

Hernandez v Mercedes

2019 NY Slip Op 35145(U)

January 2, 2019

Supreme Court, Bronx County

Docket Number: Index No. 25056/2018E

Judge: John R. Higgitt

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

-----X
HERNANDEZ, YNES, et ano.

Index No. 25056/2018E

- against -

Hon. JOHN R. HIGGITT,

MERCEDES, ISMAEL

A.J.S.C.

-----X

The following papers numbered 6 to 13 and 16 to 18 in the NYSCEF System were read on this motion for **SUMMARY JUDGMENT (LIABILITY)**, noticed on June 4, 2018 and duly submitted as No. 33 on the Motion Calendar of September 19, 2018.

	NYSCEF Doc. Nos.
Notice of Motion – Exhibits and Affidavits Annexed	6-13
Notice of Cross-Motion – Exhibits and Affidavits Annexed	
Answering Affidavit and Exhibits	16-18
Replying Affidavit and Exhibits	
Filed Papers	
Memoranda of Law	
Stipulations	

Upon the foregoing papers, the motion of plaintiffs for partial summary judgment on the issue of defendant’s liability is granted in part in accordance with the annexed decision and order.

Dated: 1/2/2019

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

Check one:

- Case Disposed in Entirety
- Case Still Active

Motion is:

- Granted GIP
- Denied 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
YNES HERNANDEZ and ALBA FELIX DE DIAZ,

Plaintiffs,

DECISION AND ORDER

- against -

Index No. 25056/2018E

ISMAEL MERCEDES,

Defendant.

-----X

John R. Higgitt, J.

This is a negligence action to recover damages for personal injuries plaintiffs sustained in a motor vehicle accident that took place on February 12, 2017. While the vehicle in which plaintiffs were passengers was stopped, the vehicle owned and driven by defendant Mercedes struck plaintiffs' vehicle in the rear. Plaintiffs seek partial summary judgment on the issue of defendant's liability. For the reasons that follow, plaintiffs' motion is granted in part.

"A rear-end collision with a stationary vehicle creates a prima facie case of negligence requiring a 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 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 clear when a driver follows another too closely without adequate reason and that conduct results in a collision (*id.*).

Plaintiffs satisfied their prima facie burden of establishing their entitlement to judgment as a matter of law on the issue of liability (*see* CPLR 3212[b]). Plaintiffs submitted a copy of the pleadings, their affidavits and a certified report submitted to the New York State Department of Motor Vehicles by reporting police officer Fernandez. Plaintiffs averred that they were passengers in third-party defendant Fernandez's vehicle when Fernandez's vehicle came to a stop on the Eastbound Cross Bronx Expressway. At that time, defendant Mercedes vehicle rear-ended the vehicle in which plaintiffs were passengers.

In opposition, defendant raised a triable issue of material fact as to his liability (*see* *Zuckerman v City of New York*, 49 NY2d 557 [1980]). Defendant averred that he was traveling in the right lane when the vehicle in which plaintiffs were passengers, traveling in the middle lane, suddenly and without warning moved into his lane of travel. Defendant further averred that once third-party defendant Fernandez's vehicle switched lanes, it came to an unreasonable stop. Defendant argues that third-party defendant Fernandez's vehicle sudden change in lanes created a sudden emergency, thus causing the accident. Defendant's affidavit demonstrated that there are conflicting versions as to how the accident occurred, raising issues of fact and credibility, making summary judgment in plaintiff's favor on the issue of defendant's liability inappropriate (*see* *Peritore v Anna & Diane Cab Corp.*, 127 AD3d 669 [1st Dept 2014]).

In light of circumstances, plaintiffs, as "innocent passengers," are entitled to summary judgment dismissing defendant's affirmative defense of plaintiffs' comparative fault (*see* *Oluwatayo v Dulinayan*, 142 AD3d 113 [1st Dept 2016]).

Accordingly, it is

ORDERED, that the aspect of plaintiffs' motion seeking, in effect, summary judgment dismissing defendant's fourth affirmative defense is granted, and defendant's fourth affirmative defense alleging plaintiffs' comparative fault is dismissed; and it is further

ORDERED, that the aspect of plaintiffs' motion seeking partial summary judgment on the issue of defendant's liability for causing the subject motor vehicle accident is denied.

This constitutes the decision and order of the court.

Dated: January 2, 2019



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