

Davy v Singh

2025 NY Slip Op 34096(U)

March 20, 2025

Supreme Court, Queens County

Docket Number: Index No. 714431/2020

Judge: Leonard Livote

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SHORT FORM ORDER

NEW YORK STATE SUPREME COURT - QUEENS COUNTY

Present: Honorable Leonard Livote
Supreme Court Justice

IAS Part 33

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DARNELL A. DAVY,

Index No.: 714431/2020

Plaintiff,

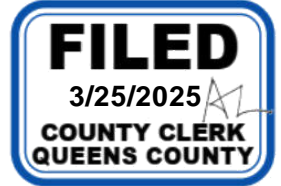
v.

Motion Date: 7/16/24

HARDAYAL SINGH, JOSEPH SENEAL,
and ILYA PARIZH,

Motion Sequence: 004

Defendants.
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The following papers numbered below read on this motion by Plaintiff DARNELL A. DAVY (“Plaintiff”) for an Order: (1) pursuant to CPLR 3212 granting summary judgment to the plaintiff against the defendants as to the issue of liability as there are no issues of fact; 2) finding that the Plaintiff is free from comparative fault; 3) pursuant to CPLR 3211(b) dismissing defendant’s First, Third, Fourth, Fifth, Sixth, Seventh, Eighth, and Ninth Affirmative Defenses; 4) such other, further and different relief as this court may deem just, proper, and equitable.

	<u>PAPERS NUMBERED</u>
Notice of Motion, Affirmation, Affidavits and Exhibits.....	105-117
Answering Affirmations, Affidavits And Exhibits.....	118-120
Reply Affirmations, Affidavits And Exhibits.....	121

Upon the foregoing papers, the motion is determined as set forth below.

Plaintiff brings the within action for personal injuries sustained in a four-vehicle “domino-type” collision motor vehicle accident. As per the certified police report, the accident occurred on Monday, November 11, 2018 at approximately 8:15 PM on the westbound Grand Central Parkway. The Plaintiff and three defendants comprise the drivers of the four involved vehicles. Defendant JOSEPH SENECAL (“Defendant Senecal”) was the owner and operator of vehicle #1; Defendant ILYA PARIZH (“Defendant Parizh”) was the owner and operator of vehicle #2; Plaintiff was the operator of vehicle #3; and Defendant HARDAYAL SINGH (“Defendant Singh”) was the owner and operator of vehicle #4.

The certified accident report states in essence that Plaintiff’s vehicle #3 was traveling westbound on the Grand Central Parkway and was stopped in heavy traffic when Defendant Singh’s vehicle #4 struck Plaintiff’s vehicle #3. This caused Plaintiff’s vehicle #3 to strike the rear of Defendant Parizh’s vehicle #2. This then caused Defendant Parizh’s vehicle #2 to strike the rear of Defendant Senecal’s vehicle #1.

This Court previously granted summary judgment to Defendant Senecal and Defendant Parizh, and dismissed the Plaintiff’s complaint against them. The only defendant remaining in this action is Defendant Singh, the driver of vehicle #4.

Hon. Claudia Lanzetta, by Order dated December 1, 2023 (NYSCEF Doc. No. 102), directed that Defendant Singh shall be precluded from testifying at trial of this matter or submitting an affidavit of fact on any dispositive motions if they fail to appear for a deposition on December 8, 2023. Plaintiff alleges in this motion that Defendant Singh failed to appear for that deposition, and Defendant Singh does not contest otherwise.

Plaintiff now moves for, inter alia, summary judgment on liability against Defendant Singh.

New York’s Vehicle and Traffic Law (VTL) § 1129(a) provides: “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” (*see* N.Y. Veh. & Traf. Law § 1129).

Summary judgment is a drastic remedy that should only be employed when there is no doubt as to the absence of any triable issues of a material fact (*see* *Kolivas v. Kirchoff*, 14 AD3d 493 [2nd Dept 2005]). “Issue finding, rather than

issue determination is the court's function. If there is any doubt about the existence of a triable issue of fact, or a material issue of fact is arguable, summary judgment should be denied" (*see Celardo v. Bell*, 222 AD2d 547 [2d Dept 1995]). "In the context of a motion for summary judgment, the court is obliged to draw all reasonable inferences in favor of the non-moving party, and may not pass on issues of credibility" (*see Rizzo v Lincoln Diner Corp.*, 215 AD2d 546 [2d Dept 2005]).

The party moving for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law, offering sufficient evidence to demonstrate the absence of a triable issue of fact (CPLR Section 3212(b); *see Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]; *Zuckerman v City of New York*, 49 NY2d 557 [1980]; *Megafu v. Tower Ins. Co. of New York*, 73 A.D.3d 713 [2d Dept 2010]). Once the moving party has satisfied this obligation, the burden then shifts; "the party opposing the motion must demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action" (*Zuckerman v. City of New York, supra*).

A rear-end collision with a stopped or stopping vehicle creates a prima facie case of negligence with respect to the operator of the moving vehicle and imposes a duty on that operator to rebut the inference of negligence by providing a non-negligent explanation for the collision (*see Tutrani v. County of Suffolk*, 10 N.Y.3d 906, 861 N.Y.S.2d 610, 891 N.E.2d 726 (2008)).

The issue of a plaintiff's comparative negligence, however, "may be decided in the context of a summary judgment motion where . . . the plaintiff moved for summary judgment dismissing a defendant's affirmative defense alleging comparative negligence" (*see Dieubon v Moore*, 229 AD3d 686, 687 [2d Dept 2024]). There can be more than one proximate cause of an accident (*see Welch v Suffolk Coach, Inc.*, 162 AD3d 1097 [2d Dept 2018]). The issue of proximate cause "may be decided as a matter of law where only one conclusion may be drawn from the facts" (*see Raldiris v Enlarged City Sch. Dist. of Middletown*, 179 AD3d 1111, 1114 [2d Dept 2020], *quoting Faust v Gerde*, 150 AD3d 1204, 1204 [2d Dept 2017]).

Here, Plaintiff avers that their deposition testimony and affidavit establishes that Defendant Singh was negligent in failing to maintain a reasonably safe distance to Plaintiff's vehicle and/or exercise proper judgment or caution, maintaining a proper lookout and, and taking any evasive measures to avoid an accident, in violation of VTL § 1129(a).

Defendant Singh avers that the police report indicates that Plaintiff's vehicle (vehicle #2) was already involved in an accident, but such an argument does not rebut the inference of negligence by providing a non-negligent explanation for the collision considering the record herein establishing that Plaintiff was at a full stop for approximately 30 seconds when the front of Defendant Singh's vehicle struck the rear of Plaintiff's vehicle. Thus, there are no triable issues of fact regarding liability. Therefore, the branch of Plaintiff's motion (Motion Sequence 004) seeking summary judgment as to liability against Defendant Singh is granted.

As to any comparative negligence by Plaintiff, upon review of the record establishing that Plaintiff was fully stopped before Defendant Singh's vehicle made contact, there remains no issue of fact. Therefore, the branch of Plaintiff's motion seeking a finding that Plaintiff is free from comparative fault is granted. Accordingly, it is

ORDERED, that the caption be amended to reflect the dismissal of the action against Defendant Parizh and Defendant Senecal and all future papers filed with the Court shall bear the amended caption as follows:

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DARNELL A. DAVY,

Plaintiff,

v.

HARDAYAL SINGH,

Defendant.

-----X

and it is further

ORDERED that summary judgment on the issue of liability only is determined in favor of the Plaintiff against the Defendant Singh, and it is further


ORDERED that counsel for Plaintiff shall serve a copy of this Order upon the Clerk of the Court who is directed to mark the Court's records to reflect the change in the caption herein; and it is further

ORDERED that Plaintiff is directed to serve a copy of this Order on Defendant Singh within twenty (20) days of the date of filing this Order.

Any other and/or further relief requested and not addressed is denied.

This constitutes the Order of the Court.

Dated: March 20, 2025



Leonard Divote, J.S.C.

