

Gil v Radoncic

2019 NY Slip Op 35144(U)

November 29, 2019

Supreme Court, Bronx County

Docket Number: Index No. 21813/2018E

Judge: John R. Higgitt

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This opinion is uncorrected and not selected for official publication.

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART 14

-----X
GIL, ANA, et al

- against -

Index No. 21813/2018E

Hon. JOHN R. HIGGITT,
A.J.S.C.

RADONCIC, JUSUF, et al
-----X

The following papers numbered 16 to 26 and 29 to 30 in the NYSCEF System were read on this motion for SUMMARY JUDGMENT (DEFENDANT), noticed on September 13, 2019 and duly submitted as No. 19 on the Motion Calendar of October 22, 2019

	<u>NYSCEF Doc. Nos.</u>
Notice of Motion – Exhibits and Affidavits Annexed	16-26
Notice of Cross-Motion – Exhibits and Affidavits Annexed	
Answering Affidavit and Exhibits	29
Replying Affidavit and Exhibits	30
Filed Papers	
Memoranda of Law	
Stipulations	

Upon the foregoing papers, the motion of defendants Berrosa Auto, Corp. and Blancoarias for summary judgment dismissing the complaint as against them and the cross claims against them is granted, and plaintiffs’ cross motion for summary judgment on the issue of defendant Randonic’s liability for causing the subject accident is granted, in accordance with the annexed decision and order.

Dated: 11/29/2019

Hon. 
JOHN R. HIGGITT, A.J.S.C.

Check one:

- Case Disposed in Entirety
- Case Still Active

Motion is:

- Granted
- Denied
- GIP
- Other

Check if appropriate:

- Schedule Appearance
- Fiduciary Appointment
- Referee Appointment
- Settle Order
- Submit Order

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

-----X
ANA GIL, LEONEL MEJIA and YNEYDA GUZMAN-
TEJADA,

Plaintiffs,

DECISION AND ORDER

Index No. 21813/2018E

- against -

JUSUF RADONCIC, BERROSA AUTO, CORP. and
EDGAR M. BLANCOARIAS,

Defendants.
-----X

John R. Higgitt, J.

This is a negligence action to recover damages for personal injuries plaintiffs sustained in a motor vehicle accident that occurred on February 15, 2017. Defendants Berrosa Auto, Corp. and Blancoarias (“the Blancoarias defendants”) seek summary judgment dismissing the complaint as against them and all cross claims against them. Plaintiffs cross-move, seeking summary judgment on the issue of defendant Randonic’s liability for causing the subject accident. For the reasons that follow, the Blancoarias defendants’ motion and plaintiffs’ cross motion are granted.

In support of their motion for summary judgment, the Blancoarias defendants submit the pleadings, the police accident report, the transcripts of the plaintiffs’ deposition testimony, and defendant Blancoarias’ affidavit. Defendant Blancoarias averred that he was travelling on the Major Deegan Expressway in the far-left lane when his vehicle was struck in the rear by defendant Radonic’s vehicle.

In support of their cross motion, plaintiffs assert that at the time of the accident they were passengers in the Blancoarias defendants’ vehicle when defendant Randonic’s vehicle struck the rear of the vehicle they occupied.

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]). In a rear-end collision, there is a presumption of non-negligence of the driver of the lead vehicle (*see Soto-Marouquin v Mellet*, 63 AD3d 449 [1st Dept 2009]).

The Blancoarias defendants made a prima facie showing of entitlement to judgment as a matter of law dismissing the complaint as against them and the cross claims against them, and plaintiffs made a prima facie showing of entitlement to judgment on the issue of defendant Radoncic’s liability.

Defendant Radoncic failed to oppose the Blancoarias defendants’ motion or plaintiffs’ cross motion, and therefore failed to raise any triable issue of fact as the Blancoarias defendants’ liability or Radoncic’s lack of liability in causing the accident.

The aspect of plaintiffs’ motion seeking dismissal of defendant Radoncic’s affirmative defenses alleging plaintiff’s comparative fault is granted. Under the circumstances, the “innocent passenger” plaintiffs are entitled to dismissal of defendant Radoncic’s affirmative defense of comparative fault (*see Oluwatayo v Dulinayan*, 142 AD3d 113 [1st Dept 2016]).

Accordingly, it is

ORDERED, that the Blancoarias defendants’ motion for summary judgment is granted, and the complaint as against them and the cross claims against them are dismissed; and it is further

ORDERED, that the Clerk of the Court shall enter judgment in favor of the Blancoarias defendants dismissing the complaint as against them and the cross claims against them; and it is further

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

ORDERED, that the aspect of plaintiffs' cross motion seeking summary judgment dismissing the affirmative defense of comparative fault is granted, and defendant Radonic's first affirmative defense alleging plaintiffs' culpable conduct is dismissed.

The parties are reminded of the January 31, 2020 compliance conference before the undersigned.

This constitutes the decision and order of the court.

Dated: November 29, 2019



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