

**Moore v Singh**

2021 NY Slip Op 33085(U)

November 9, 2021

Supreme Court, Queens County

Docket Number: Index No. 702340/2019

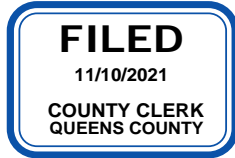
Judge: Denis J. Butler

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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY



Present: HONORABLE DENIS J. BUTLER IAS Part 12
Justice

JOWELL MOORE and ISAAH MCFADDEN, Index Number: 702340/2019
Plaintiff(s),
-against- Motion Date: October 26, 2021
BHOOPENDRA SINGH, AMERICAN AIRFREIGHT TRUCKING CORP and RAFAEL RAMIREZ FERRER, Defendant(s). Motion Seq. No.: 003

The following papers read on this motion by defendant, Rafael Ramirez Ferrer, for an order pursuant to CPLR 3212, granting summary judgment on the issue of liability, and dismissing plaintiffs complaint and any and all cross claims against Rafael Ramirez Ferrer, and, upon a cross-motion by plaintiff Jowell Moore seeking summary judgment pursuant to CPLR 3212 against defendants Bhoopendra Singh and American Airfreight Trucking Corp on the issue of liability, and dismissing the affirmative defenses raised by defendants Bhoopendra Singh and American Airfreight Trucking Corp alleging comparative negligence, contributory negligence and culpable conduct against Jowell Moore.

Table with 2 columns: Document Name, Papers Numbered. Includes Notice of Motion, Affirmation, Exhibits, Affirmation In Opposition, Notice of Cross-Motion, Affirmation, Exhibits, Affirmation in Opposition to Cross-Motion, Reply Affirmation.

Upon the foregoing papers, it is ordered that this motion and cross-motion is determined as follows:

Plaintiffs bring this action to recover for injuries allegedly sustained in a motor vehicle accident on July 6, 2018.

Defendant Ferrer, brings this motion seeking summary judgment on the issue of liability pursuant to CPLR 3212, and dismissing plaintiff's complaint and any and all cross claims against him.

A proponent for summary judgment must make a prima facie showing of entitlement to judgment, as a matter of law, through the submission of sufficient evidence to demonstrate the absence of any material issues of fact. (Alvarez v Prospect Hosp., 68 NY2d 320, 24 [1986]). A party is not required to show an absence of comparative fault to be awarded summary judgment on the issue of liability. Rodriguez v. City of New York, 31 N.Y. 3d 312 (2018)).

Once the movant establishes prima facie entitlement to judgment, as a matter of law, it is incumbent upon the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of triable issues of fact (Zuckerman v City of New York, 49 NY2d 557, 63 [1980]).

"A rear-end collision with a stopped or stopping vehicle creates a prima facie case of negligence against the operator of the rear vehicle, thereby requiring that operator to rebut the inference of negligence by providing a nonnegligent explanation for the collision." (Gallo v. Jairath, 122 A.D. 3d 795 (2d. Dept. 2014))

Defendant Ferrer, established prima facie entitlement to summary judgment on the issue of liability as against co-defendants Bhoopendra Singh and American Airfreight Transport Corp. Ferrer's deposition testimony demonstrates he was lawfully stopped when he was struck from behind by the vehicle operated by defendant Singh and owned by defendant American Airfreight.

In opposition, defendants Singh and American Airfreight, contend defendant Ferrer's vehicle stopped short, causing Singh's vehicle to strike Ferrer's vehicle.

Pursuant to VTL §1129, "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."

Defendant Singh, concedes he was only one car length behind Ferrer prior to the accident, and Ferrer had been stopped for approximately three seconds before the accident.

The allegation that Ferrer's vehicle stopped short, "is insufficient to raise a triable issue of fact as to whether there

was a non-negligent explanation for the collision." (Sayyed v. Murray, 109 A.D. 3d 464 (2d Dept. 2013)).

As such, the first branch of the motion by defendant Ferrer, seeking to dismiss defendants Singh and American Airfreight's cross-claims, is granted.

The second branch of the motion by defendant Ferrer, seeks to dismiss plaintiffs complaint pursuant to CPLR 3212.

Defendant Ferrer, fails to submit evidence establishing the absence of a triable issue of fact as against plaintiffs.

As such, the second branch of the motion by defendant Ferrer, is denied.

The first branch of the cross-motion by plaintiff Jowell Moore seeks summary judgment pursuant to CPLR 3212 against defendants Singh and American Airfreight on the issue of liability.

"The right of an innocent passenger to summary judgment on the issue of whether he or she was at fault in the happening of an accident is not restricted by potential issues of comparative negligence as between two defendant drivers." (CPLR 3212(g)) (Pinila v. New York City Transit Authority, 122 A.D. 3d 703 (2d Dept. 2014)).

Plaintiff Moore, made a prima facie showing for summary judgment through her deposition testimony, wherein Moore contends she did not engage in any culpable conduct that contributed to the happening of the accident.

In opposition, defendants Singh and American Airfreight, contend plaintiff, Moore, was distracting Ferrer with hand gestures prior to, and at the time of the accident.

As plaintiff Moore, and defendants Singh and American Airfreight, have presented differing versions as to plaintiff, Moore's conduct prior to the accident, there is a triable issue of fact that precludes granting summary judgment to plaintiff, Moore, against Singh and American Airfreight.

As such, the first branch of plaintiff Moore's cross-motion is denied.

The second branch of plaintiff Moore's cross-motion, seeks to dismiss the affirmative defenses raised by defendants Singh and

American Airfreight alleging comparative negligence, contributory negligence and culpable conduct.

"Comparative fault is not a defense to the cause of action of negligence, because it is not a defense to any element of plaintiff's prima facie cause of action for negligence, and, as CPLR 1411 plainly states, is not a bar to plaintiff's recovery, but rather a diminishment of the amount of damages." Rodriguez v. City of New York, 31 N.Y. 3d 312 (2018)).

As such, the second branch of the cross-motion by plaintiff Moore, is denied.

Accordingly, the first branch of the motion by defendant, Ferrer is granted. The second branch of the motion by defendant Ferrer, is denied. The first branch of the cross-motion by plaintiff Moore is denied, and the second branch of the cross-motion by plaintiff Moore, is also denied.

This constitutes the Decision and Order of the court.

Dated: November 9, 2021

  
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Denis J. Butler, J.S.C.

