


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 42104/2015

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
22/02/2019	
DATE	SIGNATURE

DOUMAN EDGAR ELISHA

Plaintiff

And

ROAD ACCIDENT FUND

Defendant

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JUDGMENT

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BESTER AJ

- [1] The plaintiff sued the defendant for medical expenses, loss of earnings and general damages, which he contends he suffered as a result of a collision between two motor vehicles, one of which was driven by him, on 10 July 2013. At the request of the parties, at the commencement of proceedings, I directed

that the issues of liability and quantum be dealt with separately in terms of Uniform Rule 33(4). The parties had agreed, at a pre-trial conference, that the only remaining disputed aspect of liability is whether the plaintiff negligently contributed to the collision.

- [2] The plaintiff's evidence was facilitated by an aerial photograph of the intersection which, the parties agreed, depicted the intersection as at the time of the collision, even though it is a recent printout from Google Maps.
- [3] At about 07:15 on the morning of 10 July 2013, the plaintiff was driving on William Nicol Drive in Constantia Kloof, Roodepoort, towards the intersection with Constantia Drive to the left and Joseph Lister Street to the right. The intersection is controlled by traffic lights.
- [4] William Nicol Drive allows for two lanes of traffic in each direction, separated by an island. The traffic in Constantia Drive and Joseph Lister Street are also divided by islands.
- [5] The plaintiff testified that he travelled in the middle lane at the time that he entered the intersection. That lane, and the lane to his left, allowed for traffic to continue straight across the intersection; the lane to his right was a dedicated right turn lane. He testified that William Nicol Drive, from his direction of travel, curved to the right to reach the intersection. As soon as he

had come around the bend, he noticed that the traffic light was green in his favour, and that a Peugeot sports utility vehicle, or SUV, (the insured vehicle) had entered the intersection, although not into his line of travel. There were no cars in front of the Opel Corsa driven by the plaintiff, save for two vehicles that had already crossed the intersection. Upon noticing the SUV, he reduced speed from between 55km to 60km an hour to approximately 45km an hour.

[6] He then noticed that the SUV came to a complete standstill in the intersection, just outside of his line of travel, upon which he accelerated, so that, in his estimate, he was again travelling at approximately 55km an hour when he entered the intersection. Upon him entering the intersection, the SUV attempted to cross into Constantia Drive, thus moving into his line of travel. He testified that this happened when he was approximately 3 meters away from the SUV, and that he had no opportunity to take any effective evasive action.

[7] In cross-examination, the plaintiff was challenged as to the reasonableness of his actions. It was put to him that he ought not to have sped up again once the SUV had come to a stop. His response was that he did so when that vehicle came to a complete standstill, because it was not in his line of travel, and he assumed that the vehicle would wait for him to pass. He knew there was a turning arrow, which would allow the insured vehicle to cross once the traffic

light turned red against vehicles travelling in the same direction as he (the plaintiff) did. When challenged that he should have anticipated that the other vehicle intended to turn, because that was clearly the intention, he was steadfast that the other vehicle came to a stop and seemed to be waiting for an opportune moment to cross; as a result, he felt that he was entitled to proceed.

[8] Mr Van Tonder, for the plaintiff, pointed out that at 55km an hour, a vehicle would travel approximately 15.3 metres per second. Thus, at a distance of about 3 metres a driver has but a split second to take evasive action. Mr Snojman, who appeared for the defendant, remained insistent that the plaintiff could have taken evasive action, but was unable to identify any facts in evidence from which he could draw this conclusion.

[9] The plaintiff conceded that his vehicle was written off as uneconomical to repair. However, he was unable to comment on the damages to the other vehicle. He testified that pedestrians pulled him out of his vehicle and that he did not have a proper look at the SUV. No evidence regarding the extent of or the location of damages on the two vehicles was led. Mr Snojman suggested that the SUV's damages was mostly to the left side, but the plaintiff was unable to respond to this aspect.



- [10] On the accident report, which was introduced in evidence, the collision is reflected as being head-on. When asked about this, the plaintiff testified that this was how the police officer who assisted him completed the form pursuant to his explanation, but that this was not correct. From the plaintiff's evidence, and Mr Snojman's cross-examination regarding the damages to the SUV, it seems common cause that the recordal of a head-on collision in the accident report form is simply wrong.
- [11] The defendant did not call any witnesses.
- [12] Mr Van Tonder argued that the plaintiff did not contribute to the collision through his own negligence. Mr Snojman on the other hand argued that the plaintiff, in the circumstances, could and should have taken evasive action, and even before that, he ought not to have accelerated back to 55 km an hour in anticipation of crossing the intersection.
- [13] The legal principles regarding a driver's duties to keep a proper lookout at traffic light-controlled intersections and a driver's duties when executing a turn to the right, that is, across traffic, have conveniently been set out in *Jacobs v Road Accident Fund*:<sup>1</sup>

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<sup>1</sup> JDR 0890 (GNP).

- a) Priority of right of way does not confirm an absolute right of way on a driver,<sup>2</sup> but a driver who enters a crossing when the traffic lights are green in his favour owes no duty to traffic otherwise entering the crossing.<sup>3</sup>
- b) The driver, travelling straight, should use ordinary care when becoming aware of the presence of a trespasser in the intersection in attempting to avoid the collision, but he is not required to look out for traffic which might possibly enter the intersection unlawfully from either side.<sup>4</sup>
- c) Turning across the path of oncoming or following traffic is an inherently dangerous manoeuvre and a driver who intends executing such a manoeuvre bears a stringent duty to do so after satisfying herself that it is indeed safe, thus by choosing the opportune moment to cross.<sup>5</sup>
- d) The turning driver should only turn once she is satisfied that there is room enough between her motor vehicle and any approaching vehicles to allow her to complete the manoeuvre safely.<sup>6</sup>

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<sup>2</sup> *S v Desi* 1969 (4) SA 23 (T).

<sup>3</sup> *Jacobs supra* in [11].

<sup>4</sup> *Serfontein v Smith* 1941 WLD 195; *S v Desi supra*.

<sup>5</sup> *AA Mutual Insurance Association Limited v Moneka* 1976 (3) SA 45 (A) at 52 E.

<sup>6</sup> *R v Court* 1945 TPD 133 at 134.

- e) A driver travelling straight is entitled to assume that other drivers will not suddenly and inopportunistically turn across the line of traffic, and he may hold this assumption until it is shown that there is a clear intention to the contrary.<sup>7</sup>
- f) A driver who sees another driver signalling her intention to turn right is entitled to assume that that driver will only execute her turn at a safe and opportune moment; he is not obliged to guard against the unreasonable and negligent actions of a driver who signals her intention to turn to the right.<sup>8</sup>
- g) Overall, a driver is entitled to expect reasonableness rather than unreasonableness, and legality rather than illegality, from other users of the road.<sup>9</sup> A driver thus is only required to take precautions against reasonably foreseeable contingencies and not the reckless driving of other motorists.<sup>10</sup>
- h) Of course, a motorist may not simply proceed through an intersection to the disregard the possibility of other traffic entering the intersection, and

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<sup>7</sup> See *Van Staden v Stocks* 1936 AD 18.

<sup>8</sup> *Sierborger v South African Railways & Harbours* 1961 (1) SA 498 (AD) at 504 – 505.

<sup>9</sup> *Moore v Minister of Posts & Telegraphs* 1949 (1) SA 815 (AD) at 826.

<sup>10</sup> *Rondalia Versekeringskorporasie van SA Bpk v De Beer* 1976 (4) SA 707 (AD) at 711.

should anticipate that traffic will move across his path in defiance of a traffic light, unless there is some indication otherwise.<sup>11</sup>

[14] According to the plaintiff's evidence, the SUV had entered the intersection, evidently so that it would be in the line of travel of vehicles travelling across William Nicol, but for whom at the time the traffic light was red. Whilst still approaching the intersection, the plaintiff observed the SUV moving forward, and slowed down in anticipation of it potentially crossing his path. However, he then observed that the vehicle came to a standstill in the intersection outside of his line of travel, that is, at a position where there was no danger of a collision if he were to continue travelling in his lane across the intersection.

[15] The plaintiff explained that, at the last moment, the SUV attempted to cross the road, across his line of travel. Why this happened, remains unexplained. The defendant disclosed that it had in fact consulted with the insured driver, but for an undisclosed reason she was not available to testify, and the defendant did not seek an opportunity to present any evidence regarding the collision.

[16] In my view, the plaintiff's conclusion, that the insured driver did not intend to risk the danger of crossing over William Nicol in front of the plaintiff's vehicle,

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<sup>11</sup> *Walton v Rondalia Assurance Corp of SA Limited* 1972 (2) SA 777 (DCLD) at 779 G – H.



but that she intended to wait for him to pass and only cross when it was safe to do so, was reasonable.

[17] The further question is whether, once he realised that the vehicle was in fact going to cross before he had passed, the plaintiff could have taken any reasonable steps. On his evidence, the plaintiff had only a split second to react. It cannot be expected of the reasonable person to have the kind of reflexes to avoid a collision in such a short time span.

[18] I find no reason to doubt the evidence of the plaintiff, and although Mr Snojman for the defendant urged me to conclude that the plaintiff's version did not make sense, no specific reasons why I should reject his evidence was advanced. It should further be taken into account that, in circumstances where the defendant alleges that the plaintiff's conduct contributed to the collision, the defendant bears the onus to prove that culpability.<sup>12</sup>

[19] I conclude that the plaintiff did not negligently contribute to the collision.

[20] In the result, I make an order in the following terms:

- a) The defendant is declared liable for 100% of the plaintiff's proven or agreed damages flowing from the motor vehicle collision on 10 July 2013.

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<sup>12</sup> *Beswick v Crews* 1965 (2) SA 690 (A) at 705 E – F.

- b) The defendant shall pay the plaintiff's costs on the scale as between party and party in respect of the issue of liability.
- c) The determination of the quantum of damages is postponed *sine die*.



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**A Bester**  
**Acting Judge of the High Court of South Africa**  
**Gauteng Local Division, Johannesburg**

Heard:	19 February 2019
Judgment:	22 February 2019

For the Plaintiff:	Adv H Van Tonder
Instructed by:	Levin Tatanis Inc

For the Defendant:	Adv C Snojman
Instructed by:	Duduzile Hlebela Attorneys