

Foster v GIC Trucking Inc.

2012 NY Slip Op 33857(U)

September 21, 2012

Supreme Court, Bronx County

Docket Number: 310530/10

Judge: Jr., Kenneth L. Thompson

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*Punitive Damages Denied
Motion Denied/Defense Mot
Granted*

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX IA 20

AKINWOLE FOSTER,

Index No. 310530/10

Plaintiffs,

DECISION/ORDER

-against-

Present:

GIC TRUCKING INC., PAK-AM TRANSIT INC.,
SUKHWANT SINGH, VALERIO TORRES, STYLE
EXPRESS INC., JON K. LUSSIER, MANOOCHHEHR
SOHRABI, MILES TWISTER FREIGHT CARRIER INC.,
DANIEL ARZA AREVALUS and 3769739 CANADA INC.,

HON. KENNETH L. THOMPSON, Jr.

Defendants.

The following papers numbered 1 to ___ read on this motion, _____

No	On Calendar of	PAPERS NUMBERED
	Notice of Motion-Order to Show Cause - Exhibits and Affidavits Annexed-----	_____
	Answering Affidavit and Exhibits-----	_____
	Replying Affidavit and Exhibits-----	_____
	Affidavit-----	_____
	Pleadings -- Exhibit-----	_____
	Stipulation -- Referee's Report --Minutes-----	_____
	Filed papers-----	_____

Upon the foregoing papers and due deliberation thereof, the Decision/Order on this motion is as follows:

Defendants' GIC TRUCKING INC., PAK-AM TRANSIT INC and SUKHWANT SINGH motion for an Order pursuant to CPLR §§ 3211 and 3212 granting dismissing Plaintiff's claim for punitive damages and Plaintiff's cross-motion for an Order pursuant to CPLR § 3126 are consolidated for decision herein.

Defendants' motion is **GRANTED**.

Plaintiff's motion is **DENIED**.

Plaintiff was a passenger in a vehicle being driven by her husband when it collided with a truck owned and operated by Defendants, that blocked the roadway after Defendant SUKHWANT SINGH lost control of it due to the road conditions. Plaintiff alleges that Defendant's operation of the truck and his failure to place "reflective triangles" in the roadway to warn oncoming drivers of the trucks presence in the are

sufficient for a finding of punitive damages. Defendants dispute this supposition and are moving for summary judgment. Plaintiff in turn is seeking to have sanctions levied against Defendants for failing to supply SINGH's "driver's files," which she claims is integral to opposing the motion and should have been provided.

"Punitive damages are warranted where the conduct of the party being held liable evidences a high degree of moral culpability, or where the conduct is so flagrant as to transcend mere carelessness, or where the conduct constitutes willful or wanton negligence or recklessness." *Fernandez v. Suffolk County Water Auth.*, 276 AD2d 466, 467.

Plaintiff's expert limits his opinion SINGH's purported "reckless disregard" to his failure to place warning devices on the roadway. (S.L. Turner Aff at ¶ 19.) There is nothing in the record that supports a finding that SINGH's actions prior to the collision, or that GIC TRUCKING INC and PAK-AM TRANSIT INC's hiring and retention of SINGH, evinced a high degree of moral culpability, or conduct that transcends mere carelessness, or that constitutes willful or wanton negligence or recklessness in regards to the accident at issue.

Plaintiff's expert limits his opinion SINGH's purported "reckless disregard" to his failure to place warning devices on the roadway. (S.L. Turner Aff at ¶ 19.) This opinion is contradicted by Mr. Turner's acknowledgment that SINGH flashed his high beams. He opines that this would have been futile since the trailer was facing away from oncoming traffic. This conclusion is counterintuitive. The stretch of road in question had two lanes of traffic running North and South in opposite directions. So the trailer

may have been facing away from the direction Plaintiff's vehicle was approaching but it was facing oncoming Southbound traffic. (*Id.*)

SINGH's failure to place warning devices in the face of his efforts to warn oncoming traffic with his high beams speaks to "mere carelessness" as opposed to "willful or wanton negligence or recklessness." See, e.g., *Buckholz v. Maple Garden Apts., LLC*, 38 AD3d 584, 585 (finding that "[n]othing beyond speculation was presented in support of the allegation that the defendants' record of servicing and maintaining the electrical system" warranted punitive damages); *Green v. Passenger Bus Corp.*, 61 AD3d 1377, 1378 (finding that "punitive damages are warranted against an employer only where it has authorized, participated in, consented to or ratified the conduct of its employee giving rise to such damages, or deliberately retained the unfit employee") (citations omitted); *Evans v. Stranger*, 307 AD2d 439, 440 (finding punitive damages were not warranted where defendant "knew that [its bus driver] had a recent conviction for driving while intoxicated when it hired him ... , permitted him to take a leave of absence rather than terminate him after his repeated drug use, and reinstated him as a bus driver rather quickly and without continued monitoring beyond the first year"); *Taylor v. Dyer*, 190 AD2d 902, 903 (finding that "[e]vidence that a defendant was driving while intoxicated at the time of a motor vehicle accident standing alone is insufficient to support an award of punitive damages, absent evidence of willful or wanton reckless conduct").

Plaintiff's claim that she needs SINGH's driver's files to oppose the motion are unpersuasive since she has:

failed to offer an evidentiary basis to suggest that discovery may lead to relevant evidence or that facts essential to opposing the motion were exclusively within the knowledge and control of the Defendants. The mere hope or speculation that evidence sufficient to defeat a motion for summary judgment may be uncovered during the discovery process is an insufficient basis for denying the motion.

Kimyagarov v. Nixon Taxi Corp., 45 AD3d 736, 737.

Her claims that Defendants should be sanctioned for failing to provide SINGH's driver's files are belied by her failure to seek this information when given the chance.

If any party, or a person who at the time a deposition is taken or an examination or inspection is made, is an officer, director, member, employee or agent of a party or otherwise under a party's control, refuses to obey an order for disclosure or wilfully fails to disclose information which the court finds ought to have been disclosed pursuant to this article, the court may make such orders with regard to the failure or refusal as are just, among them: 1. an order that issues to which the information is relevant shall be deemed resolved for purposes of the action in accordance with the claims of the party obtaining the order; or 2. an order prohibiting the disobedient party from supporting or opposing designated claims or defenses, from producing in evidence designated things or items of testimony, or from introducing any evidence of the physical, mental or blood condition sought to be determined, or from using certain witnesses; or 3. an order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or any part thereof, or rendering a judgment by default against the disobedient party.

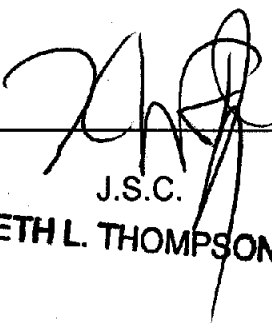
CPLR § 3126(3).

Plaintiff claims that SINGH's driving files are materially necessary in prosecuting his negligent hiring and retention action. This issue was addressed by Judge Laura Douglas on January 31, 2012, which her honor "was unable to resolve" according to Plaintiff's counsel. (T.M. Rubin Aff in Opp/Supp at ¶ 69.) This leaves this Court to infer

that either Judge Douglas did not find that SINGH's driver's file "ought to have been disclosed," which absolves this Court from having to revisit the issue, or that Plaintiff's counsel did not present this issue to her honor, which undercuts his arguments regarding their materiality and necessity.

The foregoing shall constitute the decision and order of this Court.

Dated: SEP 21 2012



J.S.C.
KENNETH L. THOMPSON, JR.