

Balkaran v Shapiro-Shellaby

2008 NY Slip Op 33657(U)

March 4, 2008

Supreme Court, Bronx County

Docket Number: 7600/2007

Judge: Lucy Billings

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PART 16

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF BRONX:

Case Disposed	<input type="checkbox"/>
Settle Order	<input type="checkbox"/>
Schedule Appearance	<input type="checkbox"/>

BALKARAN, PRAKASH

Index N^o. 0007600/2007

-against-

Hon. LUCY BILLINGS

SHAPIRO-SHELLABY, NATHAN

Justice.

The following papers numbered 1 to 7 Read on this motion, SUMMARY JUDGMENT LIABILITY
 Noticed on June 29 2007 and duly submitted as No. of the Motion Calendar of

RECEIVED BRONX COUNTY CLERK'S OFFICE		PAPERS NUMBERED	
Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed		1-3	
Answering Affidavit and Exhibits		4-5	
Replying Affidavit and Exhibits		6-7	
<input checked="" type="checkbox"/> Affidavits and Exhibits	PAID		
	NO FEE		
Pleadings - Exhibit			
Stipulation(s) - Referee's Report - Minutes			
Filed Papers			
Memoranda of Law			

Upon the foregoing papers this *court grants plaintiff's motion for summary judgment against defendants on liability pursuant to the accompanying decision. C.P.L.R. § 3212(b) and (c).*

Respectfully Referred to: _____
 Dated: _____

Dated: 3 / 4 / 08

Hon. *Lucy Billings*
 LUCY BILLINGS, J.S.C.

LUCY BILLINGS
 J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART 16

-----x

PRAKASH BALKARAN,

Index No. 7600/2007

Plaintiff

- against -

DECISION AND ORDER

NATHAN SHAPIRO-SHELLABY and
RICHARD SHAPIRO,

Defendants

-----x

LUCY BILLINGS, J.S.C.:

Plaintiff sues to recover for personal injuries sustained July 16, 2006, when a vehicle operated by defendant Shapiro-Shellaby and owned by defendant Shapiro struck the rear of a vehicle operated and owned by plaintiff. Plaintiff moves for summary judgment on liability, C.P.L.R. § 3212(b) and (e), on the grounds that defendants negligently caused the rear end collision and plaintiff was not negligent and did not cause it. Upon oral argument January 17, 2008, for the reasons explained below, the court grants plaintiff's motion.

A rear end collision with a vehicle travelling or stopped ahead establishes a prima facie claim of negligence against the operator and owner of the vehicle travelling behind. Francisco v. Schoepfer, 30 A.D.3d 275 (1st Dep't 2006); Woodley v. Ramirez, 25 A.D.3d 451, 452 (1st Dep't 2006); Garcia v. Bakemark Ingredients (E.) Inc., 19 A.D.3d 224 (1st Dep't 2005); De La Cruz v. Ock Wee Leong, 16 A.D.3d 199, 200 (1st Dep't 2004). To rebut the presumption of negligence, defendants, as the operator and

owner of the rear vehicle, bear the burden to present a reasonable explanation for the failure to maintain a safe distance behind the front vehicle other than Shapiro-Shellaby's negligence. Francisco v. Schoepfer, 30 A.D.3d at 276; Woodley v. Ramirez, 25 A.D.3d at 452; Mullen v. Rigor, 8 A.D.3d 104 (1st Dep't 2004); Jean v. Zong Hai Xu, 288 A.D.2d 62 (1st Dep't 2001).

Here, the only rebuttal is Shapiro-Shellaby's explanation that he struck plaintiff's vehicle when it accelerated from a stop to 20 miles per hour and then "stopped suddenly for no apparent reason in moving traffic." Aff. of Nicole R. Kilburg, Ex. A ¶ 11. Even accepting this version of facts as true, it does not provide a non-negligent explanation for the rear end collision by defendants' vehicle.

A driver travelling behind another vehicle has a duty to maintain a safe distance behind the front vehicle, whether it is moving or stopped, to avoid a rear end collision in the event the front vehicle slows down or stops, even suddenly. N.Y. Veh. & Traf. Law § 1129(a); Woodley v. Ramirez, 25 A.D.3d at 452; Mullen v. Rigor, 8 A.D.3d 104; Malone v. Morillo, 6 A.D.3d 324, 325 (1st Dep't 2004); Figueroa v. Luna, 281 A.D.2d 204, 206 (1st Dep't 2001). That duty includes taking account of the discernible traffic and street conditions. In fact, Shapiro-Shellaby also admitted that he followed plaintiff's vehicle in front of him for 20 minutes in stop and go traffic before hitting the vehicle. Therefore Shapiro-Shellaby had ample time to maintain a safe distance behind and avoid hitting plaintiff's vehicle in front,

whether it was moving or stopped.

The fact that plaintiff stopped short is an insufficient explanation to raise a question as to either plaintiff's negligence or Shapiro-Shellaby's nonnegligence that would require a trial on negligence. Woodley v. Ramirez, 25 A.D.3d at 452-53; Mullen v. Rigor, 8 A.D.3d 104. New York Vehicle and Traffic Law § 1163(c) prohibits stopping a vehicle or suddenly decreasing its speed, "without first giving an appropriate signal." While plaintiff's violation of § 1163(c) would establish his negligence and potentially explain Shapiro-Shellaby's failure to maintain a safe distance behind, Shapiro-Shellaby did not rebut plaintiff's affidavit that his vehicle's brake lights and signals were functioning properly.

Consequently, the court grants plaintiff's motion for summary judgment against defendants on liability. C.P.L.R. § 3212(b) and (e). This decision constitutes the court's order. The court will provide copies to the parties' attorneys.

DATED: March 4, 2008

Lucy Billings

LUCY BILLINGS, J.S.C.

LUCY BILLINGS
J.S.C.