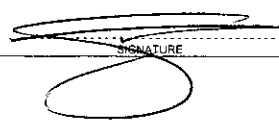


/EVDM

IN THE NORTH GAUTENG HIGH COURT, PRETORIA  
(REPUBLIC OF SOUTH AFRICA)

Case Number: A 746/2010

24/8/2012

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: <del>YES</del> / NO.
(2)	OF INTEREST TO OTHER JUDGES: <del>YES</del> / NO.
(3)	REVISED.
24/8/2012	
DATE	SIGNATURE

In the matter between:

D. J. BOSMAN obo T. M. BOSMAN

1<sup>st</sup> APPELLANT

T. M. OOSTHUIZEN (formally) BOSMAN

2<sup>nd</sup> APPELLANT

and

ROAD ACCIDENT FUND

RESPONDENT

---

JUDGMENT

---

Delivered on: 24 August 2012

POTTERILL J,

1. The appellant is appealing against the order of the Court *a quo* whereby the appellant's action was dismissed and the plaintiff ordered to pay the costs.

- 
2. The appellant argued that the Court *a quo* erred in not finding that the insured driver was 1% negligent thereby entitling the passenger of the motor cycle to claim against the respondent.
  3. It was common cause that on 1 August 2003 at approximately 20:30 at the robot-controlled intersection of Louis Trichardt and Henshall Streets in Nelspruit where there was a collision between a motorcycle and a minibus (taxi) hereinafter referred to as the insured driver. The driver of the motorcycle died on the scene and the appellant (second plaintiff) was a passenger on the motorcycle.
  4. The plaintiff called an eye-witness to the collision, Mr Meiring, [hereinafter referred to as Meiring] an on duty traffic officer. He observed the motorcyclist skipping two red robots whereupon the witness proceeded to pursue the motorcyclist. In this pursuit he switched on his vehicle's blue lights and indicated to the cyclist to stop. The driver of the motorcycle slowed down as if to heed to Meiring's instruction to stop, but then increased speed when the robot turned green. Meiring thereupon also activated his vehicle's siren. At the next intersection the motorcyclist again went through the robot that was red for him. The motorcyclist was by then travelling no less than 130 kilometres per hour. The motorcycle crossed a pedestrian crossing that was 150 metres back from the next intersection where the collision between the insured driver and the motorcyclist took place. At the intersection where the collision occurred the road the motorcyclist and Meiring were travelling in had four lanes. Between the pedestrian traffic and the intersection where

---

the collision took place the motorcyclist in a reckless manner almost drove into the back of a Golf vehicle that was travelling in the middle of that road. A collision with the Golf vehicle was avoided by the motorcyclist swerving to the left. Meiring noticed that the insured driver was stationary at the intersection. The road the insured driver was travelling in had two lanes of traffic in each direction. The insured driver was in the left-hand lane and would have crossed in front of the motorcyclist. The insured driver pulled off when the robot turned green for him and at that stage the motorcyclist was 40 metres from the intersection. When the insured driver had crossed three-quarters into the intersection, the motorcyclist in attempting to skip the red light attempted to pass the insured driver on the left and collided with the left front wheel of the insured driver's vehicle.

5. The appellant also called the passenger of the motorcyclist but she could not recall the accident and her evidence did not take the matter any further.
6. The insured driver, Mr G Z Phiri had in the mean time passed away, but the parties agreed that an affidavit be handed in and the appellant relied heavily on a certain portion of the affidavit as support for their contention that the insured driver was at least 1% negligent. This portion reads as follows:

*"As I entered the intersection, a motorbike which was being chased by a Police vehicle skipped the red robot. I tried to avoid a collision, but unfortunately collided with the motorbike."*

- 
7. The court *a quo* found that the motorcyclist recklessly and against a red light entered the intersection at a speed of 140 kph. The insured driver pulled off when the green light was in his favour. It was found that there was no evidence to indicate that the insured driver noticed the motorcycle or was negligent in any way. The court also found that there was no evidence that there were any exceptional circumstances where more was expected from the insured driver. The reasonable cautious driver would do no more than the insured driver did in the circumstances. The factual findings were substantiated in law with inter alia reference to **Van Wezel v Johannesburg City Council** 1955(4) SA TPD on p164F-H:

*"....The driver must take steps to avoid cars which he could reasonably be expected to see. Failure to see every vehicle suddenly and wrongly emerging from a side street which is a stop street or which is in effect temporarily an absolute stop street because of the red light of a robot, cannot be said to be negligence on the part of the driver on a busy through street in all circumstances."*

8. In a nutshell the appellant's main contention is that the court *a quo* erred in not finding that the insured driver must have seen Meiring's vehicle with the flashing lights and siren and therefore the insured driver should not have entered the intersection rendering the insured driver at least 1% negligent in the causation of the collision. The appellant argued that the traffic officer's vehicle with flashing lights and blaring siren in the dark constituted exceptional circumstances and as such more was expected from the insured driver. The court should have found that the insured driver should

not have entered the intersection under these exceptional circumstances. It was also argued that the only inference to be drawn from the affidavit of the insured driver was that he saw the motorcycle and therefore he should not have entered the intersection. The court *a quo* erred in relying on the Von Wezel-matter *supra* because the merits differ from the matter at hand.

9. The respondent argued that the court was correct in that the plaintiff did not present evidence that the insured driver saw or should have seen the motorcycle. On the facts before the court the motorcycle must have been between the Golf and the insured driver up until the point where it swerved to avoid colliding with the rear of the Golf. The lights and siren of Meiring's vehicle did not prove negligence on the part of the insured driver because these may have been distractions hindering the driver in seeing the motorcycle. Furthermore observing Meiring's vehicle did not imply that the insured driver saw the motorcycle.
10. The case-law pertaining to entering a robot-controlled intersection on green can be summarized as:
  - A motorist entering on green has the duty to lookout for vehicles still in the intersection, but there is no duty on such motorist to look out for motorists entering the intersection illegally;- **Netherlands Insurance Co of SA Ltd v Brummer** 1978[4] SA 824 on 833E-F.
  - "A motorist may assume that even though an approaching vehicle is travelling fast that its driver will observe and obey the red light

---

although this may involve a sudden and violent application of the brakes." - **Van der Walt v Gershater** 1944 TPD 240 on p243.

- Only in exceptional circumstances where it would be obvious to any reasonable person that the conduct of the oncoming vehicle is dangerous and with ordinary care he could have avoided an accident would he then be considered negligent. [**Van der Walt v Gershater** 1944 TPD 240 on p244].

11. This matter thus only centres on whether there were exceptional circumstances that would have alerted the reasonable person that the motorcycle would not obey the red traffic light. The court *a quo* was correct in finding that the plaintiff did not prove that the insured driver did indeed see the motorcycle or was negligent in not heeding the motorcycle. The mere fact that the insured driver stated that he tried to avoid a collision does not infer that he saw the motorcycle before he entered the intersection. It only infers that when he saw a collision with the motorcycle coming he did take evasive action. It must be remembered that the motor cyclist tried to pass the insured driver on the left.

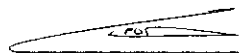
The fact that there was a vehicle with blue flashing lights and a siren does not call for an inference that the insured driver must have seen the motorcycle; it may call for an inference that it should have seen Meiring's vehicle. There was however no evidence that the insured driver saw Meiring's vehicle. There was no evidence from which an inference could be made that had he seen Meiring's vehicle he was negligent in entering the intersection when he did. There was no evidence from which an inference

---

could be made that at the distance Meiring's was from the intersection no reasonable person would have entered the intersection and thereby the accident with the motorcycle would have been circumvented. There is no evidence to suggest that causally the sighting of Meiring's vehicle would have prevented the collision with the motorcycle.

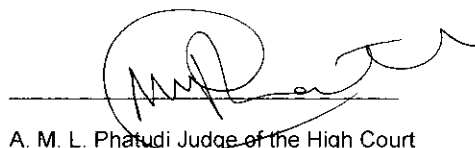
12. I accordingly make the following order:

12.1 The appeal is dismissed with costs.



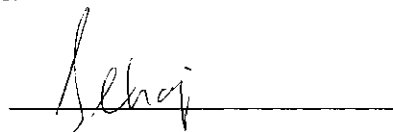
S. Potterill Judge of the High Court

I agree:



A. M. L. Phatudi Judge of the High Court

I agree:



V. V. Tlhapi Judge of the High Court

Matter heard on: 08 August 2012

Delivered on: 25 August 2012

Attorney for the Appellant:

JACQUES VAN WYK ATTORNEYS

Hertzog Street 1121

Pretoria.

Tel: 012 332 5970

(Ref: MNR VAN WYK/wr/JB6A)

Attorney for the Respondent:

MAPONYA INCORPORATED

Pretorius Street 950

Pretoria.

Tel: 012 342 0523

(Ref: MRS B RANGATA/law/BR1680)