

Rodriguez v Sharma
2018 NY Slip Op 33474(U)
December 10, 2018
Supreme Court, Bronx County
Docket Number: 303136/2015
Judge: Howard H. Sherman
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SUPREME COURT OF THE STATE OF NEW YORK
BRONX COUNTY
Part 4

-----x
Mercedes Rodriguez

Index No. 303136/2015

Plaintiff

Decision and Order

-against-

Amy Sharma, Sheetal Sharma and Oneida Reyes

Defendants

-----x
Amy Sharma and Sheetal Sharma ,

Third-Party Plaintiffs

-against-

Oscar M/ Pimental and GVC, LTD.,

Howard H. Sherman

JSC

-----x
The following papers numbered 1-4 read on these motions for re-argument /renewal by third -party defendants and plaintiff submitted September 30, 2017

Notice Of Motion, Affirmation , Exhibit A-I [Third-Party Defts]	1	
Notice of Motion , Affirmation , Exhibits A-L [Pltf.]	2	
Affirmation in Opposition	3	
Affirmation in Reply, Exhibits M,N	4	

Upon the foregoing papers, this motion by Third-Party Defendants for reargument and the motion by plaintiff for reargument and renewal are consolidated for purposes of disposition and decided as set forth below.

Procedural Background

In this action , plaintiff seeks damages for personal injuries alleged to have been sustained in a three-vehicle collision that occurred on November 6, 2013 on an eastbound lane of the Cross Bronx Expressway. At the time, Mercedes Rodriguez (Rodriguez) was a matron on a school bus owned by GVC , Ltd., which was then being operated by her co-worker, Oscar M. Pimental (Pimental). Defendants Amy Sharma and Sheetal Sharma (Sharma Defendants) commenced a third party action as against Pimental and GVC, Ltd, seeking common law indemnification and contribution.

Motions

- 1) Pimental and GVC Ltd . move for reargument of this court's prior decision and order , and upon reargument, seek an order dismissing the third-party complaint on the grounds that the action is barred as a matter of law by operation of Workers Compensation Law §§ 11 and 29. No opposition is interposed .
- 2) Plaintiff moves for leave to renew and/or reargue this court's prior decision and order that granted the unopposed motion of the Sharma Defendants for summary judgment , and upon same, denying that motion on the grounds that there are unresolved issues of fact as to the cause of the accident precluding dispositive relief.

The Sharma defendants oppose the motion on the grounds that plaintiff has failed to provide a sufficient excuse for failing to submit papers in opposition to the original motion, and there is no evidence to raise an issue of fact that ay conduct by

Amy Sharma, whose vehicle was stopped before it was rear-ended by the vehicle being driven by Oneida Reyes (Reyes), caused or contributed to the accident.

Discussion and Conclusions

Third-Party Complaint

Upon consideration of the moving papers here, the court finds that the movants have demonstrated that the court overlooked the procedural posture of the Sharma Defendants' third-party action in making its earlier determination. As a consequence, reargument is granted.

Upon reargument, the court finds that the GVC, Ltd. Defendants have established that at the time of the accident, Rodriguez and Pimental were co-employees working within the scope of their employment with GVC Ltd, and that Rodriguez applied for and received benefits under GVC Ltd's workers' compensation insurance policy.

Section 11 of the Workers' Compensation Law, which is expressly incorporated into section 29(6), states "The liability of an employer prescribed by [section 10] shall be exclusive and in place of any other liability whatsoever, to such employee ... or any person otherwise entitled to recover damages, contribution or indemnity, at common law or otherwise, on account of such injury or death or liability arising therefrom ..."

In *Isabella v Hallock*, 22 NY3d 788 (2014) the Court of Appeals found that Workers'

Compensation Law §§ 11 and 29(6) render workers' compensation benefits the exclusive remedy of an injured employee, thus barring the employee from recovering against a negligent co-employee or employer, and as pertinent here, also precluding third-parties from seeking contribution or indemnification from the co-employee or his or her employer unless the employee sustained a grave injury. There is here no allegation of such a qualifying injury, nor proof of one.

The court finds that third-party defendants Pimental and GVC Ltd., met their burden and on reargument, grants their motion for summary judgment dismissal of the Sharma Defendants' third-party complaint .

Liability Motion

Upon consideration of the prior decision and order and the record here, the court finds sufficient basis to establish that the court misstated as undisputed assertions about the sequence of the rear-end collisions , and as a consequence, plaintiff has established that reargument is warranted because the court overlooked or misapprehended issues of fact in making its original determination (see, CPLR 2221[d][2];Pezhman v. Chanel, Inc., 126 A.D.3d 497, 2 N.Y.S.3d 792 [1st Dept.2015]).

On reargument, the court finds that plaintiff has demonstrated that there are triable issues of fact with respect to the issue of Amy Sharma's culpable conduct in creating or contributing to non-party Pimental's "one strong impact" [RODRIGUEZ

EBT: 21] to the rear of the Reyes vehicle .

Sharma described the traffic as "stop-and-go"[EBT : 14:13], and stated that she was traveling "somewhere between 30 and 40 miles an hour" when she was caused to quickly apply her brakes in response to the fast deceleration of the vehicle immediately ahead of hers [15-16] . Then she felt one impact to the rear of her vehicle and she "heard" the sound of another that she described as "medium to heavy " [21:17].

Plaintiff contends that Sharma's abrupt stop , while the bus was proceeding at approximately forty-five miles per hour in conditions described as "a lot of traffic , but . "moving "[18:24], contributed to the rear-end impact to the Reyes vehicle. Rodriguez did not observe any collision between the Reyes and Sharma vehicles [30], but she heard a "crash" before the bus hit the rear of Reyes's car [31].

Oneida Reyes testified that she was driving at a speed of thirty-five miles an hour [30] in a "little traffic " that was "movable" [15] when her vehicle sustained a "strong" [39:19] rear impact from the bus causing it to "light[ly] " hit the rear of Sharma's Land Rover [40]. She first saw the bus behind her in her rearview mirror when it was three to four car lengths away , and she estimated that it was traveling "much faster than [she]." [35:21-22] She also observed that there were no vehicles traveling in front of the Land Rover [72].

Upon consideration of the above testimony as afforded all favorable inferences in favor of plaintiff as the non-moving party, the court finds that there are material issues of fact precluding dispositive relief. A crucial issue unresolved here is the prevailing traffic conditions immediately preceding the collisions. The appellate courts have consistently held that the assertion of a sudden stop by a lead vehicle, without more, is generally insufficient to rebut the presumption of non-negligence on part of lead vehicle (see, *Woodley v. Ramirez*, 25 A.D.3d 451, 452–453, 810 N.Y.S.2d 125 [1st Dept. 2006]). However, as the First Department noted, citing its own authority (see, *Berger v. New York City Hous. Auth.*, 82 A.D.3d 531, 531, 918 N.Y.S.2d 458 [1st Dept.2011] [presumption of negligence “may be rebutted by evidence that the vehicle in front stopped suddenly”]), and that of the Court of Appeals (see, (*Tutrani v. County of Suffolk*, 10 N.Y.3d 906, 891 N.E.2d 726 [2008]), it is unaware of any precedent holding that “ where a sudden stop by a vehicle on a highway, with normal traffic conditions, resulted in summary judgment in favor of that vehicle. “ *Baez-Pena v. MM Truck and Body Repair, Inc.*, 151 AD3d 473, 477 [1st Dept. 2017]

On this record the court cannot make a finding as a matter of law that the traffic conditions on the expressway immediately before the accident were “normal” or otherwise or whether the acknowledged sudden stop was necessitated by traffic in front

of the lead vehicle. While the moving defendant driver testified that conditions at the location on the expressway were “stop and go”, she also stated that she was traveling at 30 to 40 miles an hour. Behind her, Reyes was driving in “movable” traffic at 35 mph. Plaintiff estimated that the bus was proceeding at 45 mph in “moving” traffic, with Reyes observing that its speed exceeded hers significantly. Also crucial, and here disputed is the condition of the traffic in front of the lead vehicle. Sharma contends that her sudden stop was in reaction to the vehicle immediately in front of hers, which had also been traveling at 30 to 40 miles an hour, abruptly braking to stop [16-17]. Reyes testified that she observed no vehicles in front of the Land Rover [72-73].

Under these circumstances, the court cannot find as a matter of law that the abrupt stop of the lead driver did not contribute to the rear-end collision to the Reyes vehicle.

Accordingly, it is

ORDERED that motion of Third-Party Defendants Oscar M. Pimental and GVC, Ltd., for reargument of this court’s decision and order of August 8, 2017 be and hereby is granted, and it is

ORDERED that upon reargument, the motion of Third-Party Defendants Oscar M. Pimental and GVC, Ltd. for summary judgment be and hereby is granted, and it is

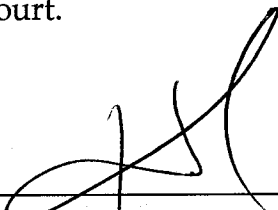
ORDERED that summary judgment be entered in favor of Oscar M. Pimental and GVC, Ltd. as against Amy Sharma and Sheetal Sharma dismissing the third-party complaint , and it is

ORDERED that the motion of plaintiff for leave to reargue the decision and order of this court dated September 28, 2017 be and hereby is granted, and it is

ORDERED that upon reargument, the motion of Defendants Amy Sharma and Sheetal Sharma for summary judgment be and hereby is denied.

This shall constitute the decision and order of this court.

Dated : December 10, 2018



Howard H. Sherman