

No. 18-1237

IN THE

Supreme Court of the United States



VEERAMUTHU P. GOUNDER,

Petitioner,

v.

ARGANTE R. GRIPPA and TEW G.A. GRIPPA,

Respondents.

*On Petition for a Writ of Certiorari to the
United States Court of Appeals*

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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April 16, 2019

QUESTIONS PRESENTED

Question 1:

Does petitioner Veeramuthu P. Gounder present valid grounds for a writ of certiorari?

Answer:

No, the petitioner does not present valid grounds for a writ of certiorari since the validity of a treaty or statute of the United States is not drawn into question. Additionally, the validity of a state statute is not drawn into question on the grounds of its being repugnant to the Constitution, treaties or laws of the United States. Finally, no valid title, right privilege or immunity is claimed or present.

Question 2:

Did the lower New York State courts err when they upheld dismissal of petitioner Veeramuthu P. Gounder's case after a liability trial in this rear end case?

Answer:

Neither the New York City trial court nor the New York State appellate courts erred when they dismissed petitioner's case after a liability bench trial held on January 5, 2016. It remains without dispute that petitioner Gounder rear ended the motor vehicle operated by respondent Argante R. Grippa. The sworn trial testimony of petitioner Gounder indicates that he was traveling too closely for the prevailing weather conditions that day. After evaluating the testimony of both involved

operators, Hon. Terrence C. O'Connor (Civil Court of the City of New York—County of Queens) correctly held that Gounder did not provide a non-negligent excuse for rear ending the defense vehicle. As such, the case was correctly dismissed by the trial judge and correctly affirmed on appeal.

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STATEMENT OF THE CASE

The petitioner willingly proceeded to a liability bench trial before Hon. Terrence C. O'Connor in Civil Court of the City of New York—Queens County on January 5, 2016. A complete copy of that trial transcript, noticeably absent from petitioner's submission to this court, is annexed hereto at defendants' cost and expense. [Respondents' Appendix 1a-38a]

Petitioner Gounder, a taxi operator, testified that he was traveling in the left lane of the Long Island Expressway near the Grand Central Parkway at approximately 5:15 a.m. on March 17, 2015. Mr. Gounder's speed was estimated at 40 to 45 mph and it was "slightly raining" and "a little bit dark" with a wet road surface. [Respondents' Appendix 11a, 14a, 17a, 18a, 35a] As the vehicle directly in front of him allegedly stopped short, the front portion of the Gounder vehicle struck the rear portion of the defendants' vehicle. Mr. Gounder estimates his trailing distance from the vehicle ahead of him as approximately two (2) car lengths despite the less than ideal weather conditions. [Respondents' Appendix 11a, 12a, 18a, 19a, 22a]

The police report was stipulated into evidence. [Respondents' Appendix 14a-16a] Neither operator received a ticket from the police and neither operator was arrested due to the accident. [Respondents' Appendix 21a-22a] Petitioner was asked by the Court if he wished to present any further witnesses and Mr. Gounder declined. [Respondents' Appendix 23a]

Defendant/operator Argante R. Grippa, an anesthetist, also testified at the trial. He confirmed his involvement in the subject motor vehicle accident as the operator of a motor vehicle headed west-bound in the left lane of the Long Island Expressway. [Respondents' Appendix 25a, 26a] When traffic ahead of Mr. Grippa slowed, Mr. Grippa "gently" slowed his vehicle by applying the brakes. [Respondents' Appendix 27a-28a] While slowing, the Grippa vehicle was struck from behind. [Respondents' Appendix 28a] Mr. Grippa confirmed the weather conditions as "raining." [Respondents' Appendix 30a]

Prior to reaching a liability decision, Hon. O'Connor heard from the two (2) operators at issue. The Court thereafter admonished the plaintiff for following too closely in violation of Vehicle and Traffic Law section 1129. [Respondents' Appendix 24a-25a, 35a-38a] The Court also noted the presumption of negligence against a party who rear ends another motor vehicle. [Respondents' Appendix 24a-25a] Hon. O'Connor ultimately held that petitioner Gounder did not overcome that presumption of negligence. As such, Hon. O'Connor found in favor of the defense and dismissed petitioner's Complaint after a liability trial. [Respondents' Appendix 35a-38a]

ARGUMENT

POINT ONE:

PETITIONER DOES NOT HAVE ANY VALID GROUNDS FOR A WRIT OF CERTIORARI

A writ of certiorari is governed by 28 U.S.C. section 1257. The law essentially provides three (3) potential avenues wherein the Supreme Court of the United States could take a petitioner's case from the highest court of a state in which a decision was rendered. Those three avenues are: (1) where the validity of a treaty or statue of the United States is drawn in question; (2) where the validity of a statute of any state is drawn in question on the grounds of it being repugnant to the Constitution, treaties, or laws of the United States; and (3) where any title, right, privilege or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under the United States.

In the case at bar, petitioner Gounder meandered through the New York State court system starting in the Civil Court of the City of New York—Queens County wherein he lost on liability after a bench trial with live witness testimony in January 2016. (App. 8 of petitioner's petition) Gounder next appealed to the Appellate Term wherein he again lost this time before a panel of 3 judges in November 2017. (App. 5 through 8 of petitioner's petition) Unwilling to accept defeat, Gounder sought leave from the Appellate Term to appeal to the Appellate

Division. That request was denied in December 2017. (App. 4 of petitioner's petition) He next sought relief direct from the Appellate Division—Second Department. That application was denied in March 2018. (App. 2-3 of petitioner's petition) Finally, Gounder sought relief from the New York State Court of Appeals but his request was dismissed in October 2018. (App. 1 of petitioner's petition) There are no courts available in New York which are higher than the Court of Appeals. As such, petitioner has apparently exhausted his state remedies.

Notwithstanding same, petitioner does not satisfy any of the three (3) avenues contained within 28 U.S.C. section 1257. First, Gounder does not cite to any treaty or statue of the United States that he draws into question. Second, Gounder does not cite to any state statue which is repugnant to the Constitution, treaties, or laws of the United States. In fact, he only cites to New York Vehicle and Traffic Law section 1163 and New York Vehicle and Traffic Law section 1129(a).

Vehicle and Traffic Law section 1163 is entitled "turning movements and required signals". Subsection "c" of same states "no person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided herein to the driver of any vehicle immediately to the rear when there is opportunity to give such signal." It is respectfully submitted that there is nothing repugnant about this common sense traffic

section and that same does not derogate the Constitution, treaties, or laws of the United States.

Vehicle and Traffic Law section 1129(a) is entitled “following too closely.” Same states “the 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.” There is nothing repugnant about keeping a safe following distance for the prevailing conditions and the trial record confirms that petitioner Gounder utterly failed in this regard.

Finally, Gounder does not satisfy the “any title, right, privilege or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under the United States” clause of 28 U.S.C. section 1257. Although Gounder makes fleeting reference to his right to a jury trial, he never requested a trial by his peers anywhere in the trial record. Moreover, the 7th Amendment to the Constitution does not compel states to hold jury trials in all civil cases. See *Galloway v United States*, 319 U.S. 372 (1943). As such, Gounder was not deprived of his right to a trial by jury in this civil motor vehicle style case.

Lastly, Gounder’s incredulous conspiracy theory that race was somehow a factor in the court’s decision is not supported by the trial transcript whatsoever or by the cold hard fact that other judges in different courts within New York State examined

the facts of this case and all rendered learned opinions in favor of the defense and unanimously against petitioner Gounder. (App. 1 through 8 of petitioner's petition)

Based upon all of the foregoing, petitioner Gounder's request for a writ of certiorari should be denied.

POINT TWO

PETITIONER GOUNDER FAILED TO REBUT THE PRESUMPTION OF NEGLIGENCE ASSOCIATED WITH A REAR END CONTACT

A rear end collision with a stopped or stopping vehicle creates a *prima facie* case of liability in favor of the operator of the stationary/lead vehicle. See, *Emil Norsic & Son, Inc. v L & P Transp., Inc.*, 30 A.D.3d 368, 815 N.Y.S.2d 736 (2nd Dept., 2006); *Leonard v City of New York*, 273 A.D.2d 205, 708 N.Y.S.2d 467 (2nd Dept., 2000); *Sekuler v Limnos Taxi, Inc.*, 264 A.D.2d 389, 694 N.Y.S.2d 100 (2nd Dept. 1999); *Itingen v Weinstein*, 260 A.D.2d 440, 688 N.Y.S.2d 582 (2nd Dept., 1999); *Inzano v Brucculeri*, 257 A.D.2d 605, 684 N.Y.S.2d 260 (2nd Dept., 1999); *Barba v. Best Security Corp.*, 235 A.D.2d 381, 652 N.Y.S.2d 71 (2nd Dept., 1997).

The operator of the moving/trailing vehicle is required to rebut the inference of negligence created by an unexplained rear-end collision, because he or she is in the best position to explain whether the collision was due to a reasonable, non-negligent

cause. If the operator of the moving/trailing vehicle cannot come forward with any evidence to rebut the inference of negligence, the operator of the stationary/lead vehicle may properly be awarded judgment on the issue of liability. *Leonard v City of New York*, 273 A.D.2d 205, 205-206 [2nd Dept., 2000].

The stipulated into evidence police report indicates that petitioner Gounder rear ended the vehicle operated by respondent Argante R. Grippa. (App. 11 through 14 of petitioner's petition and 14a-16a of Respondent's Appendix] Neither operator received a ticket from police and neither was arrested due to the accident. [Respondents' Appendix 21a-22a]

At a liability trial before Hon. Terrence C. O'Connor on January 5, 2016 petitioner Gounder, a taxi operator, testified that he was traveling in the left lane of the Long Island Expressway near the Grand Central Parkway at approximately 5:15 a.m. on March 17, 2015. Mr. Gounder's speed was estimated at 40 to 45 mph and it was "slightly raining" and "a little bit dark" with a wet road surface. [Respondents' Appendix 11a, 14a, 17a, 18a, 35a] As the vehicle directly in front of him allegedly stopped short, the front portion of the Gounder vehicle struck the rear portion of the defendants' vehicle. Mr. Gounder estimates his trailing distance from the vehicle ahead of him as approximately two (2) car lengths despite the less than ideal weather conditions. [Respondents' Appendix 11a, 12a, 18a, 19a, 22a]

Defendant/operator Argante R. Grippa, an anesthetist, also testified at the trial. He confirmed his involvement in the subject motor vehicle accident as the operator of a motor vehicle headed west-bound in the left lane of the Long Island Expressway. [Respondents' Appendix 25a, 26a] When traffic ahead of Mr. Grippa slowed, Mr. Grippa "gently" slowed his vehicle by applying the brakes. [Respondents' Appendix 27a-28a] While slowing, the Grippa vehicle was struck from behind. [Respondents' Appendix 28a] Mr. Grippa confirmed the weather conditions as "raining." [Respondents' Appendix 30a]

Petitioner's assertion that the Grippa vehicle came to a sudden stop was conclusory and insufficient, in and of itself, to provide a non-negligent explanation for the rear-end collision. *Cortese v Pobejimov*, 136 A.D.3d 635 (2nd Dept., 2016) *citing Brothers v Bartling*, 130 A.D.3d 554, 13 N.Y.S.3d 202; *Hackney v Monge*, 103 A.D.3d 844, 960 N.Y.S.2d 176; *Xian Hong Pan v Buglione*, 101 A.D.3d 706, 955 N.Y.S.2d 375. This is even more critical when petitioner Gounder failed to adequately explain why he did not maintain a safe following distance despite the adverse weather conditions. *Morgan v Browner*, 138 A.D.3d 560 (1st Dept., 2016).

Based upon the above record, it is patent that Hon. O'Connor evaluated the respective testimony of the parties and rendered a reasonable and prudent liability decision in favor of the defense. Since the trial court held in favor of the defense, peti-

tioner Gounder was not entitled to present evidence on injuries and damages since he essentially consented to a bifurcated trial. [Respondents' Appendix 10a, 37a]

Finally, the trial court's findings are supported by the record and when the findings of fact in a non-jury trial rest in large measure on considerations relating to the credibility of witnesses, the decision of the fact-finding court should not be disturbed. *Aigrette Ltd. v. Ernst & Young*, 262 A.D.2d 85 (1st Dept., 1999) citing *Thoreson v Penthouse Intl.*, 80 N.Y.2d 490, 495.

CONCLUSION

For all of the foregoing reasons, respondents Argante R. Grippa and Tew G.A. Grippa respectfully request that the Complaint remain dismissed and that Veeramuthu P. Gounder's petition for a writ of certiorari be denied.

Dated: Bohemia, New York
April 15, 2019

Respectfully submitted,

/s/ _____

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APPENDIX

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS

Index No. CV-009297-15/QU

VEERAMUTHU P. GOUNDER

Plaintiff(s)

—Against—

ARGANTE R. GRIPPA AND TEW G.A. GRIPPA

Defendant(s)

**NOTICE OF TRANSMITTAL
OF TRANSCRIPT**

To: ARGANTE R. GRIPPA AND TEW G.A. GRIPPA

The enclosed transcript is being forwarded to you, the appellee, following Section 1704 of the Civil Court Act together with a copy of the proposed amendments, if any.

Within fifteen (15) days of service you shall make any proposed amendments or objections to the transcript and serve them on the appellant.

The amendments or objections are to be made referring to the page and line number in the transcript and specifying the change. For example, if the transcript says the time that an incident occurred was 3:30 P.M. when the testimony given at trial was 2:30 P.M., label a piece of paper Proposed Amendments and Objections, list the page, the line number and the proposed amendment.

When you return the transcript to the appellant, attach a copy of the proposed amendments. Be sure to serve the corrected transcript on the appellant within fifteen (15) days.

After the appellant receives the transcript (and amendments, if any) he/she will set a date for settlement of the transcript with the Judge who tried the case. At that time the transcript and proposed amendments, if any, will be submitted to the Judge. You should contact the Judge's Court Attorney to find out if you appearance will be required on that date by calling (718) 262-7300.

March 29, 2016

Date

/s/ VEERAMUTHU P. GOUNDER

Appellant Signature

Veeramuthu P. Gounder

Print Name

94-11 Springfield Blvd

Queens Village, N.Y. 11428

Address

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS

Index No. CV-009297-15/QU

VEERAMUTHU P. GOUNDER

Plaintiff(s)

—Against—

ARGANTE R. GRIPPA AND TEW G.A. GRIPPA

Defendant(s)

**NOTICE OF SETTLEMENT
OF TRANSCRIPT**

To Appeals Clerk, Civil Court, City of New York,
County of Queens,

To ARGANTE R. GRIPPA AND TEW G.A. GRIPPA
Appellee/Respondent

The above captioned action is to be settled before
the Hon. Terrence C. O'Connor on January 5, 2016.

Initial the appropriate section below:

I have attached my list of objections/
corrections to this Notice
 I have no corrections

The respondent has provided a list of objec-
tions/corrections, and that list is attached.
 The respondent has not provided a list of
objections/corrections.

4a

You (the respondent) should contact the Judge's Court Attorney to find out if you appearance on this date is required by phoning (718) 262-7300.

March 29, 2016
Date

/s/ VEERAMUTHU P. GOUNDER
Appellant Signature

Veeramuthu P. Gounder
Print Name

94-11 Springfield Blvd
Queens Village, N.Y. 11428
Address

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS

Index # CV-009297-15/QU

VEERAMUTAU P. GOUNDER,
Plaintiff,

—against—

ARGANTE R. GRIPPA AND TEW G.A. GRIPPA,
Defendants.

TRIAL

January 5, 2016

89-17 Sutphin Boulevard
Jamaica, New York 11435

TRIAL TERM,
PART 108

B E F O R E:

HON. TERRENCE C. O'CONNOR, J.C.C.

A P P E A R A N C E S:

VEERAMUTHU P. GOUNDER,
Plaintiff, Appearing Pro Se,
94-11 Springfield Boulevard
Queens Village, New York 11428

DESENA & SWEENEY, LLP
Attorneys for Defendants,
1500 Lakeland Avenue
Bohemia, New York 11716

BY: ARTHUR T. WADE, ESQ., of Counsel.

SHARON COHEN
OFFICIAL COURT REPORTER

THE COURT: Please call it into the record.

COURT OFFICER: Calling into the record Civil Court Index Number cv-009297-15/Qu, Veeramuthu P. Gounder against Argante R. Grippa and Tew G.A. Grippa.

Counselor, your appearance for the court record, please?

MR. WADE: Yes, your Honor, my name is Arthur Wade from DeSena and Sweeney and I represent both defendants in this lawsuit.

COURT OFFICER: And, sir?

MR. GOUNDER: Veeramuthu, V E E R A M U T H U, P. Gounder, G O U N D E R.

94-11 Springfield Boulevard, Queens Village, New York 11428.

THE COURT: You have an application you said, counsel?

MR. WADE: Yes, your Honor.

I have an application to bifurcate the trial. I have —I recently taken over the handling of the file as of December 16th. I have no authorizations for any

medical records or any records with respect to this case.

I had filed an order to show cause which was on yesterday and which has been adjourned to February 22nd. The order to show cause seeks discovery by way of the authorizations for my firm to obtain medical records. I am also reserving the rights to conduct a physical examination by a doctor and for property damage records.

In addition, the order to show cause seeks summary judgment on the issue of liability on this rear-end collision case, where plaintiff admits he rear-ended my clients on the Long Island Expressway.

And the last cause for relief sought in the order to show cause is to dismiss the claims for bodily injury because they were not alleged in plaintiff's complaint, there was only a claim for property damage and lost earnings.

So I just request that we proceed with liability and bifurcate the case with respect to damages.

THE COURT: Okay.

MR. GOUNDER: Good morning, your Honor. Happy new year, your Honor.

Your Honor, this is an accident case. I'm a limo driver with XYZ Company. I'm an independent contractor.

I had an accident on March 17th of 2015, early morning, at 5:15 a.m., slightly—

THE COURT: All right, we're only talking about his application. He has an order to show cause pending; have you been served with that?

MR. GOUNDER: Your Honor, three times bench trial and I already submitted all the documents to the company and to insurance company—defendants' insurance company.

And the last appearance and defendant's lawyer, a different counselor asking about the first trial, an E.B.T. before the trial. I already submitted all documents and also at the E.B.T. I released the document, medical records for the injury. And, also, all the documents submitted at the E.B.T. before the trial.

They changed the lawyer, this is a new lawyer. He don't know, he's supposed to get all documents from previous lawyer. I'm not supposed to give any document.

And, anyway, yesterday—

THE COURT: Do you have all the documents that you turned over to the other lawyer? Do you have all that in front of you?

MR. GOUNDER: Yes, your Honor.

THE COURT: All right, come back. I'll see you at 2 o'clock.

Give him everything you got and you have until 2 o'clock to look at it and we'll do the trial then; okay?

MR. WADE: Yes. Your Honor, the order to show cause was adjourned to February 22nd. It was also adjourned to February 15th for him to submit. No papers were submitted on his behalf yet.

THE COURT: Okay, well, he's giving you everything you're asking for now; right?

MR. WADE: But I'm not getting the authorizations to obtain records; do you understand?

THE COURT: I understand.

MR. WADE: That and I'm reserving my rights to conduct an I.M.E. in the case. I have nothing with respect to damages.

THE COURT: He's going to give you everything. Look at what he has. If more is needed; an I.M.E. and medical exam.

MR. GOUNDER: Yesterday submitted it.

THE COURT: Just give him everything you have there.

MR. GOUNDER: Right.

THE COURT: Okay, and I'll see you at 2:15, that gives you two hours to look at everything.

MR. WADE: 2:15, your Honor?

THE COURT: Yes, please.

MR. WADE: Thank you.

MR. GOUNDER: Thank you, your Honor.

THE COURT: Okay, see you then.

(whereupon, a luncheon recess was taken, at this time.)

* * * * *

A F T E R N O O N S E S S I O N

* * * * *

(whereupon, all parties returned following a luncheon recess, at this time.)

THE COURT: So the first thing we have to decide, there's been a motion by defense counsel for a bifurcated trial. Now, what that means is, that we would try the issue of liability first and then, if you can establish that the defendant is liable, then we move on to the question of damages; all right.

So he's made that motion, do you want to respond to that? Do you have any arguments on that?

MR. GOUNDER: No.

THE COURT: No, okay, the motion is granted, so we'll do the liability issue first.

Do you want to be heard any further than that, counsel?

MR. WADE: That's fine, it was granted, thank you, your Honor. I would just ask, to the extent there is any need to perform a damages trial, that time be given—

THE COURT: I will give you more time.

MR. WADE: —with respect to discovery on that issue.

THE COURT: I will give you that. Okay, all right, let's proceed then. Plaintiff, if you wish to testify. Officer, would you kindly swear him in.

COURT OFFICER: Please, sir, remain standing and raise your right hand.

V E E R A M U T H U P. G O U N D E R, called as a witness on behalf of the plaintiff, after having been first duly sworn, took the witness stand and testified as follows:

COURT OFFICER State your name and address for the record.

MR. GOUNDER: Veeramuthu P. Gounder. 188—I'm sorry, 94-11 Springfield Boulevard, Queens Village, New York 11428.

THE COURT: do you have any objection to him testifying from there?

MR. WADE: I have no problem, your Honor.

THE COURT: All right, sit down. Sit down and you can testify from there. And remember, you're under oath now. And speak loud and slow so that the court reporter can get all your testimony.

Okay, please proceed.

MR. GOUNDER: Your Honor, I'm a taxi driver with a limo since 1977. Since 1977, I have been driving a taxi.

I had a passenger pickup in Long Island on March 17th, early morning, around 5:15 pickup taking to city.

While I'm driving on Long Island Expressway near the Grand Central Parkway, above Long Island Expressway, it was a little bit dark and it was slightly raining. We were moving 45 mile speed, approximately, 45 miles speed.

On the left side wall, right side was moving traffic and the third line is slow line. And I'm traveling the speed line, extremely speed line, about 45 speed traveling.

Near Long Island Expressway and Grand Central Parkway in front of the vehicle suddenly stopped, dead stopped, suddenly stopped. I cannot move left, I cannot move right. Left is the wall, right side is

traffic. And in front of my car, now about a quarter of a mile, no traffic. And two car distance I'm driving, approximately two car distance driving, when he suddenly stopped, slowly to go left or right, I had hit.

Because of the accident—I will try to explain—suddenly stopped in front of me of my vehicle. When we hit, I had a passenger also in my car and smoothly please get up. And she saw the accident. I said, ma'am, are you all right? She said, yes. I get out and went to his car in front of my car. And in front of my car this driver and he came out, "listen, why you stop suddenly, what happened? Are you crazy or what? Why you stop? You drunk or is there something in your life you have a problem, why you stop moving 45 mile speed? In front of your car is nobody and speed line stop"? He didn't say anything because bizarre, crazy behavior acting and hit and run.

He said, "give me license—your license and registration." I said—he said, "I'll give it to you" and "look what you did to my car, damage. I'm going to give it to you." I went to my car. I got my license.

He was tried to move. And right away I closed the car door—

MR. WADE: Your Honor, if I could just object to anything post accident, just note my objection.

THE COURT: Okay, fair enough.

All right, anything after the accident is not relevant—is not really relevant.

MR. GOUNDER: And I got to chase him to get him—

MR . WADE: Objection.

MR. GOUNDER: —almost three miles, two to three miles from the scene.

MR. WADE: Just note my continuing objection.

MR. GOUNDER: He's on the left line, "pull over, pull over." He didn't pay attention. Again, one mile past, one mile again, I told him to pull over, so finally he stopped almost two miles and came to the right line, still in the right line and he pulled over. I said, "I will call the cop and, also, you call the cop. Why you ran away, running? What happened to you?" He didn't give me any answer.

MR. WADE: Just note my objection, your Honor.

THE COURT: All right, okay.

MR. GOUNDER: And we waited. I called the police. And I asked him, "why you suppose to give me license, registration on the spot and you told me you give we. You didn't give me, you left the scene."

MR. WADE: Again, note my objection, your Honor, this is after the accident.

THE COURT: All right, did the police come?

MR. GOUNDER: The police didn't come on the spot, your Honor.

It was one and a half hours and the ambulance came and fire service came. They told me, "this is a dangerous place to stay, follow the Maurice Avenue exit, get off there and don't stay here, it's dangerous to stay here" and they follow. "I follow you", everybody get off the exit. We pull over at the exit, a couple of hundred feet—

MR. WADE: Same objection, your Honor, this has nothing to do with the accident on liability.

THE COURT: All right.

What time of day did this happen?

MR. GOUNDER: 5:15 a.m., your Honor, the time of the accident.

THE COURT: Was it 5:15 or 6 o'clock, your papers here indicate 6:00 a.m.?

MR. GOUNDER: 5:15.

THE COURT: Was there other traffic on the road?

MR. GOUNDER: Light traffic, your Honor. And right side is moving traffic, left side is the wall. In front of him there is no car about quarter of a mile and behind me there are cars coming.

The police report also says 5:15 a.m., your Honor.

THE COURT: All right, do you want to introduce that police report?

Have you seen that, counsel?

(Handing to defendant's attorney.)

MR. WADE: It seems as though the first page is just a fax page of part of the first page of the police report, your Honor, it doesn't include the second page, which I actually have here. I have the two pages, so this doesn't include the second page of the police report.

THE COURT: Do you have the second page?

MR. GOUNDER: Yes.

MR. WADE: The first page is a fax cover page (indicating).

Your Honor, can I just show plaintiff what I have?

THE COURT: sure.

(Handing to the plaintiff.)

MR. WADE: Look at the second page.

MR. GOUNDER: Thank you.

MR. WADE: I am willing to stipulate the police report into evidence, your Honor.

THE COURT: All right.

(Handing to defendant's attorney.)

(Handing to the Court.)

MR. WADE: Your Honor, the police report that was handed to you is not the same one that was willing to stipulate into evidence, just for the record.

THE COURT: Is this a different one?

MR. WADE: Yes, your Honor.

THE COURT: Let me see both of them then.

(Handing to the Court.)

MR. WADE: The first page is the same on the documents. Just the second page of my document is the second page of the police report. The second page on plaintiff's document is a duplicate of the police report.

THE COURT: All right.

(Court perusing documents.)

THE COURT: Okay.

All right, so that police report is in evidence as number one.

(Whereupon, the police report referred to was deemed marked in evidence as Plaintiff's Exhibit 1 by the Court Reporter.)

THE COURT: All right, please continue.
Deemed marked in evidence.

MR. WADE: That's the one I provided to you, your Honor?

THE COURT: Yeah, that's the complete one. We have the full police report.

MR. GOUNDER: I asked the defendant, the driver in front of me, he hit me and he was driving the vehicle, I said "what happened to you? Why you stop on the highway extremely speed line, you drunk or do you have a problem with your wife or do you have a problem with your—"

MR. WADE: Objection, your Honor, this has already been testified to. He's repeating his testimony.

THE COURT: Right.

MR. GOUNDER: "And what happened, you drunk"?

THE COURT: Right, you said that and you said he didn't answer you.

MR. GOUNDER: He didn't answer to me.

THE COURT: What else?

MR. GOUNDER: The fire service came and ambulance came. We were on the side of the road. And the ambulance, fire service came. Okay, the police come, the police he didn't come until you stay here. The fire service said "we are leaving" and "the

police come, so you stay here" they told me and they left.

An ambulance and they said they checked the pulse and they asked, "are you all right"—

MR. WADE: Objection, we're starting to get into damages, I believe.

THE COURT: Sustained.

All right, anything else about the accident?

It was a Tuesday; right, during the week?

MR. GOUNDER: Yes, Tuesday morning, early morning, your Honor, a little bit dark.

THE COURT: You said it was dark and it was raining; right?

MR. GOUNDER: Yes, your Honor.

THE COURT: And you could see in front of the car in front of you that there was nobody for a quarter of mile in front of you; right?

MR. GOUNDER: Yes, normal. I didn't see a car in front of him, further distance, no car in front of him. I cannot measure it. And suddenly he stopped.

And also he didn't give me, I asked for license and registration and he didn't give it to me.

THE COURT: All right.

Anything else regarding the accident itself?

MR. GOUNDER: That I ask him, "why you stop"? He didn't give me any answer.

THE COURT: All right, that's the fourth time you told me that.

Do you want to cross-examine, please?

MR. WADE: Sure.

CROSS-EXAMINATION

BY MR. WADE:

Q Mr. Gounder, you admit that it was raining, at the time of the accident; correct, that it was dark out?

A (No response.)

Q You admit that it was raining, it was dark out, at the time of the accident?

A Yes, light rain, light flurry.

Q And you were traveling about, did you say 45 miles an hour?

A Forty, 45 miles an hour.

Q And you were following the vehicle, approximately, two car lengths behind it; correct?

A Distance I'm driving, two car lengths.

Q And you felt that was a safe speed, given the traffic conditions?

A Yes, Approximately, more than two car distance.

Q And you felt that was a safe distance given the weather conditions and the road conditions with it being rainy; is that correct?

A Not that heavy a rain.

Q But the road was wet; correct?

A A little bit.

Q Okay. And you were a livery car driver?

A Yes.

Q And you were in the process of driving somebody, a passenger, at the time of this accident; correct?

A That's correct.

Q What time did you have to be wherever your passenger needed to go that morning?

A My passenger was going to work.

Q So where was this?

A In Long Island.

Q And what time did she have to be there?

A No particular time to be there.

Q The points of impact between the two vehicles, was the front of your vehicle and the rear of my client's vehicle; correct, you admit to that?

A Yes.

Q Did you hit your brakes at all, before the impact?

A Suddenly he stopped—

Q No, did you apply your brakes at all, before this impact?

A Yes, I hit the brake.

Q Did your vehicle skid?

A Ha?

Q Did your vehicle skid?

A Suddenly hit, hit (indicating). Suddenly hit—stop. No warning, no indication, nothing.

Q I want to know about your vehicle. When you hit the brakes, did your vehicle stop right away or did it continue to skid?

A No skid, right on the spot hit. Suddenly stop and hit.

Q I'm talking about your vehicle. Did you apply your brakes before the impact?

A Suddenly—suddenly hit, suddenly stop.

Q So you did not apply your brakes?

A Yes, I apply my brakes but no skid, nothing. No skid.

Q And when you applied your brakes, did your car stop right away?

A Yes, it was a brand new car, 2013 Honda Pilot. But it still hit the vehicle in front of you?

A He suddenly stopped, suddenly stop, no warning.

Q Okay. You testified earlier, that police arrived at the scene of the accident; correct?

A Not over there.

Q At some point, police arrived that day; correct?

A Yes, one-and-a-half hours later.

Okay, but you were present and you spoke to the police?

A Yes.

Q And you told them what happened?

A That's not the same location patrol officer. He told me, he's an outside officer, outside state somewhere, some place.

Q Did you tell the police officer how the accident happened?

A Yes, I told him. He didn't listen. He looked at it.

Q Did you mention anything to the police officer about your allegation that the other driver left the scene at some point?

A Yes.

Q You told him?

A I told him.

Q Really. So do you know, were there any tickets issued at the scene of the accident?

A Nobody got a ticket.

Q And the other driver wasn't arrested for leaving the scene of the accident; correct?

A No, nothing.

Q And you saw the police report that nobody was arrested for leaving the scene of the accident or for any reason; correct?

A No. The police, he explained it. He didn't ask for detail, nothing. He said in the beginning, the police officer said, "I'm not at this location. Give me your license, your registration and the insurance". He collected it and he said, "stay in the car". I told

him that I had a passenger in my car also, I told him. And he didn't listen or anything and he left the scene in his car.

Q But no ticket was issued?

A No ticket was issued. He didn't give a ticket to anyone.

Q And you admit you hit the vehicle in the rear; correct?

A He stopped—

Q You admit you struck the other vehicle in the rear; is that correct?

A There was a hit and there was a run—

MR. WADE: Move to strike as nonresponsive.

Q Your vehicle—the front of your vehicle came in contact with the rear of the other vehicle; correct?

A Suddenly he stopped and hit. Suddenly, no warning, nothing. Suddenly stopped and hit.

THE COURT: Just answer his question, please.

MR. GOUNDER: Yes.

Q The front of your vehicle came in contact with the rear of my client's vehicle?

A Yes.

MR. WADE: Thanks, that's all I have.

THE COURT: All right, do you have anything else, just on the issue of the liability?

MR. GOUNDER: Yes, your Honor.

THE COURT: Who's at fault?

MR. GOUNDER: Yes.

THE COURT: Do you have other testimony you want to bring forward? Do you have any other witnesses?

MR. GOUNDER: No.

THE COURT: Do you have the passenger here?

MR. GOUNDER: The passenger, no witness here, at the present time, your Honor.

THE COURT: The police accident report indicates that nobody was injured; right?

MR. GOUNDER: Yes, your Honor.

THE COURT: All right.

So you rest then?

MR. GOUNDER: Your Honor?

THE COURT: You rest? Are you finished?

MR. GOUNDER: Yes, as to what happened, I explained to you, your Honor.

THE COURT: okay, all right.
I'm listening.

MR. WADE: At this time, I just move for a directed verdict, based on plaintiff's own testimony and the fact that he admits to the rear-end collision, based on case law, that the claims against my client should be dismissed.

THE COURT: All right.

MR. WADE: And I would just like to point out, he does admit to traveling two car lengths behind my vehicle when it's raining, going 45 miles an hour.

MR. GOUNDER: Your Honor?

THE COURT: Yeah, I'm listening.
Do you want to talk about that?

MR. GOUNDER: State law, when there is an accident you are supposed to exchange license on the spot, license and registration. He said he would give it to me, he left the scene, he ran away. He took off. He took off.

THE COURT: All right, well, the police obviously didn't find that to be the case because they would have arrested someone for leaving the scene of an accident and that didn't happen.

Under the Vehicle and Traffic Law Section 1129—

MR. GOUNDER: Your Honor, this accident happened on LIE and Grand Central Parkway, by 73rd Street and the LIE, but not that place because I was almost three miles from the accident.

THE COURT: Well, you told me it happened at Grand central Parkway.

MR. GOUNDER: Yes, your Honor.

THE COURT: And the police report says it happened at 73rd Street.

MR. GOUNDER: No, two and a half miles distance. That's the place where we got in front and he ran away.

THE COURT: Well, under the Vehicle and Traffic Law 1129 (Reading): The 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.

And there's a presumption under the law that if someone else hits someone else in the rear is liable, although it's a rebuttable presumption, meaning that you can present testimony to show that the other vehicle acted improperly.

So it's your claim that he acted improperly by just, all of a sudden, stopping when there was nobody in front of him?

MR. GOUNDER: Yes, your Honor, suddenly stopped.

THE COURT: All right, I'll reserve decision on that.

Do you want to present any evidence, counsel for the defendant?

MR. WADE: Yes, your Honor, I have my client, the operator of the vehicle, Argante Grippa, who is here to testify.

THE COURT: okay.

Step up, please, to the witness stand, sir.

COURT OFFICER: Please remain standing and raise your right hand.

A R G A N T E R. G R I P P A, called as a witness on behalf of the defendant, after having been first duly sworn, took the witness stand and testified as follows:

COURT OFFICER: Please be seated and, please, state your name and address for the court record.

THE WITNESS: My name is Argante, A R G A N T E, Grippa, G R I P P A.

My home address is 10 Fireplace Drive, Kings Park, New York 11754.

THE COURT: Counsel, please proceed.

MR. WADE: Thank you.

DIRECT EXAMINATION

BY MR. WADE:

Q Good afternoon, Mr. Grippo.

A Good afternoon.

Q Do you recall an accident that occurred on March 17th of 2015 that we're here for today?

A Yes, sir.

Q What time of day did that accident occur?

A 5:15.

Q And where did the accident take place?

A On the Long Island Expressway.

Q Do you know in which compass direction you were traveling?

A Traveling westbound, towards Manhattan.

Q And for how long a period of time were you traveling on the Long Island Expressway that morning, before the accident happened?

A Roughly, 45 minutes.

Q Which lane were you traveling in, at the time of the accident?

A The left lane.

Q How long a period of time were you in the left lane, before this accident occurred?

A Twenty or thirty minutes.

Q Excuse me?

A Twenty or thirty minutes.

Q At the time of the accident, was your vehicle moving, was it stopping, was it stopped or something else?

A I was following the flow of traffic and, as the traffic was slowing down, I slowed down, when I was rear-ended.

Q Sorry?

A When I was rear-ended.

Q So, was your vehicle slowing, at the time of the accident?

A Yes, there were vehicles ahead.

Q And for what reason were you slowing your vehicle, at the time of this impact?

A I was following the flow of traffic.

Q Excuse me?

A Following the flow of traffic.

Q Were there vehicles ahead of your vehicle in the same left lane, at the same time?

A Yes, there were.

Q How far ahead of you was the next vehicle?

A About four or five car lengths.

Q And prior to you feeling the impact, did that vehicle ahead of you begin slowing?

A Beg your pardon?

Q Prior to this impact occurring, did the vehicle ahead of you begin slowing?

A Yes, that's why I started to slow down.

Q How would you describe the way in which you applied your brakes?

A Gently.

Q From what portion of your vehicle did you feel the impact?

A The back.

Q The rear bumper?

A Yes, sir.

Q And what did you do after that happened?

A I stopped the car because, when I was hit, I was not at a complete stop, I was just slowing down. I stopped the car, got out of the car, walked around the back and this gentleman came out and I asked him if he was okay and he said, "yes, I'm fine".

And I looked at my car—I drive an older car, it's a '99, with a couple of hundred thousand miles on it, about 200,000 miles, and saw what appeared to be a dent—I mean, it was a dent. I saw a dent and it didn't look like it was badly damaged. And I looked at him and I was a little—I was annoyed, no question about it, I was annoyed, but I said, "don't worry about it. It's a '99, 200,000 miles, don't worry

about it" and he said "thank you". We got in our cars and we went our separate ways.

As I'm driving up the road, it was like, um, you know, just like no good deed goes unpunished.

I get in the car and I noticed my car is running roughly and I thought to myself, geez, you know, I wish I would have asked for a police report because now, you know, you let him off the hook you said, "you know, go ahead, forget about it, no problem", end of story.

As I'm driving up the road, he pulls up next to me and he said that his passenger had a neck injury and she wanted a police report and I was more than happy to pull over at this time because what I originally thought was a dent was significant damage. When it happened was his vehicle hit my muffler and that's what caused—it was running very roughly and it caused the car to—it seemed like it wanted to stall out as I was driving. I didn't know if I would even be able to drive the rest of the way to work.

Anyway, I was more than happy to pull over and file a police report. And we pulled over at the nearest exit and called for a—

Q So you pulled over at the next exit and police finally arrived; correct?

A Yes, because we were in the left lane of the LIE.

Q And when police arrived, did you speak to the police officer?

A Yes.

Q Did you tell the police officer how the accident happened?

A Yes.

Q And, at the time of the accident, what was the weather like?

A It was raining. It wasn't pouring and it was a little bit more than a drizzle. It was raining.

Q Did you have your windshield wipers on?

A Yes.

Q Did you have your headlights on?

A Yes.

Q Where were you going to, at the time of the accident?

A Work.

Q Where did you work?

A At New York University Medical Center.

Q And what do you do there?

A I'm an anesthetist.

MR. WADE: Thank you, that's all I have.

THE COURT: All right, do you want to ask him any questions?

MR. GOUNDER: Yes.

CROSS-EXAMINATION

BY MR. GOUNDER:

Q When you stopped—suddenly stopped, my car hit your car on the spot and I came to you, I asked you, you didn't come out—

MR. WADE: Objection to the form of the question.

THE COURT: I'm going to give him a little leeway on that, counselor.

Q I asked you to come out, what did you say? You said, "what did you do"? The first time I came to you, that's correct?

A No, that's a lie. Everything you've said here today is a lie.

Q After you came out, I asked you, "why you stopped suddenly", I asked you. You didn't answer me. You did not answer me. And "look at my car", I ask you, "what damages" and you look at it. "Give me your license and registration", I ask you. You said you're going to give it to me; is that correct?

A No, that's not correct, not at all correct. In fact, you were very appreciative of the fact that I let you off the hook by telling you "don't worry about it" and you said "thank you very much".

Q You went to your car and I went to my car to get my registration and my license, in the meantime, you took off and I chased you and I asked you to "pull over, pull over", and what did you say, you looked at me; is that correct?

A No, that's also incorrect. You rolled down your window and you asked me to pull over because your passenger wanted to file a complaint because she had a neck injury and you were very disgruntled about that.

Q I spoke to you, sir?

A That's correct, you did speak to me, yes, sir.

Q "Pull over, pull over", I said. You didn't.

A That is incorrect.

MR. WADE: Objection

Q Still you kept going?

A That's incorrect. I was more than happy to pull over, at that time.

Q When you pulled over on the right side toward the line, I got out of the car and I said "call the police and I also will call the police". And the police, they didn't come out, the fire service came out.

And at that time I also asked you, what did I ask you, "give me your license and registration", still you didn't give it to me.

A You know what you kept asking me all day, and it struck me kind of odd and it rings kind of true now, "do you have insurance". The one question he kept asking me, I would say three or four times, "do you have insurance, do you have insurance, do you have insurance", and I thought to myself, what kind of stupid question is this. You hit me in the back, "do you have insurance". Any-

how, that's pretty much the only question you really asked.

Q But you did not come to ask my passenger to see if she's all right?

A Yes, I did. I asked you how you were and I asked her how she was.

Q You didn't speak to her, not at the time of the accident. You didn't speak to my passenger. You didn't come to my car.

A Yes, I did. I came out to the back of the car to evaluate the damage.

Q I told you, "look at my car"?

MR. WADE: Objection, your Honor, this is all after the accident, at this point.

THE COURT: All right, okay, let's just talk about the accident itself.

THE WITNESS: Yes, sir.

THE COURT: All right, let's just have questions from this gentleman of what happened, at the time of the collision.

Q And the police came, the police came after one-and-a-half hours, and not the same location. He collected my insurance and he gave me a—

MR. WADE: Objection, your Honor, again, he's asking after the accident.

THE COURT: Sustained.

Do you have questions about the accident itself, the actual collision?

Q And I asked on the spot, "why you stop" and you didn't answer me. And I asked if you were drunk. I asked if you have problems with your family, I ask you and you didn't answer me.

MR. WADE: Objection to the form of the question.

MR. GOUNDER: Your Honor, that's what happened on the spot. I explain that, your Honor, that's actually what happened. He suddenly stopped.

THE COURT: All right. If you have no more questions.

Do you have any redirect?

MR. WADE: No, I have nothing further.

THE COURT: Okay, all right.

Thank you, sir. You may sit back down with your counsel.

THE WITNESS: Yes, sir.

(Whereupon, the witness was excused from the witness stand, at this time.)

THE COURT: Do you have anything else, counsel?

MR. WADE: That's my only witness, your Honor.

THE COURT: That's fine.

Do both sides rest then on the issue of liability?

MR. GOUNDER: Yes.

MR. WADE: Yes, your Honor,

THE COURT: Okay.

Do you want to make a closing statement?

MR. GOUNDER: Your Honor, suddenly he stopped.
And he go left side, right side. Hit my front.

After that, that night, I had chest pains—

MR. WADE: Objection, there's no evidence of any
injuries. We're only talking about liability.

MR. GOUNDER: The next day—

THE COURT: All right. Apparently, you don't want
to listen me when I tell you that I only want to hear
about the collision itself now and I don't want to
hear about damages.

MR. GOUNDER: Okay.

THE COURT: If we get to that, we'll get to that.

MR. GOUNDER: Yeah.

THE COURT: So you indicated that you were trav-
eling 45 miles an hour in the left-hand lane?

MR. GOUNDER: Approximately, going 45 miles an
hour.

THE COURT: And you were two car lengths
behind?

MR. GOUNDER: More than two car lengths.

THE COURT: And you have been a taxi driver for—
since 1971 and you feel that was sufficient distance
for you to stop, two car lengths at 45 miles an hour?

MR. GOUNDER: More than two car lengths, your
Honor.

THE COURT: Well, you said two car lengths was
your testimony?

MR. GOUNDER: Yes.

THE COURT: And that was enough—

MR. GOUNDER: Your Honor, I cannot measure it. I said more than two car distance.

THE COURT: So now it's more than two car lengths?

MR. GOUNDER: Yes, your Honor. I cannot measure it, your Honor. Distance is too far, distance, your Honor.

THE COURT: Okay.

Do you want to be heard in closing argument, counsel?

MR. WADE: Your Honor, the facts are clear, the weather was raining, the plaintiff was driving two car lengths behind my client's vehicle, traveling 45 miles an hour, when he was unable to stop his vehicle.

At this time, I would just renew my application for liability dismissing plaintiff's complaint against my client, based upon this rear-end collision.

THE COURT: All right, that motion is granted under the case of Lundy versus Llatin, L L A T I N, it's spelled, and Lundy is L U N D Y, and that was decided by the Appellate Division, Second Department.

They indicate: (Reading) The defendants' bare claim that the plaintiffs' vehicle abruptly slowed down or stopped, without more, under the circumstances, was insufficient to raise a triable issue of fact as to whether the plaintiff driver was negligent, and, if so, whether such negligence was a proximate cause of the accident.

All this is an appeal of a denial of a summary judgment motion. I find that it's a compelling authority and, based on that, I don't think the plaintiff has sustained the burden of overcoming the presumption of negligence on his part and find in favor of the defendant.

Judgment for defendant.

Thank you.

Here are your papers back.

(Handing to the parties.)

MR. WADE: Thank you, your Honor.

THE COURT: Okay, we're done.

Thank you.

MR. GOUNDER: Your Honor, when is the second part?

THE COURT: Pardon? There is no second part. I found that they're not liable. It was your fault, simple as that.

MR. GOUNDER: Your Honor—

THE COURT: There's a presumption under the law, you didn't overcome the presumption under the law, that's the evidence. We're not getting to the damages cause there's no liability; all right.

You have a right to appeal. You could talk to a lawyer about appealing the case and that's it.

Okay, thank you.

MR. WADE: Thank you, again, your Honor.

MR. GOUNDER: Thank you.

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(Whereupon, the parties left the courtroom, at this time.)

* * * * *

CERTIFIED TO BE A TRUE AND ACCURATE TRANSCRIPT OF THE ORIGINAL STENOGRAPHIC MINUTES TAKEN OF THIS PROCEEDING.

/s/ SHARON COHEN
SHARON COHEN
Official Court Reporter