

Jones v Dominique

2026 NY Slip Op 32007(U)

May 6, 2026

Supreme Court, Kings County

Docket Number: Index No. 512964/2021

Judge: Anne J. Swern

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At an IAS Trial Term, Part 75 of the Supreme Court of the State of New York, Kings County, at the Courthouse located at 360 Adams Street, Brooklyn, New York on the 6th day of May 2026

P R E S E N T: HON. ANNE J. SWERN, J.S.C.

DECISION & ORDER

SABRINA MONIQUE JONES,

Index No.: 512964/2021

Plaintiff(s),

Motion Seq.: 009 & 011

-against-

Return Date: 4/30/2026

DANIELLE DOMINIQUE, TAMU D JONES
and ORINTHIA A SKEETE-BROWNE,

Defendant(s).

Recitation of the following papers as required by CPLR 2219(a):

**NYSCEF
Papers
Numbered**

Notice of Motion and Supporting Documents	131-135
Affirmation in Opposition and Supporting Documents.....	137-140, 165-170
Reply Affirmation and Supporting Documents	151-152
Notice of Cross-Motion and Supporting Documents	153-162
Affirmation in Opposition and Supporting Documents.....	180, 173-176
Reply Affirmation and Supporting Documents	184, 187

Upon the foregoing papers, the decision and order of the Court is as follows:

Plaintiff commenced this action to recover damages for personal injuries sustained in an automobile accident. At the time of the accident, plaintiff was a passenger in the vehicle operated by her sister, defendant Tamu D. Jones (Jones).

Plaintiff has moved for summary judgment per CPLR § 3212 on the issue of liability and dismissal of defendants’ affirmative defenses of comparative negligence, contributory negligence and culpable conduct and requests a trial on the assessment of damages. (MS 009). Defendants Tamu D. Jones and Orithia A. Skeete-Browne have cross-moved for summary judgment per

CPLR § 3212 dismissing this action and all crossclaims contending that they were not negligent for the accident as a matter of law. (MS 011).

Plaintiff's motion is granted to the extent that defendants' affirmative defenses are dismissed but denied on the issue of defendants' negligence. Defendants' cross-motion is also denied.

The accident happened on 5/31/2019 at the intersection of Bedford Avenue and Sterling Street, Brooklyn, New York. Defendant Danielle Dominique (Dominique) states that she was stopped at a red light behind Jones' vehicle [the host vehicle] when suddenly it went into reverse striking Dominique's vehicle. Plaintiff and her sister dispute Dominique's version of the accident. It is their contention that Dominique rear-ended their vehicle.

The Court's only role upon a motion for summary judgment is to identify the existence of triable issues, and not to determine the merits of any such issues (*Vega v Restani Construction Corp.*, 18 NY3d 499, 505 [2012]) or the credibility of the movant's version of events (see *Xiang Fu He v Troon Management, Inc.*, 34 NY3d 167, 175 [2019] [internal citations omitted]). Therefore, viewing the evidence in the light most favorable to all defendants, more than one inference can be drawn from the deposition testimony of the parties (see *Negri v Shop & Stop, Inc.*, 65 NY2d 625, 626 [1985]).

“[T]he 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 Service, Inc.*, 282 AD2d 207). In *Garcia*, the trial court denied plaintiff's motion for summary judgment on culpable conduct and defendants' negligence. The Appellate Division reversed the trial court only to the extent that plaintiff's motion for summary judgment was granted on the issue of culpable conduct. The Court in *Garcia* expressly rejected

defendants' argument that summary judgment on the issue of culpable conduct was inappropriate because "one or the other may not be found negligent by a jury" (*id.*).

The First Department affirmed this principle in *Hobbs v MTA Bus Company*, 211 AD3d 471 [1st Dept 2022]. The Court held that "an innocent passenger must still establish a defendant driver's liability under traditional principles of tort liability in order to prevail on the issue of liability against that driver" (211 AD3d 472; *see also Guzman v DeSantis*, 148 AD3d 580, 581 [1st Dept 2017] [In the absence of any finding of defendants' respective liability as a matter of law, an innocent passenger is still entitled to summary judgment only to the extent of finding no culpable conduct by him on the issue of liability.]).

The Second Department is in accord with the First Department that an innocent passenger must establish defendants' liability as a matter of law to obtain summary judgment on the issue of their negligence (*Balladares v City of New York*, 177 AD3d 942, 943 [2d Dept 2019] [Plaintiffs, passengers in a non-party's vehicle, established as a matter of law that the defendant driver entered the intersection without yielding even though he initially stopped at the stop sign.]).

Here, the credibility of the witnesses is in question and must be determined by a jury (*see Cameron v City of Long Beach*, 297 AD2d 773, 774 [2d Dept. 2002]). The jury must determine whether Jones backed into Dominique's vehicle or Dominique rear-ended Jones' vehicle. Based on the conflicting testimony, the Court cannot determine as a matter law the negligence of either defendant or the lack thereof (*Balladares v City of New York*, 177 AD3d 943).

The Court has considered the parties' remaining contentions and finds same to be without merit. Accordingly, it is hereby

ORDERED that plaintiff's motion for summary judgment per CPLR § 3212 on the issue of liability and to set this action down for a trial on the assessment of damages is DENIED (MS 009), and it is further

ORDERED that plaintiff's motion for summary judgment per CPLR § 3212 dismissing defendants' affirmative defenses of comparative negligence, contributory negligence and culpable conduct. (MS 009) is GRANTED, and it is further

ORDERED that the cross-motion by defendants Tamu D. Jones and Orithia A. Skeete-Browne for summary judgment per CPLR § 3212 dismissing this action and all crossclaims is denied (MS 011) is DENIED m

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E N T E R:



Hon. Anne J. Swern, J.S.C.
Dated: 5/6/2026