Anderson v Singh
2019 NY Slip Op 34213(U)
December 17, 2019
Supreme Court, Westchester County
Docket Number: 58229/2016
Judge: Sam D. Walker
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
WESTCHESTER COUNTY
PRESENT: HON. SAM D. WALKER, J.S.C.

----------x

MAXINE BENT ANDERSON and HEATHER BENT-TAMIR,

Plaintiff,

-against-

GURMEET SINGH, NISHAN SINGH, BERNARD MORCHELES, and JOHN DOES 1-5 (hereinafter "JOHN DOE") a fictitious name for the individuals or entities which hired, employed or otherwise contracted with Defendant(s) at the time of the subject incident and is responsible by way of vicarious liability, respondeat superior or otherwise for the acts and omissions alleged herein and/or negligently repaired, managed, maintained, controlled, entrusted, and/or owned the subject vehicles described below and involved in the subject incident and whose identity is presently known only to the Defendant(s),

Defendants.

----------x

DECISION & ORDER
Index No. 58229/2016
Seq. # 10

The following papers were read and considered in deciding the present motion:

Notice of Motion/Affirmation/Exhibits A-M	1-15
Affirmations in Opposition	16-17
Reply Affirmation	18

Upon the foregoing papers it is ordered that the motion is GRANTED.

FACTUAL AND PROCEDURAL BACKGROUND

The plaintiffs, Maxine Bent Anderson and Heather Bent-Tamir commenced this action on May 7, 2015 in New York County, to recover monetary damages for alleged

injuries sustained in a motor vehicle accident that occurred on December 8, 2013 at or near the intersection of 12th Avenue and West 57th Street in New York City. At the time of the accident, the plaintiffs were passengers in a taxi operated by the defendant, Gurmeet Singh and owned by the defendant Nishan Singh, and such taxi was struck in the rear by a vehicle owned and operated by the defendant, Bernard Morcheles ("Morcheles").

By Decision and Order entered on May 19, 2016, the New York Supreme Court transferred venue to Westchester County. Then, on or about October 20, 2016, Fiduciary Insurance Company of America A/S/O Maxine Bent-Anderson commenced a subrogation action (Index No. 19203/2016) in Queens County against Bernard Morcheles, with regard to the same accident, seeking reimbursement for Additional Personal Injury Protection benefits paid to or on behalf of Maxine Bent-Anderson. By Decision and Order dated and entered on December 7, 2018, this Court granted a motion to transfer the subrogation action to this Court and join the actions for the purposes of discovery and trial.

The defendant, Gurmeet Singh and Nishan Singh now file the instant motion for summary judgment pursuant to CPLR 3212, seeking dismissal of the complaint against them on the ground that they are not liable because their taxi was hit in the rear.

The defendants argue that the occupants of the front vehicle are entitled to summary judgment unless the rear driver can provide a non-negligent explanation. The Singhs further argue that a sudden stop by the front vehicle is not a non-negligent explanation for a rear end collision.

The plaintiffs filed an affirmation in opposition, stating that they were passengers

in the taxi, which was fully stopped when it was rear-ended by Morcheles' vehicle. They assert that Morcheles is liable as a matter of law, however, in the event the Court finds a question of fact exists as to the Singhs' liability in causing and/or contributing to the occurrence of the collision, they request that the Court deny the motion for summary judgment.

Morcheles also opposes the motion, asserting that the deposition testimony submitted by the Singhs in support of their motion, is conflicting and demonstrates the existence of triable issues of material fact, including, (a) whether the traffic light facing the drivers of the two vehicles involved in the accident was yellow or red at the time of the accident; (b) whether the taxi entered the intersection and then stopped in the middle of the intersection in violation of the Vehicle and Traffic Law § 1202(a)(1)(c), which would constitute negligence per se and in violation of the highway rules of the New York City Department of Transportation, which would constitute evidence of Gurmeet Singh's negligence; and (c) the number of impacts that occurred during the accident.

Discussion

"[T]he proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact" (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). Only when such a showing has been made must the opposing party set forth evidentiary proof establishing the existence of a material issue of fact, *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]).

Liability

"A rear-end collision with a stopped or stopping vehicle creates a prima facie case of negligence with respect to the operator of the moving vehicle, and imposes a duty on that operator to rebut the inference of negligence by providing a nonnegligent explanation for the collision" (*see Sokolowska v Song*, 123 AD3d 1004 [2d Dept 2014]); *see also Agramonte v City of New York*, 288 AD2d 75, 76 [2001]; *Johnson v Phillips*, 261 AD2d 269, 271 [1999]; *Danza v Longieliere*, 256 AD2d 434, 435 [1998], lv dismissed 93 NY2d 957 [1999]).

In this case, the plaintiffs have made out a prima facie showing of his entitlement to summary judgment with regard to liability. The evidence submitted by them establishes entitlement to summary judgment as a matter of law, thereby shifting the burden to Morcheles to demonstrate the existence of a factual issue requiring a trial (*see Macauley v Elrac, Inc.*, 6 AD3d 584, 585 [2d Dept 2004]) [Rear-end collision is sufficient to create a prima facie case of liability.] If the operator of the striking vehicle fails to rebut this presumption and the inference of negligence, the operator of the stopped vehicle is entitled to summary judgment on the issue of liability (*see Leonard v City of New York*. 273 AD2d 205 [2d Dept 2000]; *Longhito v Klein*. 273 AD2d 281 [2d Dept 2000]; *Velasquez v Quijada*. 269 AD2d 592 [2d Dept 2000]; *Brant v Senatobia Operating Corp.*, 269AD2d 483 [2d Dept 2000]).

In opposition, Morcheles' attorney argues that the Singhs have not met their burden of establishing their entitlement to summary judgment and that the record presents issues of fact. The attorney argues that the deposition testimony is conflicting

and demonstrates the existence of triable issues of material fact, including, (a) whether the traffic light facing the drivers of the two vehicles involved in the accident was yellow or red at the time of the accident; (b) whether the taxi entered the intersection and then stopped in the middle of the intersection in violation of the Vehicle and Traffic Law § 1202(a)(1)(c), which would constitute negligence per se and in violation of the highway rules of the New York City Department of Transportation, which would constitute evidence of Gurmeet Singh's negligence; and (c) the number of impacts that occurred during the accident.

New York Vehicle and Traffic Law § 1129 states in pertinent part that:

> The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway. NY VTL § 1129 (a)

In (*Leal v Wolff*), the Second Department held that "[s]ince the defendant was under a duty to maintain a safe distance between his car and [the plaintiff's] car (*see* Vehicle and Traffic Law Section 1129[a]), his failure to do so in absence of a non negligent explanation constituted negligence as a matter of law" (*Leal v Wolf*, 224 AD2d 392 [2d Dept 1996]).

Further, "[w]hen the driver of an automobile approaches from the rear, he or she is bound to maintain a reasonably safe rate of speed and control over his or her vehicle, and to exercise reasonable care to avoid colliding with the other vehicle" (*see Zweeres v Materi*, 94 AD3d 1111 [2d Dept 2012]). "Drivers have a duty to see what should be seen and to exercise reasonable care under the circumstances to avoid an accident" (*Id.*).

Here, Morcheles fails to offer any non-negligent explanation for the accident and the opposition does not create any issues of fact with regard to liability. The fact that Morcheles rear ended the Singhs' vehicle, demonstrates that he was following too closely. The testimony established that the taxi was stopped when the vehicle was struck in the rear. The issues raised by Morcheles of whether the taxi stopped in the intersection, whether the light was red or yellow, and whether there were two impacts, does not create any issue of fact as to his liability and do not affect the proximate cause of the accident.

Further,"[w]hile a nonnegligent explanation for a rear-end collision may include evidence of a sudden stop of the lead vehicle, 'vehicle stops which are foreseeable under the prevailing traffic conditions, even if sudden and frequent, must be anticipated by the driver who follows, since he or she is under a duty to maintain a safe distance between his or her car and the car ahead'" (*Tumminello v City of New York*, 148 AD3d 1084, 1085 [3d Dept 2017]). Even if the taxi came to a sudden stop at the intersection's yellow or red light, Morcheles should have anticipated that it might come to a stop (*Id.*).

Therefore, based on all the foregoing, it is

ORDERED that the Singhs' motion for summary judgment on the issue of liability is GRANTED, and it is further

ORDERED that the complaint against Gurmeet Singh and Nishan Singh is dismissed.

The parties are directed to appear before the Settlement Conference Part in Courtroom 1600 on January 14, 2020 at 9:15 a.m.

The foregoing shall constitute the Decision and Order of the Court.

Dated: White Plains, New York
December 17, 2019

HON. SAM D. WALKER