

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

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES /NO.	CASE NO: 69431/2009
(2) OF INTEREST TO OTHER JUDGES: YES /NO.	
(3) REVISED.	
DATE 30/03/2011	 SIGNATURE

30/3/2011

In the matter between:

KESSO DIALLO MALUMO

Plaintiff

And

SUSANNA TREDoux

Defendant

JUDGMENT

MATOJANE J

[1] At approximately 11h00 on 4 November 2008 in the intersection of Hans Strydom Road and Rubenstein, Pretoria, a collision occurred between a Mercedes Benz C220 CDi driven by plaintiff and another vehicle bearing registration number PWY 437 GP driven by the defendant, as a result of which collision, plaintiff alleges that she suffered damages

[2] Hans Strydom Road in Pretoria runs from West to East and is intersected at right angles by Rubenstein road on the left and Lois on the right. The intersection is robot controlled. Hans Strydom is a dual carriageway. This dual carriageway is separated by a traffic island and has five lanes in each direction. At the intersection with Lois, the first and fifth lanes are used by motorists who wish to turn right into Lois or left into Rubenstein. Similarly, on the opposite side of Hans Strydom there are also five lanes and the first and fifth lanes are used by motorists either turning into Rubenstein or Lois.

[3] The plaintiff was driving along Hans Strydom and turned right into Lois. The defendant was at the time driving in the opposite direction from west to east intending to proceed straight along Hans Strydom Road. As the plaintiff negotiated a turn a collision occurred. It is common cause that the plaintiff had to pass three lanes to arrive at the point of impact, which was on the defendant's lane of travel on the fourth lane.

[4] At the commencement of the trial the issues relating to the merits and quantum of the plaintiff's claim were separated and the trial proceeded on the issue whether the defendant was negligent in relation to the collision (and therefore, whether the defendant was liable for the damages suffered by the plaintiff), and if so, whether

the plaintiff was contributory negligent in relation to the collision and if so the degree thereof.

[5] The plaintiff herself was the only witness. Her evidence in a broad outline was that she was stationery at the robots on a lane for motorists turning right along Hans Strydom Road. After satisfying herself that it was safe to do so, she negotiated the right turn into Lois Avenue after she got a green arrow and was then hit by the defendant's car on the fourth lane. She was adamant that the robots were green for her and red for the defendant. The defendant's version on the other hand is that the robots were green for her as she came round the bend 100 m before the intersection. She was travelling at about 60 to 70 km and saw a blue BMW skipping the red lights. She never saw plaintiff's vehicle negotiating a turn and only saw it in front of her on her lane. She had no time to apply brakes. She swerved to the right and could not avoid colliding with plaintiff. The plaintiff walked towards her and accused the driver of the BMW for causing the collision.

[6] Defendant's colleague, Cornelia Cheyne testified that she was driving, third in line behind the defendant on the same lane. As she approached the intersection, she was driving at 80km and the robot was green. She saw a BMW driving through the intersection in front of the plaintiff. She saw plaintiff suddenly moving to the right and

heard the sound of the crash. After the collision, plaintiff came to her and defendant and told them twice that she was sorry. She was upset with plaintiff.

[7] In contending that defendant was not negligent at all, defendant's counsel has submitted that in view of the stringent duty upon a driver who intends to turn across the line of oncoming traffic, the plaintiff has failed to properly satisfy herself before performing such a dangerous maneuver that it was safe and opportune to do so. Counsel relied on *AA Mutual Insurance Association Ltd v Nomeka* 1976(3) SA 45 (A) 52E-G. He further argued that there was no obligation on defendant to take note of the plaintiff as she had a right of way. I disagree, firstly the decision in *AA Mutual Insurance Association Ltd v Nomeka* does not create a general presumption of negligence as each case revolves around its particular facts and circumstances. The through- driver does not have an absolute right of way even if the robot is green for her, such driver must be vigilant and where circumstances demand, reduce speed to accommodate a driver who turns across his path of travel. See *Milton v Vacuum Oil Co* 1932 AD 197 at 205.

[8] Secondly, in *Netherlands Insurance Co of SA v Brummer* 1978 (4) it was held that a driver who enters an intersection while the traffic light is green for him must keep a lookout for the traffic

already in the crossing. Also he cannot ignore a vehicle which he is aware of, which is clearly being driven in a negligent manner. The court stated that it is not expected of him to look out for traffic that can possibly enter the intersection from the left or the right unlawfully against a traffic light. On Cornelia Cheyne's evidence, from the defendant's point as she approached the intersection, her view in the direction of the vehicle coming from the opposite direction will not be obstructed and if there had been any other vehicle before defendant entered the intersection, nothing would have obscured her view.

[9] In my view, the defendant was negligent in not keeping a lookout for the plaintiff's vehicle that was already in the intersection, even if it is accepted in her favour that the robot was green for her. She testified that the first time she saw plaintiff's vehicle was when it was in front of her on the fourth lane, she conceded that plaintiff's vehicle must have travelled a width of four lanes to reach the point of impact after negotiating a right turn, yet she did not see it until it was in front of her. She further testified that a BMW vehicle skipped the red lights in front of her yet she did not reduce speed because as she puts it: "You cannot hesitate in driving".

[10] The defendant's evidence was unsatisfactory in the following respects. She testified that the plaintiff approached her and blamed the driver of the BMW for causing the accident yet this aspect of her evidence was never put to the plaintiff for her response. This also does not accord with the evidence of the defendant's witness who testified that plaintiff approached her as she was sitting next to defendant after the collision and said that she was sorry, this aspect of her evidence was also never put to the plaintiff. The defendant testified that there was a delivery van to her right immediately before the collision and her witness said it was behind her.

[11] It is probable that in approaching the intersection and not knowing when the lights will turn red, defendant directed her attention to the BMW that she says skipped the red lights and did not observe the cycle changing green for plaintiff and red for her as she was approaching the intersection. In my view, she was negligent in doing so.

[12] It is trite that, in civil proceedings such as these, the onus-bearing party must, in order to succeed, show that on a preponderance of probabilities, his or her version is more likely than not to be the truth. See *National Employers General Insurance Co Limited v Jagers* 1984 (4) SA 437 (E), 440D-G and *Ramakulukusha v Commander, Venda National Force* 1989 (2) SA 813 (V), 839B-C.

[13] I have weighed up and tested the plaintiff's evidence against the general probabilities and her credibility as a witness. I am satisfied that on a preponderance of probabilities, the plaintiff's version is true and accurate and therefore acceptable. I find that defendant was negligent in relation to the collision and therefore, liable for the damages suffered by the plaintiff.

[14] In the result, the plaintiff's claim must succeed and the following order shall issue:

The Defendant is liable for such damages as the plaintiff is able to prove arising out of the collision on 4 November 2008.



MATOJANE J