

**IN THE SOUTH GAUTENG HIGH COURT  
JOHANNESBURG**

**CASE NO: 31278/07**

**In the matter between:**

**GOVER JUNE ALISON**

**PLAINTIFF**

**and**

**ROAD ACCIDENT FUND**

**DEFENDANT**

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**JUDGMENT**

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**SALDULKER J:**

**A. INTRODUCTION**

[1] The plaintiff has instituted an action against the defendant for damages suffered as a result of personal injuries sustained in a motor vehicle collision

on 16 November 2006, at the intersection of Verona and Main Streets, Rosettenville, Johannesburg.

[2] The collision occurred between motor vehicle registration number NDR 147 GP driven by the insured driver, E. H. Ngwu and a motor vehicle registration number JPP728 GP driven by the plaintiff.

[3] At the commencement of the trial the question of liability and quantum were separated in terms of Rule 33(4) and the matter proceeded only on the question of liability.

## **B. EVIDENCE**

[4] The plaintiff testified that on the morning of 16 November 2006, at approximately 10h30, she was travelling from west to east along Verona Street, Rosettenville. Verona Street is a flat, straight road with two lanes and forms an intersection at right angles with Main Street, which runs from north to south.

[5] The plaintiff was familiar with the intersection as she travelled through it approximately 2 to 3 times per month. The intersection is controlled by traffic lights and is busy depending on the time of day. A chemist which is situated on the north-western corner of the intersection, obscures the vision of the eastbound driver in Verona Street, of the vehicles approaching from the northern side in Main Street.

[6] On her approach to the intersection, the chemist was on her left side. She entered the intersection at approximately 60km/ph, with the traffic lights

green in her favour. There were no cars travelling immediately in front of or behind her. When she was almost in the middle of the intersection, her daughter who was a passenger in the vehicle, shouted: "*This car is not going to stop*".

[7] The next moment, the insured driver, travelling in a maroon Fiat Uno collided with the left side of her vehicle, at the centre of the front and rear passenger doors. She was unable to avoid the collision and her vehicle spun and ended up facing east to west on the other side of the road. When the ambulance arrived, she was fitted with a neck brace and removed from the scene of the collision.

[8] Under cross- examination she stated that there was no time to apply brakes and had she done so, the collision would probably still have happened. She would also not have been able to accelerate fast enough through the intersection to avoid the collision as she drove a 1300 sedan vehicle which did not possess the capacity of rapid acceleration. When asked whether she could have swerved to avoid the collision, she replied that she could not do so due to the presence of pedestrians on the side of the road.

[9] She testified that the insured driver did not hoot nor did she see him prior to the collision. When her daughter 'shouted' at her the insured driver was travelling at more than 60km/ph. She did not expect the insured driver to travel through the intersection with the robot against him. She had no time to react.

[10] On being questioned by the court the plaintiff conceded that she should have seen the vehicle of the insured driver but did not. She was looking in the front as she travelled. However, she stated that because of the obstruction

posed by the chemist on her left, in Main Street, which extended approximately 1.5m to 2m from the corner of the roadway, she would not have seen the insured driver on her approach at any time prior to her field of vision becoming clear of such obstruction.

[11] The defendant closed its case without calling any witnesses.

### **C. THE LAW**

[12] The case of *Diale v Commercial Union Assurance CO of SA Ltd*<sup>1</sup> was concerned with a vehicle which suddenly appeared from behind an impenetrable screen (a hedge in that case, a chemist in casu) creating a source of danger. It was held that it would have been a different matter if that vehicle was visible and under observation for some time and thereafter executed a dangerous manoeuvre. The facts were as follows:

*“On the north-eastern corner of the intersection there was ... a fairly tall, opaque garden hedge. From the point of view of a motorist approaching the intersection along Tana Road this hedge had the effect of limiting his view of traffic approaching the intersection along 5<sup>th</sup> Avenue from the north, i.e. from the motorist’s right, in that traffic was not visible while it was behind the hedge. The degree of limitation naturally decreased as the motorists neared the intersection – and the angle of vision changed – and, of course, at a certain point, near the commencement of the intersection, the hedge ceased altogether to obstruct his view.”*<sup>2</sup>

And at G to H:

*“Harmsen’s own account of what happened is, shortly, to the effect that he approached the intersection at a speed of 35-40 miles p.h. He was looking*

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<sup>1</sup> 1975(4) SA 572 (A)

<sup>2</sup> *Diale*, p575, lines A-to B

*ahead of him. At or near the intersection he saw a flash on his right hand side. He applied his brakes and swerved slightly to his left. There was an impact with his motor vehicle, in the region of the right hand headlight, and something, later identified as the plaintiff, was thrown over the bonnet of his vehicle against the windscreen, which shattered on impact. The impact and the commencement of braking took place virtually simultaneously.”*<sup>3</sup>

[13] Corbett JA stated “ *In the present case the reasonable motorist in Harmsen’s position would have required a substantial period of time to identify the object appearing from behind the hedge, to assess its speed, direction of travel and apparent intention and to realise that it presented a source of danger.*” <sup>4</sup>

[14] It was further held in *Diale* that the motorist was not under a duty to keep the cross street under the same careful observation as he would have been obliged to do had it not been a stop street, and that there was no compelling reason why the motorist should have looked to the right before looking to the left, ‘*and that , after the cyclist had emerged from the hedge, the motorist would have required a substantial period of time for assessing the position and reacting to it*’. In these circumstances, it was held that it was very doubtful whether the plaintiff had established that there had been a delay on the motorist’s part, in observing the cyclist and taking evasive action, sufficiently substantial to amount to negligence.

[15] Furthermore, Corbett JA, stated that assuming in the plaintiff’s favour that there had been a culpable delay on the motorist’s part, the plaintiff had failed to establish that this had been causally connected with the collision in the sense that, had the motorist reacted when a reasonable man would have reacted , the collision would probably not have occurred.

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<sup>3</sup> *Diale*,p575

<sup>4</sup> *Diale*,p578,lines A to B

[16] Similarly in *National Employers' General Insurance Co Ltd v Sullivan*<sup>5</sup>, a through street driver's vision of a cross street was obscured by a fence. It was also held that *"the driver in a through street, while being required to keep a general lookout, is entitled to assume, in the absence of indicators to the contrary, that a driver approaching from a stop street will heed the stop sign operating against him and bring his vehicle to a stop. It is only when it would become apparent to a reasonable man in the position of the driver in the through street that the driver in the stop street does not intend to stop, or will not be able to stop, that the duty rests on the through street driver to take appropriate avoiding action. Until that stage is reached, it is not incumbent upon him, under normal conditions, to regulate his driving on the assumption that the driver in the stop street may not stop."*<sup>6</sup>

And at p 36 H – I:

*"It is also when it became apparent to him that the Capri was not going to stop - and there is nothing to suggest that his appreciation of this fact was unreasonably delayed – that the duty arose on his part to take avoiding action. It has not been shown that by then, allowing for reaction time, the distances the vehicles were apart and their respective speeds, there was anything he could do either to avoid collision or materially reduce the effect thereof."*<sup>7</sup>

[17] In both *Diale* and *Sullivan* no contributory negligence was found on the part of the driver who had the right of way.

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<sup>5</sup> 1988(1)SA 27

<sup>6</sup> Sullivan, Hefer JA, p 36, D-F

<sup>7</sup> Sullivan, p 36, H-I

#### **D. ASSESSMENT OF EVIDENCE**

[18] The plaintiff approached and entered the intersection with the traffic lights in her favour. Her view to the left, being the direction from where the insured driver came, was obscured by a chemist which extended almost to the corner, on the north-western side of the intersection.

[19] The plaintiff's evidence was not challenged and no rebutting evidence was presented. She withstood the rigours of cross-examination and testified candidly and clearly. As a witness she was reliable, credible and trustworthy. She was travelling through a robot controlled intersection, travelling with the robot in her favour when the collision occurred.

[20] On approaching the intersection, the plaintiff was reasonably entitled to expect that the insured vehicle approaching from Main street, although not yet visible to her, because of the chemist which obscured her vision, will heed the red traffic light operating against him and bring his vehicle to a stop.

[21] Additionally, the insured vehicle would not have been visible to the plaintiff until she was very close to the commencement of the intersection. As was stated in *Sullivan*<sup>8</sup>, by Hefer JA :

*“ The driver in a through street, while being required to keep a general look-out, is entitled to assume, in the absence of indications to the contrary, that a driver approaching from a stop street will heed the stop sign operating against him and bring his vehicle to a stop. It is only when it would become apparent to a reasonable man in the position of the driver in the through street that the driver in the stop street does not intend to stop, or will be unable to stop in time, that the duty rests on the through street driver to take appropriate*

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<sup>8</sup> 1988 (1) SA 27, at p36,D-E

*avoiding action. Until that stage is reached it is not incumbent upon him, under normal conditions, to regulate his driving on the assumption that the driver in the stop street may not stop.”*

[22] Furthermore, the plaintiff's evidence that she did not see the insured vehicle before the impact, is of no consequence. The question is, when would the reasonable man in the plaintiff's position realise that the insured vehicle intended not to heed the traffic lights and take steps to avoid the collision. Making allowance for reaction time, the distances of the vehicles and their respective speeds, in these circumstances, no culpable delay can be attributed to the plaintiff. There was no time to avoid the collision.

[23] Even if such a delay is assumed, it must be established that had the plaintiff observed the insured vehicle prior to the collision, she would have been able to take avoiding action. The plaintiff was travelling at approximately 60km/ph and could not come to a complete standstill in the middle of the intersection. The plaintiff also could not accelerate in such a short space of time and distance, to a speed which would allow her to clear her entire vehicle of the intersection thereby avoiding the collision. In any event, no such evidence was presented by the defendant. The probabilities, thus favour the plaintiff.

[24] Furthermore swerving to the right was not an option for the plaintiff, as there were people standing at the corners of the road. In any event, this can hardly be considered as evasive action since the plaintiff would have swerved in the same direction in which the insured driver was travelling.

[25] The uncontested evidence is that the insured driver drove at a high speed through a red traffic light, thus establishing his negligence. The high speed at which the insured driver travelled reduced the time for the reasonable man in the plaintiff's position to react.



[26] In my view the reasonable driver in the plaintiff's position would have required, as in the *Diale's* case with Harmsen, a substantial period of time to identify the object appearing from behind the chemist, assess its speed, its direction of travel and apparent intention and thereafter realise that it presented a source of danger.

[27] Every driver is under a duty to keep a proper lookout in relation to controlled intersections. It is clearly not required of a driver approaching a green traffic light to assume that other drivers will not stop at the corresponding red light, thereby crossing its path of travel, and to direct his/her actions in accordance with that assumption. Only when it becomes apparent to the reasonable driver that a vehicle is going to run through the red traffic light does the duty arise to take avoiding action. The uncontested evidence in the present case establishes that, that point in time arrived rather late as the reasonable driver in the plaintiff's position would not have seen the insured vehicle until she was near or at the intersection by virtue of the chemist obscuring her vision in that direction.

#### **E. CONCLUSION**

[28] In view of all the foregoing, the defendant has failed to establish causal negligence on the part of the plaintiff. It has not been established that the plaintiff's failure to see the insured driver or a delay on the part of the plaintiff in observing the insured driver and taking evasive action, was sufficiently substantial to amount to negligence on the plaintiff's part. In these circumstances the defendant has failed to establish that as a reasonable driver, the plaintiff could have avoided the collision or materially reduce the effect thereof. There is no contributory negligence on the part of the plaintiff.

[29] The plaintiff has succeeded in proving on a balance of probabilities that the injuries that she sustained in the motor vehicle collision was caused as a result of the negligence of the insured driver.

**F. ORDER**

[30] In the result, I make the following order:

30.1 The question of liability and quantum are separated in terms of Rule33 (4) of the Uniform Rules of Court

30.2 The determination of quantum is postponed sine die.

30.3 The motor vehicle collision on the 16 November 2006 was caused entirely through the negligence of the insured driver.

30.4 The Defendant is ordered to pay to the plaintiff, 100% of her agreed or proven damages suffered as a result of personal injuries sustained in the motor vehicle collision on the 16 November 2006.

30.5 The Defendant is ordered to pay the Plaintiff's costs in respect of the determination of the question of liability.

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**H.K. SALDULKER**  
**JUDGE OF THE HIGH COURT**

**Plaintiff's Attorney: Munro Flowers & Vermaak**

**Plaintiff's Counsel : Adv Horn**

**Defendant's Attorney : Routledge Modise**

**Defendant's Counsel: Adv Ramapadi**

**Date of Hearing: 10 June 2009**

**Date of Judgment: 11 August 2009**