
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO 27227/2020

(1) REPORTABLE: **NO**

(2) OF INTEREST TO OTHER JUDGES: **NO**

(3) REVISED: **NO**

(4) Date: 21 August 2023

Signature:

In the matter between:

MARIA MAKGANANE BOHLOLO

Plaintiff

And

ROAD ACCIDENT FUND

Defendant

JUDGMENT

NYATHI J

A. INTRODUCTION

[1] This is an action for damages arising from a motor vehicle collision which occurred on the 06 October 2019 at Lebotloane road in Themba, when a grey Nissan NP200 motor vehicle bearing registration letters and numbers C[...] 2[...] V[...] G[...] there and then driven by the plaintiff and a dark blue Ford Ranger motor vehicle with registration letters and numbers S[...] 9[...] G[...] there and then driven by the insured driver collided.

[2] The plaintiff sustained bodily injuries because of the collision.

B. Plaintiff's version of the events.

[3] At all material times prior to the collision, the plaintiff drove as part of a procession from a cemetery to the family home.

[4] This matter is for determination of the merits only, quantum having been separated therefrom at the inception of the trial. The defendant opposes the action.

[5] The plaintiff Maria Makganane Bohlolo was called as the sole witness for the plaintiff. She is seeking compensation for the accident. She testified under oath that she drove as part of a convoy of cars that were travelling slowly. There were cars in front of her and behind her. The time was about 11h00am.

[6] She had reached an intersection and her intention was to turn in the right direction. She checked her mirror and blind spot mirror, indicated, and took her turn. The next thing she felt was a strong impact on her right. She ended up outside the road. She found herself outside of her car but did not know how.

[7] She saw an ambulance and the other car was at a distance. She was admitted to a hospital called Montana. She had been taken there by way of an ambulance in a stretcher.

[8] The cars that collided with hers had not been following her from the cemetery. She stated that it had been driving at a high speed.

[9] Miss Bohlolo was then cross-examined by Mr. Perumal on behalf of the defendant. A discrepancy on the time of the accident was highlighted since it had been recorded in the accident report and a section 19F affidavit which she

had deposed to, that the accident happened at 10h00am. The plaintiff conceded that she was unsure of the exact time.

[10] She stated that there were more than twenty cars in the convoy.

[11] The plaintiff further conceded that the intersection was a side junction even though she termed the intersection as a T-junction.

[12] She did not come to a complete stop before turning as there were no cars approaching ahead on the opposite side and it was safe for her to turn.

[13] It was put to her by Mr. Perumal that: had she (plaintiff) made proper observations of her blind spot to the right, she would have seen the insured vehicle approaching and would have then known that it was not safe to make the right-hand turn.

[14] Plaintiff's response was that: she indeed made the observations, but she did not see the insured vehicle at any point during her observations.

[15] She could not state if there were any witnesses to support her version of events. This was the case for the plaintiff.

C. Defendant's version of events

[16] Save for denying the plaintiff's version of events, the insured driver was not called to testify.

[17] The defendant's case was closed as well.

D. The material facts

[18] The material facts can only be deduced from the section 19(f) affidavit that was deposed to by the plaintiff some 3 months after the incident. Therein she records that:

18.1 "On or about the 06 October 2019 at approximately 10:00 in the morning, I was involved in a motor vehicle accident at Lebotloane road, on the way to Little Trust Village, Themba, Province of Limpopo.

18.2 "I was a driver of a grey Nissan NP 200 bearing Registration particulars C[...] 2[...] V[...] G[...], when indicated to turn Right and dark Blue Ford Ranger bearing registration letters and numbers S[...] 9[...] G[...], there and then driven by Thabo Ezzo Molokomme came at a very high speed, overtaking other cars and collided with my vehicle".

[19] The accident report date stamped 06 October 2019 records the plaintiff's version as follows:

"Driver A alleges that she was travelling from Lebotloane to Little Trust, she indicated in time to turn right and as turn, vehicle B came with high speed from behind and hit vehicle A on its right side (driver's side)."

[20] The insured driver's version is recorded as follows:

"Driver B alleges that he was travelling from East to West and that he was trying to overtake Driver B and Driver B lost control and both motor vehicles collided."

[21] It is apparent that the above version, was possibly written down by an inattentive police officer at a busy police station and not attended to thereafter,

is incorrect. If Mr. Molokomme was the driver of vehicle **B**, then plaintiff was in vehicle **A**, and vehicle **A** collided into vehicle **B**. (writer's own analysis and emphasis).

E. The legal principles and authorities

[22] The legal principles that are up for consideration are firstly, the driver's duty when turning right. Secondly, the driver's duty when passing/overtaking another/other cars. The second duty has as its corollary, the driver's duty while being overtaken by another car.

[23] The cardinal rule that should be borne in mind is that if collisions are to be avoided, all road users should keep a proper look-out.¹

[24] Our courts have time and again held that executing a turn to the right across the path of incoming or following traffic is an inherently dangerous manoeuvre and that a driver who intends executing such a manoeuvre bears a stringent duty to do so after satisfying himself or herself that it is, indeed, safe, and then choosing the right moment (often called the opportune moment) to do so.²

[25] A driver intending to turn right must signal his or her intention clearly and avoid turning until an opportune moment presents itself.³

[26] A driver who intends to turn right owes a duty to following traffic⁴ to:

26.1 ascertain whether there is following traffic;

¹ Butt and Another v Van Den Camp 1982 (3) SA 819 (AD)

² Msimeki J in *Jacobs C v RAF* (A402/2008) [2011] ZAGPPH 121, referring with approval to *AA Mutual Insurance Association Ltd v Nomeka* 1976 (3) SA 45 (AD), *Sierborger v SAR & H* 1961 (1) SA 498 (AD) and other matters.

³ Welf v Christner 1976 (2) SA 170 (N).

⁴ See *Barendse v Smith* 1923 EDL 269; *Allen v Standard General* 1983 (1) SA 628 (W).

26.2 signal his/her intention clearly; and

26.3 refrain from turning until an opportune moment.

[27] A driver should look attentively in his/her rearview mirrors – a perfunctory glance is not sufficient to ascertain whether there is traffic following his vehicle.⁵ The duty is a continuous one: one look in the rear view mirror may not be sufficient; the circumstances may require a driver to look repeatedly in his rearview mirror(s), particularly once he becomes aware of the presence of following traffic.⁶

[28] To carry out a right hand turn safely a driver is invariably obliged to make assumptions he is entitled to make vis-a- vis following traffic. One view is that having given an adequate signal timeously, he or she is entitled to assume that his signal has been seen and will be heeded.⁷

[29] In *S v Olivier*⁸ Miller J (as he then was) made the point that the assumptions a turning driver may legitimately make must, of necessity, depend upon the overall situation at the given moment.⁹ The learned Judge then gave an illustration not dissimilar to the facts *in casu* as follows:

*“it seems to me that, with reference to the assumption with which we are now concerned, there is a vital difference, for example, between the case where a driver is driving, of necessity very slowly, in the traffic-laden street and the case where he is driving at speed on an open highway. In the former case, **where vehicles are proceeding almost as in a procession**, only a few feet or yards separating each vehicle from the one*

⁵ See *Bata Shoe Co. v Moss* 1977 (4) SA 16 (W) 21A.

⁶ W.E. Cooper – *Delictual Liability in Motor Law* 1996 at p168.

⁷ See *S v Olivier* 1969 (4) SA 78 (N); *R v Fratees* 1932 CPD 308.

⁸ Note 6 above.

⁹ At 82B.

*behind it, a driver who wishes to turn to his right down a street intersecting the one along which he is traveling may well be entitled, in regards to the vehicles coming on slowly behind him, to do no more than give a clear and timeless signal of his intention to do so. If he assumes that his signal will be seen by the driver of the vehicle behind him who will accommodate his progress to the turn of the vehicle ahead and not run into it as it turns, such assumption may well, in the vast majority of cases, be held to be a legitimate one. But not so, I think, in the case of a driver who is travelling along a national road on which it is a common experience to be overtaken at high speed by other vehicles. Such a driver would, I think, if he were reasonably diligent, before or at the time of giving a signal of his intention to turn right, make a special point of ascertaining, with the aid of his rear-view mirror, or otherwise, whether there were any vehicles coming on behind him. And, a fortiori, he would also keep a keen look out ahead for vehicles approaching from the opposite direction and into whose line of travel the proposed right turn would necessarily take him. If the route ahead were entirely free of danger but the vehicle were to be seen by him approaching from behind it's not great distance but it speed, he would in my opinion be taking an unjustifiable risk if, without paying any further attention to the movements of that vehicle, he were simply to execute his right-hand turn on the blithe assumption that the driver thereof had seen and understood his signal and would heed it."*¹⁰ [my emphasis].

[30] Before overtaking another vehicle, a driver is under a duty to satisfy himself or herself that it is safe to do so.¹¹ **Cooper: Delictual Liability in Motor Law** states the position as follows:

¹⁰ At 82C.

¹¹ See *Minister van Vervoer v Bekker* 1975 (3) SA 128 (O) 130H.

*"An overtaking driver must keep a vehicle about to be overtaken under observation and he should not overtake when the vehicle ahead is turning, or the driver has indicated his intention to turn, to the right."*¹²

[31] In *Kruger v Van der Merwe*¹³, it was held that proof that a motor vehicle in a stream of traffic collided with the vehicle ahead is prima facie proof of negligence.

F. Discussion and analysis

[32] From the plaintiff's testimony, it is clear that prior to the collision, she had been driving as part of a convoy en route from the cemetery going homewards. One can safely assume that the cars had been traveling at a sedate pace. This was in no way a highway where greater speeds are to be expected.

[33] The plaintiff does not know whether the Ford Ranger, the insured vehicle had been the fifth or seventh car behind her. From this one can deduce that the insured vehicle had not been immediately behind the plaintiff's vehicle. The irresistible conclusion, absent any version of the insured driver, is that the Ford Ranger had overtaken several vehicles that had been immediately following the plaintiff's Nissan 1400 motor car.

[34] The plaintiff's uncontroverted evidence is that the insured vehicle had come at a high speed, hence she had been unable to notice its approach despite looking at her "blind spot" or rearview mirror.

[35] The insured driver in executing the overtaking manoeuvre at that moment and in the manner he did, deprived himself of the opportunity to keep a proper lookout for all the vehicles ahead. The fact that he could not avoid the resultant collision speaks to the speed he was driving at, at the time.

¹² At p165.

¹³ *Kruger v Van der Merwe* 1966 (2) SA 266 (A).

[36] For her part, the plaintiff should have made sure that no car was overtaking her by taking a further look into her rearview mirror(s) before executing this inherently hazardous manoeuvre of turning right. It seems she operated on the much-debated assumption that the motorists following her car had seen her indicators and were heeding them.

[37] There is absolutely no explanation for the insured driver's conduct. The expectations on a driver executing a right turn are onerous, were it not for that, I would not have hesitated to find the defendant 100% liable.¹⁴

[38] In the circumstances, I make the following order in the plaintiff's favour:

1. The defendant is held to be 80% liable for the collision.
2. The defendant is ordered to pay the plaintiff's costs.

J.S. NYATHI
Judge of the High Court
Gauteng Division, Pretoria

Date of hearing: 20 July 2023

Date of Judgment: 21 August 2023

On behalf of the Plaintiff: Adv. K. Mongwe
Instructed by: R.G. Duba Attorneys; Pretoria
E-mail: litigation@rgdubaattorneys.co.za

¹⁴ Following the approach taken by Poswa J in the unreported decision in *Erasmus CJ v Road Accident Fund* (Case No. 34232/2005) delivered on 14 January 2005.

On behalf of the Defendant: Mr. J. Perumal
Instructed by: The State Attorney; Pretoria.

Delivery: This judgment was handed down electronically by circulation to the parties' legal representatives by email and uploaded on the CaseLines electronic platform. The date for hand-down is deemed to be 21 August 2023.