

Caparitia v Johnson

2021 NY Slip Op 34109(U)

December 20, 2021

Supreme Court, Bronx County

Docket Number: Index No. 25244/2018E

Judge: Ben R. Barbato

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.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, PART 31

-----X
MONISHIA M. CAPARITIA,

Index №. 25244/2018E

-against-

Hon. **BEN R. BARBATO**

ROBERT JOHNSON and PIPCO
TRANSPORTATION INC.,
-----X

Justice Supreme Court


The following papers, were read on this Motion (NYSCEF Seq. No. 1), for Summary Judgment, noticed Sept 7, 2021, and submitted October 5, 2021.

Notice of Motion–Affirmation & Exhibits -- by Plaintiff	NYSCEF Doc No(s). 29-43
Answering Affirmation & Exhibits-Opp by Defendants	NYSCEF Doc No(s). 44-46
Replying Affirmation & Exhibits – by Plaintiff	NYSCEF Doc No(s). 48-49
Miscellaneous	NYSCEF Doc No(s).

Upon the foregoing papers, Plaintiff CAPARITIA’s Motion for partial summary judgment in her favor on liability as against Defendants, and for related relief, is decided in the annexed memorandum decision and order.

Dated: DEC 20 2021 2021

Hon.



BEN R. BARBATO, J.S.C.

-
- 1. CHECK ONE..... CASE STILL ACTIVE
 - 2. MOTIONS IS GRANTED TO THE EXTENT
 - 3. SCHEDULE APPEARANCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X

MONISHIA M. CAPARITIA,

Plaintiff,

-against-

Index No.: 25244/2018E

ROBERT JOHNSON and PIPCO TRANSPORTATION
INC.,

Defendants.

-----X

HON. BEN R. BARBATO:

Plaintiff, MONISHIA M. CAPARITIA, moves for partial summary judgment in her favor on liability as against Defendants, ROBERT JOHNSON and PIPCO TRANSPORTATION INC., to strike Defendants’ affirmative defenses alleging comparative fault on the part of the Plaintiff, and for related relief.

This is an action to recover damages for alleged personal injuries sustained by Plaintiff in a motor vehicle accident, which occurred on, or about, January 11, 2018, at about 10:00 p.m., near Bruckner Boulevard and Leggett Avenue, in the Bronx, New York. The tractor trailer operated and owned by Defendants, JOHNSON/ PIPCO, was involved in a collision with the ambulance operated by Plaintiff.

The submissions include the pleadings; Plaintiff’s dash cam video and her Affidavit regarding the same; photographs; Google Maps images; and the deposition transcripts of the Plaintiff CAPARITIA and Defendant JOHNSON.

Alleged Facts:

According to Plaintiff CAPARITIA, she was traveling straight on Bruckner Boulevard in the right lane, at night. As she was approaching the intersection of Leggett Avenue, the light was green. The Defendants' tractor trailer -- which was traveling in the lanes to Plaintiff's left -- made a right turn, into Plaintiff's vehicle. When she saw the tractor trailer starting to make the right turn, Plaintiff "hit the brake", but she could not avoid the collision. The right [passenger-side] corner/headlight of the Defendants' tractor trailer struck the left [driver-side] door of Plaintiff's ambulance. (See Plaintiff's deposition, dated November 29, 2018; see Plaintiff's dash cam video, NYSCEF Doc. No. 42).

Plaintiff also alleges that there is a sign, at the subject intersection, which prohibits right turns, "from main road", onto Leggett Avenue. (See Google Maps images, at NYSCEF Doc. Nos. 29 and 49).

Defendant JOHNSON testified that he was driving on Bruckner Boulevard, in the course of his employment as a truck driver for Defendant PIPCO. From the left lane, he attempted to make a wide right turn. He proceeded to pull out into the intersection about 15 feet, in order to make the right turn. His vehicle struck the Plaintiff's van. It is noted that Defendant testified that there were no signs that

restricted the making of right turns, from the left lane, at that intersection. (See Defendant JOHNSON's deposition, dated November 29, 2018).

Applicable Law/ Analysis

An applicable statute is Vehicle and Traffic Law § 1163 "Turning movements and required signals", which provides as follows:

"(a) **No person shall** turn a vehicle at an intersection unless the vehicle is in proper position upon the roadway as required in section eleven hundred sixty, or turn a vehicle to enter a private road or driveway, or otherwise **turn a vehicle from a direct course or move right or left upon a roadway unless and until such movement can be made with reasonable safety.** No person shall so turn any vehicle without giving an appropriate signal in the manner hereinafter provided". [emphasis added]

Also, Vehicle and Traffic Law § 1128 "Driving on roadways laned for traffic" provides that:

"Whenever any roadway has been divided into two or more clearly marked lanes for traffic the following rules in addition to all others consistent herewith shall apply:

(a) A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety".

[emphasis added]

In a factually similar case, a plaintiff's motion for summary judgment on liability, as against defendants, was properly granted where the plaintiff:

"averred that while turning right from a designated lane, defendants' vehicle, which had been in the lane to the immediate left of plaintiff, turned wide to the right, entered plaintiff's lane, and collided with his car.

Unless refuted or excused, defendants' actions violated Vehicle and Traffic Law §§ 1128 (a) and 1163 (a), establishing negligence”

(*Thompson v Pizzaro*, 155 AD3d 423, 423 [1st Dept 2017]. See *Zummo v Holmes*, 57 AD3d 366, 366 [1st Dept 2008]).

Accordingly, Plaintiff CAPARITIA made a *prima facie* showing of her entitlement to summary judgment in her favor, on liability, as against Defendants, and dismissal of Defendants’ affirmative defenses on Plaintiff’s comparative fault, by the aforesaid testimony, including that Defendants’ vehicle struck her vehicle while she was driving straight in the right lane, while Defendant attempted to make a right turn, from the left lane, at a time when it was unsafe to do so.

Thus, the burden shifted to Defendants to advance a nonnegligent explanation. However, Defendants did not make the requisite showing.

Defendants mainly argue that Plaintiff may have been comparatively negligent. However, in this regard, the Court of Appeals has established that “that to obtain partial summary judgment on defendant's liability he [plaintiff] does not have to demonstrate the absence of his own comparative fault” (*Carlos Rodriguez v City of NY*, 31 NY3d 312, 323 [2018]).

Moreover, a driver with the right-of-way, who has only seconds to react to a vehicle which has failed to yield, is not comparatively negligent for failing to

avoid the collision. (*Vainer v DiSalvo*, 79 AD3d 1023, 1023-1024 [2d Dept 2010]).

In *Vainer*, also, a defendant made a sudden right turn, from the left lane. Therein, Court reiterated that a driver who has the right-of-way is entitled to anticipate that other motorists will obey the traffic law requiring them to yield. (*Vainer v DiSalvo*, 79 AD3d 1023, 1023-1024 [2d Dept 2010]).

Accordingly, Plaintiff CAPARITIA's Motion, for partial summary judgment in her favor on liability, is granted, to the extent that Defendants JOHNSON/PIPCO are found liable for the happening of the accident and that Defendant JOHNSON's negligence was a substantial factor in causing the accident; and that Plaintiff was free from comparative fault for the happening of this collision. Thus, Defendants' affirmative defenses alleging culpable conduct, on the part of the Plaintiff, are dismissed. However, this Court makes no determination as to other issues herein, including, but not limited to, whether Plaintiff's alleged injuries were proximately caused by the negligence of the Defendants; and whether Plaintiff sustained a "serious injury" within the meaning of the Insurance Law.

This constitutes the decision and order of this Court.

Dated: DEC 20 2021, 2021



HON. BEN R. BARBATO, J.S.C.