

25/8/2010

1

IN THE HIGH COURT OF SOUTH AFRICA  
(North Gauteng High Court, Pretoria)

CASE NO: A495 /2008 DATE OF  
APPEAL: 18/05/2009

DPP VERW: MA25/2008 (18/5/MJM)

In the appeal of:

MOHAU JAFTA SEKHOKHO

Appellant

and

THE STATE

Respondent

---

JUDGEMENT

---

GOODEY AJ:

[1] INTRODUCTION

(1.1) The appellant had been convicted of contravening the provisions of section 63(1), read with Sections 1, 63(2), 63(3), 69, 73, 89(1) and 89(5) of the National Road Traffic Act 93 of 1996 – reckless and negligent driving.

(1.2) He was sentenced to a fine of R3000-00 (three thousand rands) , or three (3) months imprisonment , half the sentence being conditionally suspended for three (3) years on the normal conditions of suspension.

(1.3) The appellant was legally represented throughout his trial.

(1.4) He now appeals against his conviction only.

**[2] SUMMARY OF EVIDENCE**

(2.1) The first state witness called, was one Sipho Philemon Nkalepi. He testified, that he was driving a minibus with registration number BGL 756 MP on the N2 road , a public road on the 11 April 1007.

Vide Record Page 16 lines 17-21

(2.2) Further that the weather conditions on the particular day was clear, and that the road was dry.

Vide Record Page 16 lines 22-25 Page 17 line 1

(2.3) He testified that he was coming out of Piet Retief town, and was taking a passengers to work at Ajax. Further, that he was using the lane used by slow moving vehicles.

Vide Record Page 17 lines 4-15

- (2.4) When he got into the lane, he did not see any vehicles coming behind him, and when he looked again, he saw a white kombi behind him some distance away. At that time he started indicating, showing that he was turning, and he reduced speed as well.

Vide Record Page 17 lines 18-22.

- (2.5) There were vehicles coming from the oncoming lane, and he waited for them to pass, in order to turn. He then stopped, and he heard a noise behind him. The kombi that was behind him, passed him, and he then saw a van coming towards him. This van collided with his vehicle.

Vide Record Page 17 lines 22- 25 Page 18 lines 1-4

- (2.6) He alighted from his vehicle and inspected it, and noticed that it had damage, and that the vehicle which collided into his vehicle, was a police vehicle bearing registration number BPR 607 B, being driven by the appellant.

Vide Record Page 18 lines 5-7

- (2.7) The 1<sup>st</sup> state witnesses vehicle had not been repaired to date, and the cost of repairing it was estimated between R40 – 000 (forty thousand rands) and R50 - 000 (fifty thousand rands). The vehicle according to the witness was not working since the date of the collision.

Vide Record Page 18 lines 8-18

- (2.8) The speed limit of the road that he had been traveling in was one 120km/ph (one hundred and 20 kilometres per hour).

Vide Record Page 18 lines 19-21

- (2.9) The second state witness called was one Mpanseni Gadebe, a passenger in the motor vehicle of the first state witness. His evidence was that they were waiting to turn, and that there was a certain taxi-kombi travelling behind them.

Vide Record Page 22 lines 16 – 25

- (2.10) This taxi passed their vehicle on their left, and he did not see the vehicle that was travelling behind the taxi.

Vide Record Page 23 lines 1-4

- (2.11) The state then closed its case, and the appellant then elected to testify.

Vide Record Page 23 lines 19-22

- (2.12) The appellant testified that he was a student constable within the police force, and on the date of the collision, he was transporting prisoners from Omaha Prison to court, and was accompanied by Inspector Engelbrecht.

Vide Record Page 24 lines 11-16.

- (2.13) They were traveling on the N2 road, right hand lane, following a white taxi. He was driving at around 100 km/ph (one hundred kilometers per hour).

Vide Record Page 25 lines 9-15

- (2.14) (The white taxi at that stage, turned to the left lane without indicating, and it did so at a high speed.

Vide Record Page 25 lines 18-25



(2.15) The appellant, then saw the 1<sup>st</sup> state witnesses vehicle, stationary in front of him , and he then applied brakes, and collided into the witnesses vehicle.

Vide Record Page 26 lines 1-10

(2.16) There was damage to the appellant's vehicle. It was damaged on the side, the lights were damaged and the bumper and the radiator as well.

Vide Record Page 26 lines 11-13

(2.17) According to the sketch plan , the brake marks of the appellant's vehicle was 32 feet long.

Vide Record Page 26 lines 21-23

(2.18) The appellant called a witness to testify on his behalf , namely one Conrad Frederick Engelbrecht, who was accompanying the appellant whils't they were transporting the prisoners.

Vide Record Page 33 lines 20-23

(2.19) He testified that they were following a white taxi , and that this taxi swerved suddenly causing the appellant to collide into a vehicle which was stationary.

Vide Record Page 33 lines 8-11

(2.20) Further that the taxi had swerved without indicating.

Vide Record Page 34 lines 19-22

[3] **AD CONVICTION**

(3.1) In S v Francis 1991 (1) SACR 198 at page 198 to 199, the court held that :

"The powers of a Court of Appeal to interfere with the findings of fact of a trial court are limited. In the absence of any misdirection, the trial court's conclusion, including its acceptance of a witnesses evidence, is presumed to be correct. In order to succeed on appeal, the appellant must therefore convince the court of appeal on adequate grounds, that the trial court was wrong in accepting the witness' evidence , a reasonable doubt will not suffice to justify interference with its findings. Bearing in mind the advantage which a trial court has of seeing, hearing and appraising a witness, it is only in exceptional cases that the court of appeal will be entitled to interfere with a trial court's evaluation of oral testimony')

(3.2) I am also mindful of the following cardinal principles of logic:

- "1. The inference sought to be drawn must be consistent with all the proved facts. If it is not, the inference cannot be drawn.
- 1. The proved facts should be such that they exclude every reasonable inferences from them save the one sought to be drawn. If they do not exclude other reasonable inferences, there must be doubt whether the inference sought to be drawn is correct, there must be doubt whether the inference sought to be drawn is correct."

**See: Hiemstra's Criminal Procedure (May 2009) at 22-5**

(3.3) It was not disputed by the defence, that the appellant had collided into the 1<sup>st</sup> state witnesses vehicle.

(3.4) The defense counsel has however, raised the defence of a "sudden emergency." The following must be taken into consideration:

3.4.1 That the weather conditions were clear on the date of the incident , and that the road surface was dry. It is therefore logical and consistent with the fact that the appellant have had sufficient opportunity to see the vehicle in front of him , as no mention was ever made of there being heavy traffic on the given date or the appellant's view being obstructed.

3.4.2 It must be clear, that if the respondent's humble submission, that if the appellant was driving at a speed which was considerably lower, and had kept a safe following distance behind the taxi , he would have also seen the vehicle in front of the taxi , and thus avoided the collision.

(3.5) It should further be kept in mind that

**W.E. COOPER (MOTOR LAW P90-71) set out the legal position as follows:**

#### **MOTOR LAW**

**BY W E COOPER**

" 1. Sudden Emergency

(a) *Underlying Principle*

A driver (it is self-evident) who is suddenly confronted with an unexpected danger may, and probably will, act differently from a driver who does not have to act without much time to make a decision, and on the spur of the moment he may do something which causes the very collision he is anxious to avoid.

Understandably the court accept that;

***'Men faced in moments of crisis with a choice of alternatives are not to be judged as if they had both time and opportunity to weigh the the pros and cons. Allowance must be made for the circumstances of their position.'***

See: Union Government v Buur 1914 AD 273 AT 286

This principle has been elevated into the so-called doctrine of sudden emergency, which has been formulated as follows:

***'A man who, by another's want of care, finds himself in a position of imminent danger, cannot be held guilty of negligence merely because in that emergency he does not act in the best way to avoid the danger.'***

See Footnote 278 at P90 and authorities quoted.

(b) *Reasonable Care*

A driver who is faced with a sudden emergency is required to exercise reasonable care and use reasonable skills to avoid the imminent danger. He is required to take such steps as a reasonable careful man would fairly be expected to take in the circumstances.

As Wessels CJ said:

***'One man may react very quickly to what he sees and takes in, whilst another man may be slower. We must consider what an ordinary reasonable man would have done. Cupla is not to be imputed to a man merely because another person would have realized more promptly and acted more quickly. Where many have to make up their mind how to act in a second or in a fraction of a second, one may think this course the better whilst another may prefer that. It is undoubtedly the duty of every person to avoid an accident, but if he acts reasonably, even if a justifiable error of judgment he does not choose the very best course to avoid the***

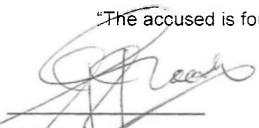
*accident as events afterwards show, then he is not on that account to be held liable for culpa.'*

See: SARV Symington 1935AD 37 AT 45

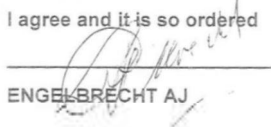
[4] CONCLUSION

- (4.1) I have come to the conclusion that if the appellant drove at a reasonable speed with the correct following distance between him and the vehicle in front of him, and had kept a proper lookout, he would have been able to avoid the so called "sudden emergency."
- (4.2) The magistrate did point out, that he erred in convicting the appellant on both counts. It is therefore clear, that the conviction against the reckless driving count should be set aside, and that the count for negligent driving should be confirmed.
- (4.3) I am therefore of the view that the appeal should succeed.
- (4.4) I therefore suggest that the following order should be made:
  - 4.4.1 The appeal is upheld pertaining to the conviction on "reckless and negligent driving;
  - 4.4.2 The order of the magistrate pertaining to the conviction is substituted by the following order:

"The accused is found guilty of negligent driving."

  
GOODEY AJ

I agree and it is so ordered

  
ENGELBRECHT AJ