

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

594

CA 09-02419

PRESENT: SCUDDER, P.J., MARTOCHE, FAHEY, GREEN, AND GORSKI, JJ.

JOANNE M. WARMUS, PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

LARRY E. SUTTON AND RELCO SYSTEMS, INC.,
DEFENDANTS-RESPONDENTS.

ROACH, BROWN, MCCARTHY & GRUBER, P.C., BUFFALO (KEVIN VASQUEZ
HUTCHESON OF COUNSEL), FOR PLAINTIFF-APPELLANT.

LAW OFFICES OF TAYLOR & SANTACROSE, BUFFALO (CHRISTOPHER R. TURNER OF
COUNSEL), FOR DEFENDANTS-RESPONDENTS.

Appeal from an order of the Supreme Court, Niagara County (Richard C. Kloch, Sr., A.J.), entered September 2, 2009 in a personal injury action. The order, insofar as appealed from, denied that part of the motion of plaintiff for summary judgment on the issue of proximate cause.

It is hereby ORDERED that the order insofar as appealed from is unanimously reversed on the law without costs and the motion is granted in its entirety.

Memorandum: Plaintiff commenced this action seeking damages for injuries she allegedly sustained when a tractor-trailer owned by defendant Relco Systems, Inc. and operated by defendant Larry E. Sutton struck a motorcycle on which plaintiff was a passenger. Supreme Court granted those parts of plaintiff's motion seeking summary judgment on the issue of negligence and dismissing the first affirmative defense. Plaintiff appeals from the order insofar as it denied that part of her motion seeking summary judgment on the issue of proximate cause, and we reverse. Plaintiff met her initial burden with respect thereto, and defendants failed to raise a triable issue of fact in opposition (*see generally Zuckerman v City of New York*, 49 NY2d 557, 562).

Entered: May 7, 2010

Patricia L. Morgan
Clerk of the Court