

Smith v Torah

2025 NY Slip Op 32219(U)

June 11, 2025

Supreme Court, Kings County

Docket Number: Index No. 532703/2021

Judge: Lisa S. Ottley

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS – PART 24

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ANDRE J. SMITH,

Mot. Seq. #s 1 and 2

Plaintiff,

Index #532703/2021

-against-

DECISION AND ORDER

YESHIVA YAGDIL TORAH and ARSEN FUZAILOV,

Defendants.

-----X

HON. LISA S. OTTLEY

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of this Notice of Motions for Summary Judgment submitted on September 9, 2024.

Papers	Numbered
Notice of Motions and Affirmation	1&2 [Exh. A-E]; 5 & 6 [Exh. A-I]
Affirmation/Affidavit in Opposition.....	4; 7 [Exh. A-B]
Reply Affirmation in Support of Motion.....	9 [Exh. A, B, I]
Memorandum of Law.....	3; 8

Plaintiff moves for an order pursuant to CPLR § 3212 (Motion Seq. # 1) granting summary judgment on the issue of liability against the defendants. The defendants oppose plaintiff’s motion on the ground that issues of fact exist which preclude summary judgment from being granted.

Defendants move for an order pursuant to CPLR § 3212 (Motion Seq. # 22) dismissing plaintiff’s complaint in its entirety on the grounds that the plaintiff has not sustained a serious injury pursuant to Section 5102(d) of the Insurance Law. Plaintiff’s Bill of Particulars alleges that he sustained injuries to the cervical spine, thoracic spine, and lumbar spine.

This action was commenced for personal injuries allegedly sustained as a result of a motor vehicle accident which occurred on July 8, 2021, while plaintiff was driving on Forest Hill Road in Staten Island, New York. Plaintiff’s vehicle was struck in the rear by the defendant, Arsen Fuzailov, the driver of the school bus, which is owned by the defendant, Yeshiva Yagdil Torah.

After careful review of the moving papers, opposition thereto and reply, the court finds as follows:

Liability

It is well settled that to grant summary judgment, it must clearly appear that no material issue of fact has been presented. See, Grassick v. Hicksville Union Free School District, 231 A.D.2d 604, 647 N.Y.S.2d 973 (2nd Dept., 1996). “Where the moving party has demonstrated its entitlement to summary judgment, the party opposing the motion must demonstrate by admissible evidence the existence of a factual issue requiring the trial of the action.” See, Zuckerman v. City of New York, 49 N.Y.2d 557, 427 N.Y.S.2d 595 (1980). The papers submitted in the context of the summary judgment motion are viewed in the light most favorable to the party opposing the motion. See, Marine Midland Bank, N.A. v. Dino v. Artie’s Automatic Transmission Co., 168 A.D.2d 610 (2nd Dept., 1990). If the *prima facie* showing has been met, the burden then shifts to the opposing party to present sufficient evidence to establish the existence of material issues of fact requiring a trial. See, CPLR 3212[b]; Alvarez v. Prospect Hosp., 68 N.Y.2d 320, 508 N.Y.S.2d 923 (1986).

“A rear-end collision with a stopped or stopping vehicle creates a *prima facie* case of negligence with respect to the operator of the rearmost vehicle, thereby requiring that operator to rebut the inference of negligence by providing a non-negligent explanation for the collision.” See, Edgerton v. City of New York, 160 A.D.3d 809, 810, 74 N.Y.S.3d 617 (2nd Dept., 2018).

The court finds that the plaintiff has established his *prima facie* entitlement to judgment as a matter of law on the issue of liability against the defendants. The deposition testimony of the plaintiff, Andre Smith and defendant, Arsen Fuzailov, demonstrated that the plaintiff’s vehicle was at a stop at a red light when it was struck in the rear by defendant driver’s vehicle. See, Tsyganash v. Auto Mall Fleet Mgt., Inc., 163 A.D.3d 1033, 83 N.Y.S.3d 74 (2nd Dept., 2018); Drakh v. Levin, 123 A.D.3d 1084, 1085, 1 N.Y.S.3d 202 (2nd Dept., 2014); Niyazov v. Bradford, 13 A.D.3d 501, 786 N.Y.S.2d 582 (2nd Dept., 2004).

In opposition, the defendants failed to raise a triable issue of fact regarding a non-negligent explanation for the rear-end collision. See, Tsyganash v. Auto Mall Fleet Mgt., Inc., *supra*; Edgerton v. City of New York, *supra*. In opposition, the defendant, Arsen Fuzailov, submitted his deposition testimony in which he states that at the time of the accident, after making his left-hand turn onto Forest Hill Road he observed the red light and plaintiff’s vehicle stopped behind other vehicles; he was traveling approximately two (2) miles per hour; and after applying his brakes, the bus slid about one (1) foot on the slippery roadway into the rear of plaintiff’s vehicle due to rain a few moments earlier. The inference of negligence was not rebutted by the mere assertion that the defendant driver was unable to stop on a wet roadway. See, Volpe v Limoncelli, 74 A.D.3d 795, 902 N.Y.S.2d 152 (2nd Dept., 2010). As such, the defendants have failed to rebut the inference of negligence by failing to provide a non-negligent explanation for the collision.

A plaintiff is no longer required to show freedom from comparative fault to establish his or her *prima facie* entitlement to judgment as a matter of law on the issue of a defendant's liability. See, Rodriguez v. City of New York, 31 N.Y.3d 312, 76 N.Y.S.3d 898 (2018); Merino v. Tessel, 166 A.D.3d 760, 87 N.Y.S.3d 554 (2nd Dept., 2018). A driver of a vehicle approaching another vehicle from the rear is required to maintain a reasonably safe distance and rate of speed under the prevailing conditions to avoid colliding with the other vehicle. See, Toala v. EAN Holdings, LLC, 191 A.D.3d 724, 137 N.Y.S.3d 713 (2nd Dept., 2021); Vehicle and Traffic Law §1129[a]. Furthermore, bare assertions as to a plaintiff's comparative fault, without documentary proof, are insufficient to raise a triable issue of fact as to whether there was a non-negligent explanation of the accident. See, Gutierrez v. Trillium USA LLC, 111 A.D.3d 669, 974 N.Y.S.2d 563 (2nd Dept., 2013).

Here, due to defendants' failure to provide a non-negligent explanation of the accident, the plaintiff established that the defendant driver was the sole proximate cause of the accident. See, Yawagyentsag v. Safeway Construction Enterprise LLC, 225 A.D.3d 827, 207 N.Y.S.3d 608 (2nd Dept., 2024). Although the issue of comparative fault generally presents a question of fact, that issue should be submitted to a jury "only where there is a triable issue of fact as to whether the frontmost driver also operated his or her vehicle in a negligent manner." See, Clarke v. Phillips, 112 A.D.3d 872, 978 N.Y.S.2d 281 (2nd Dept., 2013), *citing*, Gutierrez v. Trillium USA LLC, 111 A.D.3d 669, 974 N.Y.S.2d 563 (2nd Dept., 2013).

Accordingly, plaintiff's motion for summary judgment on the issue of liability is hereby granted in its entirety.

Serious Injury Threshold

A defendant can establish that a plaintiff's injuries are not serious within the meaning of Insurance Law 5102(d) by submitting the affidavits or affirmations of medical experts who examined the plaintiff and conclude that no objective medical findings support the plaintiff's claim. See, Edwards v. Ali, 75 Misc.3d 1213(a), 168 N.Y.S.3d 676 (2nd Dept., 2022). Once established, the burden shifts to the plaintiff to come forward with evidence to negate the defendant's submissions by demonstrating a triable issue of fact that a serious injury was sustained within the meaning of the Insurance Law. See, Grossman v. Wright, 268 A.D.2d 79 (2nd Dept., 2000).


Based on the totality of the evidence presented, the court finds that there are issues of fact which preclude summary judgment from being granted. The court finds that the defendants, by submitting sworn reports from their examining doctors who conducted independent medical exams and reviewed plaintiff's MRIs, and using the plaintiff's deposition testimony, has established a *prima facie* case that plaintiff did not sustain a serious injury under the categories claimed in plaintiff's Bill of Particulars. Once the defendants established their *prima facie* case, the burden shifted to the plaintiff to come forward with evidence in admissible form to raise a triable issue of fact as to a serious injury as defined by Insurance Law §5102(d). See, Gaddy v. Eyler, 79 N.Y.2d 955 (1992). Here, plaintiff's opposition consisted of evidentiary proof and objective findings sufficient to raise triable issues of fact. Therefore, considering the conflicting expert opinions, the court finds

that triable issues of fact have been raised, which preclude summary judgment from being granted. See, *Wilcoxon v Palladino*, 122 A.D.3d 727, 996 N.Y.S.2d 191 (2nd Dept., 2014).

Accordingly, it is hereby ORDERED, that the plaintiff's motion on the issue of liability in his favor is hereby granted, and it is further

ORDERED, that defendants' motion for summary judgment dismissing plaintiff's complaint is denied in its entirety.

Dated: Brooklyn, New York
June 11, 2025



HON. LISA S. OTTLEY, J.S.C.
HON. LISA S. OTTLEY

KINGS COUNTY CLERK
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