

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present: ANTONIO I. BRANDVEEN
J. S. C.

EVA L. JONES,

Plaintiff,

- against -

ELIZABETH C. BANACH, SEYED M. TAHERI and
MIRHAMED TAHERI,

Defendants.

TRIAL / IAS PART 43
NASSAU COUNTY

Index No. 9178/01

Motion Sequence No. 01

The following papers having been read on this motion:

Notice of Motion, Affidavits, & Exhibits	<u>1</u>
Answering Affidavits	<u>2,3</u>
Replying Affidavits	<u>4</u>
Briefs: Plaintiff's / Petitioner's	_____
Defendant's / Respondent's	_____

The defendants SEYED M. TAHERI and MIRHAMED TAHERI move this court for an order granting summary judgment to the defendants on the issue of liability and dismissing the complaint on the grounds that the defendant vehicle was stopped when it was struck in the rear. This is an action for personal injury arising out of a three car accident that occurred on May 22, 2001 on Glen Cove Road, Town of North Hempstead, N.Y.

At an Examination Before Trial the defendant MIRHAMED TAHERI testified he was stopped in traffic the left hand lane southbound on Glen Cove Road when his car was struck in the rear by the vehicle driven by the defendant ELIZABETH C. BANACH. As a result of the impact his vehicle was pushed forward striking the rear of the vehicle driven by the plaintiff EVA L. JONES. TAHERI stated he had been stopped for 10 seconds before being hit in the rear.

At her Examination Before Trial the defendant EVA L. JONES testified that prior to the accident she was traveling southbound in the left hand lane on Glen Cove Road. She stated it was raining at the time and described the visibility as good. When she

realized a car was stopped in front of her she jammed on the brakes and her vehicle skidded and struck the rear of the TAHERI vehicle.

The plaintiff EVA L. JONES stated her car was stopped 30 seconds to a minute behind traffic when she heard a crash behind her before her vehicle was struck in the rear by the TAHERI vehicle. She had observed a vehicle in her rear view mirror stopped behind her prior to the accident.

A rear end collision with a stopped vehicle establishes a prima facie case of negligence on the part of the operator of the offending vehicle and imposes a duty of explanation on that operator (see, *Brant v Senatobia Operation Corp.* __AD2d__[2nd Dept. Feb. 2000]; *Hurley v. Izzo*, 248 A.D. 674 [2nd Dept. 1998]).

When a 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 (see, *Filippazzo v. Santiago* 277 A.D.2d 419, (N.Y.A.D. 2 Dept. 2000) *Power v. Hupart*, 260 A.D.2d 458; *Abramowicz v. Roberto*, 220 A.D.2d 374,

Under these circumstances the defendant's ELIZABETH C. BANACH conclusory assertions that her vehicle slid on wet pavement is insufficient to raise a triable issue of fact. Also, the assertion by the plaintiff EVA L. JONES that the defendant MIRHAMED TAHERI failed to maintain sufficient distance between his stopped vehicle and plaintiff's stopped vehicle is insufficient to raise a triable issue of fact (see, *Shamah v Richmond County Ambulance Service, Inc.*, 279 AD2d 564; *Levine v Taylor*, 268 AD2d 566).

Accordingly, the motion is granted.

So ordered .

Date: March 28, 2002

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COUNTY CLERK'S OFFICE

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J.S.C.