

Rooplalsingh v Obas

2022 NY Slip Op 34627(U)

December 30, 2022

Supreme Court, Queens County

Docket Number: Index No. 718779/2018

Judge: Timothy J. Dufficy

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SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS, PART 35

PRESENT: **Hon. Timothy J. Dufficy**
Justice



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JESSEY ROOPLALSINGH,

Plaintiff,

Index No. 718779/2018

—against—

Motion Seq. No. 2

FRENDY OBAS a/k/a FRENDY K. OBAS, DREIZEHN
NY, LLC, UBER TECHNOLOGIES, INC., UBER USA,
LLC, LYFT, INC. and ANDRO BHAGWANDIEN,

Motion Date September 20, 2022

Defendants,

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The following papers were read on the motion by defendant ANDRO BHAGWANDIEN (BHAGWANDIEN) for an Order, pursuant to CPLR § 3212 granting summary judgment in his favor and dismissing the plaintiff’s complaint and all crossclaims against him.

	<u>PAPERS NUMBERED</u>
Notice of Motion-Affidavits-Exhibits	NYSCEF Doc. No(s). 63-70
Answering Affidavits-Exhibits	NYSCEF Doc. No(s). 73-78
Replying Affidavit	NYSCEF Doc. No(s). 79
Answering Affidavits-Exhibits	NYSCEF Doc. No(s). 81-84
Replying Affidavit	NYSCEF Doc. No(s). 85
Sur-Reply-Exhibits	NYSCEF Doc. No(s). 86-89

Upon the foregoing papers, defendant BHAGWANDIEN’s motion is granted.

This lawsuit arises from a motor vehicle accident that occurred on July 25, 2018, at the intersection of 123rd Avenue and 153rd Street in Queens, New York. Plaintiff JESSEY ROOPLALSINGH was a passenger in the BHAGWANDIEN vehicle that was in a collision with a vehicle owned and operated by FRENDY OBAS a/k/a FRENDY K. OBAS (OBAS). The court record reflects that plaintiff has discontinued the actions against the other named defendants.

The record reflects that BHAGWANDIEN was operating a minivan traveling westbound on 123rd Avenue, and OBAS was operating an SUV traveling northbound on 153rd Street. At the subject intersection, there was a stop sign for vehicles traveling on 153rd Street, but there was no stop sign for vehicles traveling on 123rd Avenue.

BHAGWANDIEN moves for summary judgment. He cites his own EBT testimony that he entered the intersection at about 20 to 25 miles per hour. While BHAGWANDIEN was driving through the intersection, he saw the OBAS vehicle moving towards him “at a speed,” approximately 2-3 seconds before the accident. When he saw the OBAS vehicle, he applied the brakes hard and turned to the right in an attempt to avoid the collision. BHAGWANDIEN also cites to Plaintiff’s EBT testimony that the OBAS vehicle was traveling “pretty fast” at about 35 miles per hour and that BHAGWANDIEN braked and turned before the impact.

BHAGWANDIEN also submits the Certified Police Accident Report containing the Party Admission Statement by OBAS that as he was proceeding northbound on 153rd Street, he didn’t see the stop sign controlling his direction of travel and that he rolled into the intersection without stopping.

At his EBT on November 13, 2020, OBAS testified that he did not see the stop sign before the accident and that because he did not see the stop sign, he never applied his brakes before the accident. He testified that he did not see the BHAGWANDIEN vehicle before the accident. At the time of the accident, his right foot was on the gas, and he was listening to his GPS.

OBAS appeared for the continuation of his EBT on February 9, 2022. On that date, he testified that he did see the BHAGWANDIEN vehicle before the accident but admitted that he only saw it 1-to 2 seconds before the accident, when it was “very close” to his vehicle.

BHAGWANDIEN has established a *prima facie* entitlement to summary judgment. The record reflects that BHAGWANDIEN was lawfully within the intersection with the right of way, when OBAS failed to yield, in violation of Vehicle and Traffic Law § 1142(a), and that this negligence was the sole proximate cause of the accident (*See Belle-Fleur v Desriviere*, 178 AD3d

993 [2d Dept. 2019]; *Smith v Omanes*, 123 AD3d 691 [2d Dept. 2014]; *Williams v Hayes*, 103 AD3d 713 [2d Dept. 2013]; *Thompson v Schmitt*, 74 AD3d 789 [2d Dept. 2010]).

In opposition, Plaintiff and OBAS fail to raise a triable issue of fact. “The driver with the right of way is entitled to anticipate that the other motorist will obey traffic laws which require him or her to yield” (*See Williams, supra*, 103 AD3d at 714). “Although a driver with a right of way also has a duty to use reasonable care to avoid a collision, ...a driver with the right of way who has only seconds to react to a vehicle which has failed to yield is not comparatively negligent for failing to avoid the collision” (*See Yelder v Walters*, 64 AD3d 762, 764 [2d Dept. 2009]). Speculative contentions as to how a driver with the right of way could have avoided the accident are insufficient to raise an issue of fact (*See Breen v Seibert*, 123 AD3d 963 [2d Dept. 2014]).

Here, the evidence establishes that BHAGWANDIEN had only seconds to react to the OBAS vehicle, which proceeded into the intersection at a high rate of speed, without stopping, and that he did exercise reasonable care by braking and steering to the right.

Plaintiff’s argument regarding Vehicle and Traffic Law § 1140 is misplaced as that statute applies only to uncontrolled intersections and not to intersections controlled by stop signs (*See Galvis v Ravilla*, 111 AD3d 600 [2d Dept. 2013]; *Maliza v Puerto-Rican Transp. Corp.*, 50 AD3d 650 [2d Dept. 2008]). In any event, regardless of which vehicle entered the intersection first, BHAGWANDIEN, as the driver with the right of way, was entitled to anticipate that OBAS would obey traffic laws requiring him to yield (*See Yelder, supra*, 64 AD3d at 764).

Finally, plaintiff and OBAS’ argument that BHAGWANDIEN was speeding is without merit as OBAS initially testified that he did not see the BHAGWANDIEN vehicle before the accident, and thus could not have estimated its speed. Even crediting OBAS’ subsequent testimony that he did see it, he admitted that he only saw it for 1 or 2 seconds before the accident. Under either scenario, his testimony is speculative and insufficient to raise a triable issue of fact. (*See Yelder, supra*, 64 AD3d at 765; *Galvis v Ravilla*, 111 AD3d 600 [2d Dept. 2013]; *Batts v Page*, 51 AD3d 833 [2d Dept. 2008]).

Accordingly, it is

ORDERED, that BHAGWANDIEN’s motion for summary judgment pursuant to CPLR § 3212 is granted and the plaintiff’s complaint and all crossclaims against him are dismissed.

The foregoing constitutes the decision and order of the Court.

Dated: December 30, 2022

A handwritten signature in black ink, consisting of several sharp, angular strokes, positioned above a solid horizontal line.

TIMOTHY J. DUFFICY, J.S.C.