court file.

IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE HIGH COURT, CAPE TOWN)

CASE NO: 2193/2007

DATE: 11 FEBRUARY 2009

In the matter between:

TRACEY JANE ELIZABETH JOHNSON PLAINTIFF

versus

ROAD ACCIDENT FUND DEFENDANT

JUDGMENT

LOUW, J:

This is an action for damages by the plaintiff, Ms Johnson, against the defendant, the Road Accident Fund. On the application of the plaintiff, I ordered that the issue of liability be determined first and that the issue of quantum stand over.

The claim arises from injuries allegedly sustained by the plaintiff when the left front of the Golf 4 motor vehicle driven by her collided with the rear end of the Mercedes Benz motor vehicle driven by Ms A Patterson on 20 June 2003 at the intersection between the off-ramp of the M3 highway and the Ladies Mile Road. I shall refer to this road simply as the

Ladies Mile. Prior to the collision, both vehicles had driven along the M3 from the direction of Muizenberg in a northerly direction. It was approximately midday on a week day and although it was winter, the weather was fine and it was not raining. Both vehicles took the Ladies Mile off-ramp and proceeded for approximately 500 metres round a sharp bend to a point where the off-ramp, now running south to north, ends in a T-junction with the Ladies Mile at a point where that road runs east to west. The Ladies Mile is a double carriageway with two lanes running to the east and two lanes to the west. The speed limit on this stretch of the Ladies Mile is 60 kilometres per hour. Both drivers, who had regularly driven that road in the past, intended to turn left, as they regularly did, into the Ladies Mile at the intersection, and then to proceed immediately into the right-hand lane in order to be in a position to turn right at a robot-controlled intersection some 50 metres from the point where they entered Ladies Mile. Vehicles intending to turn towards the right into Ladies Mile at the intersection have to stop at a stop sign. Those vehicles who intend turning to the left into Ladies Mile, as both drivers intended to do, must proceed through a yield sign. The Ladies Mile passes over a bridge over the M3 highway some 150 metres towards the east of the intersection. Although there were and still apparently are some low bushes on a traffic island at the intersection and a traffic sign some

distance away towards the right, the view of a driver at the intersection to the right along Ladies Mile does not appear to be obstructed. The view is clear up to the crest of the bridge some 150m away towards the right.

What happened at the intersection is largely common cause. Ms Patterson arrived first and slowed down and looked towards her right to see whether it was safe to turn left into Ladies Mile. She saw no vehicles approaching from the right, she testified, and she accelerated slightly while she entered the intersection. When she looked towards her right again, she now saw a vehicle approaching from the right. The vehicle must just have come over the crest of the bridge at that time. The approaching vehicle was traveling in the left lane and was still beyond the turn-off onto the on-ramp some distance away from the intersection. Ms Patterson judged, according to her evidence, that the vehicle was approaching "rapidly", but not "very fast". Her natural instinct was, she stated, to give way to the approaching vehicle. Although she was now already partially into the intersection, she stopped her vehicle and the plaintiff's vehicle, which was then right behind her, collided with her vehicle from behind.

The exact place where the collision occurred is in dispute. According to the plaintiff, it was somewhere in the left lane of

the Ladies Mile, close to the broken line dividing the two lanes. Ms Patterson agrees that her vehicle was in the left lane but says that it was closer to the entrance of the intersection. The dispute is therefore only about how far into the left lane of the Ladies Mile the collision had occurred.

It is common cause that both drivers removed their vehicles to a safe place after the collision at the side of the road where they exchanged their personal details. According to the plaintiff, Ms Patterson apologised, saying that when she saw the vehicle approaching, she panicked and stopped. Ms Patterson stated that she would not have said that it was her fault, but concedes that she might have apologised for what had happened.

Ms Patterson was never aware of the plaintiff's vehicle before the collision. The plaintiff stated that she first became aware of the insured vehicle driven by Ms Patterson ahead of her as she approached the intersection. The insured vehicle, according to her, slowed down and might even have momentarily stopped, but it then moved forward into the intersection and turned towards its left to go into the right lane of Ladies Mile. The plaintiff looked towards her right and as she entered the intersection, she saw a vehicle coming over the bridge approaching the intersection. She judged it far

enough for her to follow the insured vehicle and to pass safely into the right lane of Ladies Mile. The two vehicles were more or less, she indicated slightly more than half a car's length apart, when the insured vehicle stopped without warning, and although the plaintiff braked, she could not avoid the collision and the left front of her vehicle collided with the back of the insured vehicle.

Mr Carollisen, on behalf of the defendant, submitted that the plaintiff was wholly to blame for the collision. He submitted that as a general principle, a driver who collides with the rear of a vehicle in front of his or her vehicle is *prima facie* negligent. This then calls for an explanation from such a driver to indicate that he or she was not negligent. The plaintiff's explanation did not displace the inference of negligence, he submitted.

Now this may be a practical and convenient way of approaching the question of negligence in the case of a rear-end collision, but I prefer to deal with the matter on the basis that each case must be decided on its own facts and to look to what extent, if any, the conduct of the respective drivers deviated from the standard of the reasonable man. I do not, therefore, propose to start on the basis of a *prima facie* case of negligence. The evidence must be taken as a whole to

determine whether there has been such a deviation in conduct.

The evidence of the plaintiff and Ms Patterson, taken together, shows that both drivers probably saw the same vehicle approaching from the right. Ms Patterson, after having entered the intersection, belatedly thought that she had to stop and give way to the approaching vehicle. The plaintiff judged that she would be able to turn into Ladies Mile safely. On the evidence it is clear in my view that Ms Patterson was wrong. The approaching vehicle was in the vicinity of 150 metres from the intersection and was travelling in the left lane. Ms Patterson's vehicle had already entered partially into that lane. If the approaching vehicle was travelling at the speed limit of 60 kilometres per hour, it would have covered 16,6 metres per second. Even if, as it seems on Ms Patterson's version, the vehicle was travelling faster than the speed limit, there was clearly, in my view, more than enough time for both vehicles to safely turn into the right lane of Ladies Mile. The time available is a matter of calculation on the different speeds. For instance at 60 kilometres per hour it would have taken the approaching vehicle approximately nine to nine and a half seconds to reach the intersection. At 100 kilometres per hour, for example, it would have taken that vehicle in the vicinity of five to five and a half seconds. If the two vehicles, that is the insured vehicle and the plaintiff's vehicle, were

travelling at approximately 20 kilometres per hour, they would have had sufficient time to negotiate through the intersection before the approaching vehicle arrived. Again it is a matter of calculation. At 20 kilometres per hour the vehicles would travel about 5½ metres per second. So if the approaching vehicle was travelling at 100 kilometres per hour, the two vehicles could have travelled some 25 metres before the approaching vehicle arrived at the intersection. These calculations are purely as an illustration and clearly not the final word on what the position was. It simply illustrates, in my view, that Ms Patterson's reaction of rather stopping than moving on was incorrect.

Having indicated to following traffic that she was going to proceed by accelerating after first slowing down, Ms Patterson was negligent in then suddenly stopping for no good reason while she was already into the intersection. Such conduct in my view falls short of the conduct of a reasonable person in those circumstances. A reasonable driver would not have misjudged the speed and distance of the approaching vehicle and would not suddenly have stopped in the intersection. Ms Patterson's negligent conduct was also, on the facts of this case, a cause of the collision.

The question is whether the plaintiff was also negligent. The plaintiff testified that her vehicle was slightly more than half a vehicle's length behind the insured vehicle when she moved forward into the intersection. There is no general rule that a motorist must travel at a distance behind the vehicle in front which would enable such a driver to stop his or her vehicle in time if the vehicle in front should suddenly stop. The reasonable and cautious driver is not required to drive in a manner that would avoid a collision caused by the recklessness of another driver, unless of course the driver became aware beforehand that the other driver was driving recklessly. What conduct a driver is entitled to expect from other drivers all depends on the facts of the case. In Uniswa v Bezuidenhout, 1982(3) SA 957 (A) at 965A - C, the following is said in this regard:-

> "Hierteenoor is ek egter van oordeel dat 'n redelike versigtige motorbestuurder in spitsverkeer nie maar solank hy in sy baan bly origens op 'n onagsame wyse outomaties kan voort bestuur teen 'n spoed wat die ander voertuig voor hom handhaaf en nie oplet of ander verkeer skielik stadiger ry of selfs stop nie. Alhoewel die redelike versigtige motorbestuurder nie teen roekelose verdrag van 'n ander motorbestuurder hoef te waak nie (kyk

Griffiths v Netherlands Insurance Company of South Africa Limited, 1976(4) SA 691 (A) te 697B - C) behoort hy nieteenstaande te voorsien dat die verkeer voor hom, om watter rede ookal, skielik mag stadiger beweeg of selfs tot stilstand kom, en het hy 'n plig om sy optrede hiervolgens in te rig. Hoe nader so 'n motorbestuurder aan die voertuie voor hom ry, hoe groter meen ek is sy verpligting om waaksaam te wees."

In this case, therefore, the plaintiff should, in the circumstances of this case, have borne in mind, especially because of the close proximity of her vehicle to the vehicle ahead of her, that the driver may, for instance because she misjudged the distance and speed of the oncoming vehicle, come to a sudden and unexpected stop. They were not driving fast. The evidence is that the speed was approximately 20 kilometres per hour. A reasonable driver would in my view have allowed a greater distance between the vehicles. By allowing more distance between the vehicles the plaintiff could, in my view, have avoided the collision.

Ms Mohamed, who appeared on behalf of the plaintiff, did concede in the alternative, her first argument being that there was no negligence on the part of the plaintiff, that there could

be negligence on the plaintiff's part. I agree with her submission that the plaintiff's negligence in relation to the cause of the collision was considerably less than Ms Patterson's negligence, in the sense that the plaintiff's deviation from the norm of the reasonable person was far less than the deviation in Ms Patterson's case.

In my view it would be just and equitable to apportion the degree of fault in relation to the alleged damage at 80% in the case of Ms Patterson and 20% in the case of the plaintiff.

Now, before I make the order, the issue of costs at this stage was not raised in argument and debated Ms Mahomed, if you are successful as it is going to be, what should the position with regard to costs be of the proceedings up to this stage?

Having heard the argument of both counsel on costs, I now proceed.

It follows that the following order is made:-

1. It is declared that the defendant is liable to pay the plaintiff 80% of such damages as she may in due course prove to have sustained as the result of the collision which occurred on 20 June 2003.

2. The defendant is ordered to pay the costs of the plaintiff in regard to the determination of the issue of the defendant's liability. The costs of the rest of the trial will stand over for later determination.

LOUW, J