

Franco v Narvaez

2019 NY Slip Op 35040(U)

November 19, 2019

Supreme Court, Bronx County

Docket Number: Index No. 22139/2019E

Judge: John R. Higgitt

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: I.A.S. PART 14

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SOLEDAD FRANCO,

Plaintiff,

DECISION AND ORDER

- against -

Index No. 22139/2019E

ALBERTO LUIS NARVAEZ,

Defendant.
-----X

John R. Higgitt, J.

Upon plaintiff’s August 28, 2019 notice of motion and the affirmation, affidavit, exhibits, and memorandum of law submitted in support thereof; there being no opposition to the motion; and due deliberation; plaintiff’s motion for partial summary judgment on the issue of defendant’s liability for causing the subject accident and for dismissal of defendant’s first and third affirmative defenses is granted in part.

This is a negligence action to recover damages for personal injuries that plaintiff allegedly sustained in a motor vehicle accident that took place on November 6, 2017. In support of his motion, plaintiff provides the pleadings, the police accident report, and his affidavit.

Plaintiff averred that he was traveling westbound on East 174th Avenue when the traffic signal turned red, and she had to come to a stop. At that time, defendant’s vehicle struck the rear of plaintiff’s vehicle. Plaintiff also relied on the police accident report in which defendant admits that “his vehicle slid[e] and [struck] [plaintiff’s] car in the rear” (*see Niyazov v Bradford*, 13 AD3d 501 [2d Dept 2004]).

“A rear-end collision with a stationary vehicle creates a prima facie case of negligence requiring judgment in favor of the stationary vehicle unless defendant proffers a nonnegligent explanation for the failure to maintain a safe distance . . . A driver is expected to drive at a

sufficiently safe speed and to maintain enough distance between himself [or herself] and cars ahead of him [or her] so as to avoid collisions with stopped vehicles, taking into account weather and road conditions” (*LaMasa v Bachman*, 56 AD3d 340, 340 [1st Dept 2008]). A rear-end collision constitutes a prima facie case of negligence against the rearmost driver in a chain confronted with a stopped or stopping the vehicle (*see Cabrera v Rodriguez*, 72 AD3d 553 [1st Dept 2010]).

Vehicle and Traffic Law § 1129(a) states that a “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” (*see Darmento v Pacific Molasses Co.*, 81 NY2d 985, 988 [1993]). Based on the plain language of the statute, a violation is evident when a driver follows another too closely without adequate reason and that conduct results in a collision (*see id.*).

Plaintiff made a prima facie showing that defendant violated Vehicle and Traffic Law § 1129, and that such violation was a proximate cause of his injuries.

Defendant did not oppose plaintiff’s motion and thus failed to raise a triable issue of fact in opposition to plaintiff’s prima facie showing.

As to the aspect of plaintiff’s motion seeking dismissal of defendant’s first affirmative defense alleging plaintiff’s comparative fault, plaintiff made a prima facie showing that he bears no such fault (*see Soto-Marroquin v Mellet*, 63 AD3d 449 [1st Dept 2009]). Because defendant failed to oppose the motion, the aspect of plaintiff’s motion seeking dismissal of defendant’s first affirmative defense alleging plaintiff’s comparative fault is granted.

The aspect of plaintiff's motion seeking dismissal of defendant's third affirmative defense alleging lack of personal jurisdiction is denied as moot in light of the September 3, 2019 stipulations of the parties withdrawing that affirmative defense.

Accordingly, it is

ORDERED, that the aspect of plaintiff's motion for partial summary judgment on the issue of defendant's liability is granted; and it is further

ORDERED, that the aspect of plaintiff's motion seeking the dismissal of defendant's first affirmative defense is granted and that defense is dismissed; and it is further

ORDERED, that plaintiff's motion is otherwise denied.

The parties are reminded of the February 21, 2020 compliance conference before the undersigned.

This constitutes the decision and order of the court.

Dated: November 19, 2019



John R. Higgin, A.J.S.C.