

**IN THE HIGH COURT OF SOUTH AFRICA**  
**(ORANGE FREE STATE PROVINCIAL DIVISION)**

Case No. : 6765/08

In the appeal between:-

**LYDIA MAPHOKA LEKHEHLE**

Appellant

and

**ROAD ACCIDENT FUND**

Respondent

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**HEARD ON:** 10 MAY 2011

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**DELIVERED ON:** 26 MAY 2011

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**MOLOI, J**

[1] This is a claim for compensation for injuries sustained in a motor collision in terms of the Road Accident Fund Act No 56 of 1996. By agreement the court ordered the separation of the merits from quantum. This judgment is consequently on the question of merits alone.

[2] The plaintiff was a passenger conveyed for reward in a Mazda motor vehicle with registration letters and numbers CLY 183 FS (hereinafter referred to as “the Mazda”). The Mazda was driving behind another motor vehicle, a Nissan combi with registration

letters and numbers BCT 752 FS, also a taxi, (hereinafter referred to as “the Nissan”). The two motor vehicles were driving from south to north in Moshoeshoe Road, Mangaung, Bloemfontein, i.e. from the township in the direction of the city of Bloemfontein. The Mazda was following the Nissan.

- [3] The plaintiff testified that at a point near the crossing with Lehasa Street (also known as Elias’ corner) a potential passenger appeared in Lehasa Street and waived for the Nissan to stop. She (the plaintiff) was a front seat passenger sitting next to the driver in the Mazda vehicle. The Mazda had driven behind the Nissan from a certain curve estimated at between 100 and 120m before the point of impact and both vehicles were moving slowly at approximately 60km/h. When the potential passenger appeared the plaintiff looked in his direction for approximately two (2) seconds before she heard a bang as collision occurred between the Mazda and the Nissan. This happened because the Nissan suddenly stopped in the middle of the left lane where both motor vehicles were moving without indicating the intention to stop nor go out of the roadway onto the pavement where it was supposed to stop in order to load a passenger. Moshoeshoe Road is a dual carriage way having two lanes on each side separated by a centre

island in the middle. There was no obstruction in the right hand lane nor were there any moving vehicles in that lane. As a result of the collision she sustained injuries, got a fright and held on to the dash board.

- [4] The driver of the Mazda did not intend to overtake the Nissan but could easily have passed the Nissan on the right was there a timeous indication given the Nissan would stop. The Mazda was moving approximately 3½ to 4m behind the Nissan. She attributed the collision squarely to the sudden stop by the Nissan and insisted the driver of the Mazda was not to blame for the collision. She persisted that had the Nissan moved onto the pavement to pick up the passenger or have given timeous and adequate warning it would stop, the Mazda would have taken evasive action not to collide with it. She did not see the Nissan reversing.
- [5] Under cross-examination she agreed that the Mazda was following the Nissan about a car-length behind and persisted she did not see the Nissan reversing because she momentarily looked at the intending passenger to her left. She would not respond to what the driver of the Mazda stated in his affidavit, namely that he was following the Nissan approximately 100m behind driving at the

speed of approximately between 40 and 50 km/h; that at crossing with Lehasa Street (he called it Elias Street as Elias lives at that corner) he saw an intending passenger coming from the right and that the Nissan suddenly stopped and immediately reversed to pick up the passenger; that he immediately stopped but the Nissan collided with the stationary Mazda while reversing. She, however, insisted the Nissan caused a dangerous situation by stopping in the middle of the lane. That concluded the plaintiff's evidence as the driver of the Mazda was not called to give evidence.

- [6] The defendant led the evidence of Thuso Joseph Mosoka, the driver of the Nissan. He stated that on 12 May 2005 he was driving a taxi, a Nissan referred to above. That there was no other traffic on the bright morning save for the Mazda vehicle that was coming from behind him. He had three passengers in his taxi. That he saw a potential passenger approaching Moshoeshoe Road from his left in Lehasa Street. He switched on his indicators to show he was deviating from the lane to go onto the pavement to pick up the passenger and applied the brakes. As he was moving towards the pavement he heard a bang from behind. When he stopped and went to see what happened, he found that the Mazda that was coming from behind had collided with him. He asked the

driver of the Mazda what happened and the driver simply wanted to telephone his employer, the owner of the Mazda. He called the police and on their arrival they attended the scene. He had hooted his Nissan for the passenger to indicate if he wanted a ride and wanted to get onto the pavement to pick the passenger up when the collision occurred. The Mazda had been moving approximately 30 to 35m behind him from where he first saw it at the curve before the point of impact.

- [7] Under cross-examination he accepted the accident report and plan and confirmed that it showed the vehicle having collided inside the left lane but insisted he wanted to get onto the pavement and that part of his vehicle was already on the pavement when the collision occurred as "it was not safe to stop in the lane". He, however, could not say which part of the Nissan was already on the pavement. He knew it was not safe to stop in the driving lane. When he hooted he was two to three car lengths from Lehasa street. He had seen the Mazda behind him in his side mirror but never used the rear-view mirror inside the Nissan. When the collision occurred he was looking at the passenger and not the Mazda and was moving at less than 10km/h. He saw the Mazda till it collided with him. He knew his flicker-lights were functioning

because he saw the light on the dash board and he knew that his brake lights were also functioning properly. That concluded the defendant's case.

- [8] In argument it was contended on behalf of the plaintiff that the driver of the Nissan was contributorily negligent in that he failed to look in the rear-view mirror, did not take sufficient precautionary measures to avoid the collision by failing to give indication of his intention to move out of the roadway timeously and that he actually suddenly stopped in the middle of the lane, and thereby created a dangerous situation.

On behalf of the defendant it was argued that the driver of the Nissan had done everything expected of him and could not be said to have caused the collision: he indicated to get off the lane onto the pavement, he reduced speed and applied the brakes of the vehicle he was driving and he had started to move out of the roadway onto the pavement when the collision occurred. In this regard the court was referred to **MOOSA v HESSBERG** 1979(3) SA 432 (T) at 436 E-G where the following was stated:

“Where a motorist sees or ought to see the lights of an oncoming vehicle from behind in his rear view mirror, I am of opinion that it is not expected of that driver to anticipate that the vehicle approaching from the rear will collide with him. He is entitled to assume reasonableness, i.e. that the driver from the rear will observe the vehicle in front, will regulate his speed accordingly or overtake him on the right hand side at a proper opportunity. The driver of the front vehicle need not anticipate that the driver from the rear will collide with him and he is therefore not obliged to drive off the tarmac surface of the road at right and so permit the vehicle from the rear to overtake him.”

The court was also referred to **VERWEY v MALHERBE** 1959 (1) SA 884 (C) at 888 G-H and **STEYN, E v SANTAM VERSEKERINGSMAATSKAPPY BEPERK** 1979(2) PH J73on 167 and **NAIDOO v DURBAN CORPORATION AND ANOTHER** 1961 (2) SA 775 (N) at 778 C-D

where Milne, J stated:

“But I hold the view that a driver who gives the appropriate signal several seconds ahead of his actual movement to the right is entitled, in the absence of special circumstances, to assume that his signal has been observed and, accordingly, that it will be heeded.

- [9] In determining whether or not the driver of the Nissan was negligent, the court must consider all the evidence on record and make a determination accordingly. The starting point, however, is

what rules of road should be borne in mind in making that determination in the circumstances of each case. In this case the driver of the Nissan intended to stop in order to load a passenger he suddenly noticed emerging from a side street. In **Delictual Liability in Motor Law** by W. E. Cooper, 1996 edition the following is stated on p. 162:

“The driver of a vehicle on a public road who intends to stop his vehicle or suddenly reduce its speed must give conspicuous signal in the manner prescribed (in Reg. 7) of his intention, visible to any person approaching him, and of a duration sufficient to warn the person of his intention. *Section 93 (of the National Road Traffic Act No 93 of 1996)* accords with the principle that a driver who intends stopping or decelerating should do so at an opportune moment (i.e. with due regard to other traffic) after giving a visible, adequate and timeous signal.”

- [10] Bearing the above in mind the evidence showed that the potential passenger appeared suddenly from a side street, Lehasa street, the driver of the Nissan wanted to pick the potential passenger up and immediately switched on his indicators, took his foot off the accelerator and applied his brakes. According to him he started to move towards the pavement but before he could do so, he heard the bang from behind. He said he had not stopped when the collision occurred. Bearing in mind the inaccurate and conflicting estimates of the following distance of the vehicles, the Mazda



(according to the plaintiff was 3½ to 4m or a car-length behind, 30-35m according to Mosoka, the driver of the Nissan and 50m according to the driver of the Mazda, it is difficult to determine whether the signals given by the Nissan were visible, adequate and timeous as the rule of the road requires. This is important because

“A driver who, without giving following traffic adequate or timeous warning, stops in the path of following traffic when it is in opportune to do so or reduces his speed in such a manner and to such an extent that his vehicle causes an obstruction to other traffic, is negligent.”

Cooper, *supra*, p163. The question is which following distance should the court accept and base its finding on.

[11] A driver of a motor vehicle has a duty towards following motor vehicle to refrain from turning until the opportune moment arrives.

In **KEUNING, NO v LONDON AND SCOTTISH ASSURANCE CORPORATION LTD** 1963 (3) SA 609 (D&C) at 612 E-F the following was stated:

“It seems to me that any change of direction or reduction of the speed of a vehicle in traffic must disturb the regularity of the flow of that traffic, and, considering first the situation of the leading vehicle, it is consequently essential that the driver of it intending so to change his

direction or to reduce his speed should ensure that the condition of traffic allows this; he must select an opportune moment for doing so and carry out his manoeuvre in a reasonable manner. A signal of his intention is an indication therefore, that he will carry it out only at an opportune moment and in a reasonable manner.”

See also **REX v RAHMAN** 1950 (2) SA 44 (N) where it was stated that

“A driver, who is about to alter direction is normally bound not only to give the appropriate signal but also to satisfy himself that others whom his change of direction might endanger have observed it.”

Also **R v MILLER** 1957 (3) SA 44 (T).

- [12] The evidence of the driver of the Nissan is that throughout the travel on that day he saw the Mazda behind him through his side mirror and never looked into his rear-view mirror inside his vehicle. A rear-view mirror inside the vehicle gives the full view of what is happening behind you whereas a side mirror can only give you better view of what is happening on the side you are looking i.e. left or right. Based on that, he estimated the following distance of the Mazda as between 30 and 35m. He suddenly saw a prospective passenger emerging from Lehasa street, a side road crossing Moshoeshoe Road. He hooted and immediately got a signal from the intending passenger that he would like to board his vehicle (the

Nissan). He switched on his indicator, lifted his foot from the accelerator, applied his brakes and started moving towards his left towards the pavement in order to load the passenger. This was a crucial stage at which he had an obligation to ensure he was doing so safely. At no stage did he say he looked again in his side mirror or even the rear-view mirror inside his vehicle to ascertain the whereabouts of the Mazda that had been following him for the last 100m. The next thing he heard was a bang. He admitted that at that crucial point he was not looking at the Mazda but at the prospective passenger. Logically, having decided to pick up the passenger, he was expected to once more satisfy himself of the safety of doing so by checking the Mazda that was following him by looking into his rear-view mirror. Had he done so, he would have seen the Mazda close to banging into his Nissan not just hearing a bang. Had he looked into his rear-view mirror he would have noticed how perilously close to his Nissan the Mazda had come and would have had an opportunity to take evasive action by moving forward. After all, he knew there was a Mazda on his trail.

In **BUTT AND ANOTHER v VAN DER KAMP** 1982(3) 819 AD at 825 E-F Diemont AJA stated as follows:

“There is clearly a general duty on a driver to keep a proper look-out which includes the obligation to look in his rear-vision mirror from time

to time. The frequency with which he should do so depends naturally on the circumstances of each case”.

[13] In my view the circumstances in this matter called for another look in his rear-view mirror during this process of making arrangements to pick up the intending passenger. There is no question about the negligence of the driver of the Mazda according to the evidence of the plaintiff much as she insisted that he did nothing wrong. In my view his negligence accounts for 90% causation of the collision as against 10% of the negligence of the driver of the Nissan.

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**K.J. MOLOI, J**

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