

<b>Hughes v Yagodka Taxi Inc.</b>
2013 NY Slip Op 31353(U)
June 20, 2013
Supreme Court, Queens County
Docket Number: 23676/2011
Judge: Robert J. McDonald
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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK
CIVIL TERM - IAS PART 34 - QUEENS COUNTY
25-10 COURT SQUARE, LONG ISLAND CITY, N.Y. 11101

P R E S E N T : HON. ROBERT J. MCDONALD
Justice

- - - - - x

SOPHIA HUGHES, Index No.: 23676/2011
Plaintiff, Motion Date: 06/10/11
- against - Motion No.: 58
YAGODKA TAXI INC., PARIJAT DAS and Motion Seq.: 1
KARIN D. TRAN,

Defendants.

- - - - - x

The following papers numbered 1 to 13 were read on this motion by
defendant, KARIN D. TRAN, for an order pursuant to CPLR 3212(b)
granting said defendant summary judgment on the issue of
liability and dismissing the plaintiff's complaint and all cross-
claims:

Papers
Numbered
Notice of Motion-Affidavits-Exhibits-Memo of Law.....1 - 6
Defendant's Affirmation in Opposition.....7 - 10
Reply Affirmation.....11 - 13

In this negligence action, the plaintiff, SOPHIA HUGHES,
seeks to recover damages for personal injuries she allegedly
sustained as a result of a motor vehicle accident that occurred
on January 24, 2010 between the taxi cab owned by defendant
Yagodka Taxi Inc and operated by defendant Parijat Das and the
motor vehicle owned and operated by defendant Karin D. Tran. At
the time of the accident the plaintiff, Ms. Hughes, was a
passenger in the taxi cab. The accident took place on 12th Avenue
near the intersection with 41st Street in New York County, New
York. Defendant Tran, alleges that her vehicle was at a complete
stop at a red traffic signal when her vehicle was struck in the
rear by the vehicle operated by defendant Parijat Das. The

plaintiff allegedly sustained serious injuries as a result of the impact.

The plaintiff commenced this action by filing a summons and complaint on October 17, 2011. Issue was joined by service of defendant Tran's verified answer with cross-claim December 12, 2011. A note of issue was filed by the plaintiff on January 3, 2013. Defendant Tran now moves for an order pursuant to CPLR 3212(b), granting summary judgment on the issue of liability dismissing the plaintiff's complaint and all cross-claims on the ground that she bears no liability for the causation of the accident.

In support of the motion, Tran submits an affirmation from counsel, Tracy Morgan, Esq., a copy of the pleadings, a copy of the plaintiff's verified bill of particulars; a copy of the note of issue; an uncertified copy of the police accident report (MV-104); and copies of the transcripts of the examinations before trial of plaintiff Sophia Hughes, defendant Parijat Das and defendant, Karin Tran.

In the police accident report the police officer, who did not witness the accident, describes the accident based upon statements from the parties as follows:

" Veh. 1 (Das) was southbound in center lane behind veh. 2 (Tran) and rear-ended veh. 2 while veh. 2 was stopping. Passengers of Veh. 1 stated he was driving too fast.

In her examination before trial, taken on November 30, 2012, defendant Karin Tran, age 38, testified that she was involved in a motor vehicle accident at approximately 10:00 p.m. She was operating a 2007 Mercedes with her two year old daughter in the rear passenger seat. She states that she was proceeding southbound on 12<sup>th</sup> Avenue when she stopped at a red traffic signal at the intersection of 41<sup>st</sup> Avenue. She was stopped for less than 30 seconds when a taxi cab struck the rear of her stopped vehicle with a medium impact. She stated that after the accident she had a conversation with the cab driver in which she told him, "you need to drive more carefully," and he responded, "you stopped suddenly." When asked how she stopped at the light she said it was somewhere between gradual and sudden.

Plaintiff, Sophia Hughes, age 40, a resident of Gary, Indiana, testified at an examination before trial on October 26, 2012. She stated that on the date of the accident she had come to New York to vacation with her 17 year old son and other family members. At the time of the accident she had gotten into a cab

with her son and four other members of her party at the W Hotel and they were proceeding to Little Italy. She was seated in the rear. She stated that the driver was proceeding very fast. She estimated that a block before the accident his speed was 50 miles per hour. As they approached the intersection with 41<sup>st</sup> Street, she observed that the traffic light was red and there was one car stopped at the light in front of them. She stated that as the taxi driver approached the car in front he decreased his speed but not to the point where he was able to stop in time. She stated that the front of the cab struck the plaintiff's vehicle in the rear with a heavy impact. She stated that upon impact her body was thrown forward and "everyone fell on top of me." After the accident she observed the taxi driver walking away from the scene. She left New York the following day.

The driver of the taxi cab, defendant Parijat Das, testified at an examination before trial on November 30, 2012. He stated that on the date of the accident he had leased the taxi cab and was driving a shift from 5:00 pm to 5:00 am. He stated that the brakes were in good working order that day. He had picked up plaintiff and four other passengers at the W Hotel which is located in the Times Square area and he was taking them to Little Italy. He was proceeding southbound in the middle lane of 12<sup>th</sup> Avenue at a rate of speed of 10 -15 miles per hour. When he was one hundred feet from the intersection of 41<sup>st</sup> Street he observed that the traffic signal was green. He stated that he was very close to the Tran vehicle in front of him. He stated that the vehicle was moving when he first observed it but stopped suddenly when the light on 41<sup>st</sup> Street turned red and he struck Tran's vehicle in the rear. He did not recall if he saw brake lights on the Tran vehicle before she stopped. After the accident, when he approached the other driver she told him to pay attention when he drives and he answered that he was sorry.

Ms. Tran's counsel contends that the accident was caused solely by the negligence of defendant Das in that his vehicle was traveling too closely to the vehicle in front in violation of VTL § 1129 and that Das failed to safely bring his vehicle to a stop prior to rear-ending the plaintiff's vehicle. Counsel states that based upon the deposition testimony there is no dispute that Tran's vehicle was lawfully stopped at a red light when it was struck by the Das vehicle. He states that the plaintiff testified that the cab driver was speeding and although he observed the Tran vehicle completely stopped at the red light he could not stop his vehicle in time to avoid colliding with the Tran vehicle in front of it. Counsel alleges that defendant Das was negligent in that he failed to maintain a safe speed, failed to maintain a safe distance between his car and the car in front of him in

violation of VTL § 1129(a) and failed to avoid striking the vehicle of defendant Karin Tran in the rear. Counsel states that a claim that a lead vehicle made a sudden stop, standing alone is insufficient to rebut the presumption of negligence on the part of the following vehicle (citing Hackney v Monge, 103 AD3d 844 [2d Dept. 2013]; Plummer v Nourddine, 82 AD 3d 1069 [2d Dept. 2011]; Staton v Ilic, 69 AD3d 606 [2d Dept. 2010]; Jumandeo v Franks, 56 AD3d 624 [2d Dept. 2008]; Kastritsos v Marcello, 84 AD 3d 1174 [2d Dept. 2011]; Ramirez v Konstanzer, 61 AD3d3d 837 [2d Dept. 2009]). Further counsel states that from the evidence submitted it can not be inferred that Tran's actions were negligent or a proximate cause of the accident. Counsel contends, therefore, defendant Tran is entitled to summary judgment as to liability because defendant Das was solely responsible for causing the accident while Ms. Tran was free from culpable conduct.

In opposition to the motion, Das's counsel, Evelina Ramos, Esq., states that Ms. Tran's motion must be denied, as there are conflicting versions of how fast the taxi was going and how the accident took place. In addition counsel asserts that the Das has proffered a non-negligent explanation for the rear end collision, to wit, that the Tran vehicle came to an abrupt and sudden stop at the red light without any signal or warning.

Plaintiff has not submitted papers in opposition to the motion.

The proponent of a summary judgment motion must tender evidentiary proof in admissible form eliminating any material issues of fact from the case. If the proponent succeeds, the burden shifts to the party opposing the motion, who then must show the existence of material issues of fact by producing evidentiary proof in admissible form in support of his position (see Zuckerman v. City of New York, 49 NY2d 557[1980]).

"When the driver of an automobile approaches another automobile from the rear, he or she is bound to maintain a reasonably safe rate of speed and control over his or her vehicle, and to exercise reasonable care to avoid colliding with the other vehicle" (Maccauley v ELRAC, Inc., 6 AD3d 584 [2d Dept. 2003]). It is well established law that a rear-end collision creates a prima facie case of negligence on the part of the driver of the rearmost vehicle, requiring the operator of that vehicle to proffer an adequate, non-negligent explanation for the accident (see Hearn v Manzolillo, 103 AD3d 689[2d Dept 2013]; Taing v Drewery, 100 AD3d 740; Kastritsios v Marcello, 84 AD3d

1174[2d Dept. 2011]; Klopchin v Masri, 45 AD3d 737 [2d Dept. 2007]; Hakakian v McCabe, 38 AD3d 493 [2d Dept. 2007]; Velazquez v Denton Limo, Inc., 7 AD3d 787 [2d Dept. 2004]).

Here, Tran testified that her vehicle was at a complete stop at a red traffic signal when it was suddenly struck from behind by the taxi cab. Thus, Ms. Tran satisfied her prima facie burden of establishing entitlement to judgment as a matter of law on the issue of liability (see Volpe v Limoncelli, 74 AD3d 795 [2d Dept. 2010]; Vavoulis v Adler, 43 AD3d 1154 [2d Dept. 2007]; Levine v Taylor, 268 AD2d 566 [2000]).

Having made the requisite prima facie showing of entitlement to summary judgment, the burden then shifted to defendant Das to raise a triable issue of fact as to whether Ms. Tran was also negligent, and if so, whether that negligence contributed to the happening of the accident (see Goemans v County of Suffolk, 57 AD3d 478 [2d Dept. 2007]). This Court finds that defendant Das failed to provide evidence as to a non-negligent explanation for the accident sufficient to raise a triable question of fact (see Lampkin v Chan, 68 AD3d 727 [2d Dept. 2009]; Cavitch v Mateo, 58 AD3d 592 [2d Dept. 2009]; Garner v Chevalier Transp. Corp., 58 AD3d 802 [2d Dept. 2009]; Kimyaqarov v Nixon Taxi Corp., 45 AD3d 736 [2d Dept. 2007]). Although Das maintains that the accident was the result of Tran braking or stopping suddenly, this does not explain his failure to maintain a safe distance from the vehicle in front of him [see Dicturel v Dukureh, 71 AD3d 558 [1<sup>st</sup> Dept. 2010]; Shirman v Lawal, 69 AD3d 838 [2d Dept. 2010]; Lampkin v Chan, 68 AD3d 727 [2d Dept. 2009]; Zdenek v Safety Consultants, Inc., 63 AD3d 918 [2d Dept. 2009]). The defendant's argument that the Tran vehicle may have stopped short is not sufficient to provide a non-negligent explanation for the rear-end collision (see Plummer v Nourddine, 82 AD3d 1069 [2d Dept. 2011][the mere assertion that the respondents' (vehicle) came to a sudden stop while traveling in heavy traffic was insufficient to raise a triable issue of fact]; Staton v Ilic, 69 AD3d 606 [2d Dept. 2010]; Ramirez v Konstanzer, 61 AD3d 837 [2d Dept. 2009]). A bare claim that the driver of the lead vehicle suddenly stopped, standing alone, is insufficient to rebut the presumption of negligence (see Ramirez v Konstanzer, 61 AD3d 837 [2d Dept. 2009]; Jumandeo v Franks, 56 AD3d 614 [2d Dept. 2008]).

Das's explanation, that he did not observe brake lights illuminated on the Tran vehicle is insufficient to rebut the presumption of negligence created by the rear-end collision, and raise a triable issue of fact to defeat summary judgment (see Macauley v ELRAC, Inc., 6 AD3d 584[2d Dept. 2004][defendant's

testimony that she did not recall seeing brake lights or tail lights illuminated on the plaintiff's vehicle before the collision did not adequately rebut the inference of negligence]; Gross v Marc, 2 AD3d 681 [2d Dept. 2003][the defendant failed to provide evidence sufficient to raise a triable question of fact as to whether the alleged malfunctioning brake lights on the plaintiff's vehicle proximately caused the accident]; Waters v City of New York, 278 AD2d[2d Dept. 2000][defendant's statement that he did not observe any illuminated brake lights indicating that the truck was stopped is insufficient to establish a genuine issue of material fact precluding summary judgment]; also see Santarpia v. First Fid. Leasing Group, Inc., 275 AD2d 315 [2d Dept. 2000]; Lopez v. Minot, 258 AD2d 564[2d Dept. 1999]).

Therefore, as the evidence in the record demonstrates that defendant Das failed to provide a non-negligent explanation for the collision and as no triable issues of fact have been put forth as to whether Ms. Tran may have borne comparative fault for the causation of the accident, and based on the foregoing, it is hereby,

ORDERED, that the motion of defendant, Karin D. Tran is granted, and the complaint of plaintiff Sophia Hughes and all cross-claims are dismissed against said defendant, and it is further,

ORDERED, that the Clerk of Court is authorized to enter judgment accordingly.

Dated: June 20, 2013  
Long Island City, N.Y.

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ROBERT J. MCDONALD  
J.S.C.