assumption of risk is granted, it is further

ORDERED, that the Clerk of the Court is directed to enter judgment on liability as against Defendant Suarez and dismiss the affirmative defenses of comparative negligence and assumption of risk as to Plaintiff and against defendants.

This constitutes the Decision and Order of this Court.

Dated: July 14, 2023

Hon. 
BIANKA PEREZ, J.S.C.

1. CHECK
ONE.....

☐ CASE DISPOSED IN ITS ENTIRETY ☒ CASE STILL ACTIVE

2. MOTION
IS.....

☒ GRANTED ☐ DENIED ☐ GRANTED IN PART ☐
OTHER

3. CHECK IF
APPROPRIATE.....

☐ SETTLE ORDER ☐ SUBMIT ORDER ☐ SCHEDULE
APPEARANCE

☐ FIDUCIARY APPOINTMENT ☐ REFEREE APPOINTMENT