



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG**

Verulam Magistrates Court Case Number: 7721/2011

Appeal Number: 445/2014

In the matter between:

LLOYD RUNGASAMY

APPELLANT

And

VIKRAM RAMPERSAD

RESPONDENT

ORDER

On appeal: from a decision of the Magistrate's Court, Verulam, (Magistrate V Naidoo sitting as a court of first instance), it is ordered:

1. The appeal is upheld, with costs.
2. The orders of the *court a quo* are set aside and replaced with the following:
 - 2.1. The defendant is liable to compensate the plaintiff for 100% of his proven damages.
 - 2.2. The defendant's counterclaim is dismissed with costs.

CIVIL APPEAL JUDGMENT

HENRIQUES J (SEEGOBIN J concurring)

Introduction

[1] The appellant appeals against the judgment on liability delivered on 13 February 2013, by Magistrate V Naidoo in which she awarded him 40% of his damages claim and found him liable for 60% of the respondent's damages in the counterclaim.

[2] The appellant submits that the court *a quo* erred in not finding that, being a rear-end collision, the facts supported a finding that the respondent was the sole cause of the collision and erred in finding that there was negligence on the part of the appellant's driver which contributed to the collision.

[3] It is only this issue which concerns us on appeal and warrants a careful analysis of the evidence presented in the court *a quo* being that of the appellant's driver, Ashley Haridass (Haridass) and the respondent Vikram Rampersad (Rampersad).

[4] The court *a quo* in concluding Haridass was more negligent, found on the evidence that Haridass *"failed to indicate his intention to stop, did not stop at a demarcated stop area or loading zone and stopped on the road without establishing that it was safe to do so."*¹ The Magistrate was of the view that ... *"It is very material were the taxi stopped. It was off the road, the collision would not have occurred."*²

[5] The court *a quo* found that Rampersad also contributed to the collision and was negligent in that he was travelling at a speed which appeared to be excessive in the circumstances and failed to take evasive steps to avoid the collision. The Magistrate did not accept Rampersad's version that he could not swerve to the left or right to avoid the collision.

Common Cause Facts

[6] It is common cause, alternatively not disputed that:

[6.1] A collision occurred in the late afternoon on 28 January 2011 on Longbury Drive, Phoenix, between a taxi driven by Haridass and a Nissan Hardbody driven by Rampersad;

¹ Page 33, Reasons for Judgment, Index to Appeal Record.

² Page 34, Reasons for Judgment, Index to Appeal Record.

[6.2] At the time the whole of Longbury Drive was under construction, the tar surface of the road had been dug up and the road consisted mainly of gravel and loose stones;

[6.3] At the time of the collision the road was quiet with no or very little traffic;

[6.4] There were no road markings and no designated stops at the time due to the construction;

[6.5] The taxi driven by Haridass was stationary on the road with its hazard lights on, sliding door open, having stopped to allow a passenger to alight before the collision.

[6.6] Immediately prior to the collision, the taxi had been travelling at approximately 20 kilometres per hour looking for passengers;

[6.7] The only skid marks on the road relative to the collision were those of the respondent's bakkie and none belonging to the taxi;

[6.8] Both Haridass and Rampersad were of the opinion that one would have to exercise extra caution when driving on the road, given the construction taking place and the road surface consisting of gravel and loose stones;

[6.9] Rampersad testified he was travelling at approximately 60 kilometres per hour immediately before the collision and was approximately three car lengths behind Haridass's vehicle.

[6.10] This was a rear-end collision the respondent's vehicle having collided with the rear of the appellant's taxi.

Legal Principles

[7] It is trite that road users especially drivers are under a duty to, inter alia, keep a proper look out, drive at a reasonable speed given the prevailing circumstances, to maintain a safe following distance and be able to stop within one's range of vision. A driver must drive in such a manner that he can avoid a collision should the vehicle in front of him suddenly stop and must therefore keep sufficient distance between himself and the vehicle in front of him.

[8] A driver who collides with the rear of a vehicle is *prima facie* negligent,³ unless he can give an adequate explanation indicating why he was not negligent.⁴

The Evidence and Findings

[9] Haridass's version is that he was stationary on the road. He had stopped to drop off a passenger and the hazard lights of his vehicle were on at the time. The passenger had alighted from the vehicle and he did not observe other vehicles around him or in the vicinity of his vehicle, as his attention was focussed on the passenger. He testified that he heard a screeching sound and it was at that point that the respondent's vehicle collided into the rear of his vehicle.

[10] Rampersad's version is that he was following the taxi at a distance of three car lengths and travelling at approximately 60 kilometres an hour before the taxi suddenly stopped on the road. He testified that he tried to swerve to the left hand side but because there were houses to the left of the road, he then swerved to the right but noticed an oncoming vehicle and by that stage then collided into the rear of Haridass's vehicle after slamming his brakes and skidding. His skid marks were indicative of the fact that he attempted to stop but due to the nature of the road surface was unable to do so timeously. He also testified that he took his hands off the steering wheel and held onto his three year old child who was seated in the front passenger seat.

[11] Both drivers confirmed that the road was under construction and consisted of gravel and loose stones. A motorist ought to have in mind the possibility that there may be a tendency for his car to skid to some extent if he applies his brakes hard and suddenly as the respondent testified to. In addition, the respondent testified that he used the road every day and that construction had been on-going for in excess of two months and was on his way to fetch his wife from work. He was fully aware of the possibility of taxi's travelling slowly on the road, to either allow passengers to alight or board. On his evidence he was travelling at 60 kilometres per hour fully aware of the taxi in front of him and did not adjust his speed to take into account the

³ *Goldstein v Jackson's Taxi Service* 1954(4) SA 14 (N); *Union and South West Africa Insurance Co Ltd v Bezuidenhout* 1982(3) SA 957 (A).

⁴ *Fig Brothers (Pty) Ltd v South African Railways and Harbours & another* 1975(2) SA 207 (C) at 211 H.

vehicle in front of him. The fact that his vehicle skidded for a considerable distance is indicative of the fact that he was travelling too close to Haridass's vehicle and at a speed which was excessive given the prevailing circumstances.

[12] It appears that he was not paying sufficient attention to Haridass's vehicle and must have braked too late, alternatively, did not observe what was going on in front of him and therefore had not kept a proper look out. In our view, if he had kept a proper lookout he would have had sufficient time and opportunity to bring his vehicle to a halt or to take evasive steps to avoid a collision. This is also in light of Haridass's unchallenged evidence that his vehicle was stationary, the passenger had alighted, and that the hazard lights of his vehicle were on.

[13] The court *a quo* was of the view that Haridass could have stopped his vehicle closer to the left hand side of the road, if not off the road to the left. By the same token, it must then follow that Rampersad could also have swerved more to the left to avoid the collision.

[14] Being a rear-end collision, the respondent had to rebut the *prima facie* inference of negligence by providing an acceptable explanation. On the available evidence, the respondent has not provided an explanation sufficient to rebut the inference. We are consequently of the view that on the probabilities, Rampersad was negligent.

[15] We are fortified in this view having regard to the decision in *Fig Brothers supra* as well as *Goldstein's case supra* where the court held the following:⁵

"... He must if he is to avoid the possibility of imputations of negligence, so adjust his speed and his distance from the vehicle in front of him that he is able to pull up in the column of traffic in a way which avoids his vehicle coming into contact with the preceding vehicle should that vehicle make a sudden stop. The duty of care is relative to the occasion, in the sense that the higher the speed and the nearer to the vehicle in front, the greater the necessary care."

⁵ At 16 C to D

[16] At 17A the court deals with the situation of a vehicle going into a skid similar to that testified to by Rampersad and remarked:

“But assuming that the car did skid, that fact would go to indicate that, in the circumstances, he was travelling too close to the plaintiff’s car at the speed at which he was going.”

[17] We are thus of the view that the court *a quo* misdirected itself in finding that Haridass did not stop at a loading zone or demarcated stop on the road, as it was clear that there were no demarcated stops or markings on the road in light of the fact that the road was under construction. In addition we do not agree with the court *a quo*’s finding that the switching on of the hazard lights by Haridass was an inappropriate signal at the time. In light of the fact that Haridass’s evidence was unchallenged in relation to the fact that he was stationary with his hazard lights on and that the passenger had alighted, the court *a quo* could not have made the following finding:

“The most probable explanation would be that Haridass planned on stopping, must have reduced speed and stopped, whereas the Defendant had to stop suddenly, as reasonably have anticipated that the taxi would stop on the road, at that location.”⁶

[18] The next issue which arises is whether or not Haridass was in any way negligent and if this negligence contributed to the collision. In our view the fact that Haridass may not have stopped at a designated stop in light of the road works does not make him negligent. We are of the view that the court *a quo*’s findings that had Haridass’s taxi not been on the road, the collision would not have occurred, cannot be correct. In our view the fact that his vehicle was partially on the road in no way contributed to the collision. The uncontested evidence is that his vehicle was stationary with its hazard lights on and that the passenger had alighted. If the respondent, on his version had been following the taxi he would have observed this and had he adjusted his speed to his range of vision, he would clearly have had ample opportunity to observe Haridass’s vehicle stationary on the road and taken steps to avoid colliding into the rear of his vehicle. It is for these reasons that we are

⁶ Page 33, Reasons for Judgment, Index to Appeal Record.

of the view that if he had kept a proper look out, he would have noticed what was going on in front of him and could have successfully avoided colliding into the rear of Haridass's vehicle. The fact that Haridass did not stop at a designated stop, does not mean that he was responsible for the collision in a legal sense.⁷

[19] It is for these reasons that we are of the view that the respondent did not provide an acceptable explanation to rebut the presumption that he was *prima facie* negligent. Having found that Haridass was not negligent, and in no way contributed to the collision, it must follow that the respondent was the sole cause of the collision.

Conclusion

[20] In the result the order we make is the following:

1. The appeal is upheld, with costs.
2. The orders of the *court a quo* are set aside and replaced with the following:
 - 2.1. The defendant is liable to compensate the plaintiff for 100% of his proven damages.
 - 2.2. The defendant's counterclaim is dismissed with costs.

HENRIQUES J

I agree,

SEEGOBIN J

⁷ *Fig Brothers* supra at 211 B - C

DATE OF ARGUMENT : 17 August 2015
DATE OF JUDGMENT : 20 August 2015
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