

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

CASE NUMBER: **5938/2020**

- (1) REPORTABLE: YES/NO
- (2) OF INTEREST TO OTHER JUDGES: YES/NO
- (3) REVISED: YES/NO.

In the matter between: -

GARY MARK BRUYNS

Plaintiff

and

ANNELIE OOSTHUIZEN

Defendant

J U D G M E N T

DELIVERED: This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail and publication on CaseLines. The date and time for hand-down is deemed to be 10h00 on 8 December 2025.

D J COMBRINK AJ:

INTRODUCTION

[1] This matter concerns a motor vehicle collision that occurred on 16 August

2017 at the intersection of the M57 and R25 (Link Road) in Kempton Park. The collision involved a Range Rover motor vehicle with registration number F[...] (**“the Range Rover”**), driven by the plaintiff, and a Toyota motor vehicle with registration number F[...] (**“the Toyota”**), driven by the defendant.

- [2] The parties agreed to have the issues of merits and quantum separated in terms of Rule 33(4). This judgment deals solely with the issue of liability.

COMMON CAUSE FACTS

- [3] The following facts are not in dispute: -

[3.1] The collision occurred on 16 August 2017 at approximately 16h00 at the intersection of the M57 and R25 roads in Kempton Park.

[3.2] The intersection is regulated by traffic lights.

[3.3] The plaintiff was the driver of the Range Rover and the defendant was the driver of the Toyota.

[3.4] The plaintiff was travelling straight through the intersection.

[3.5] The defendant was travelling on the R25 from south to north and executed a right-hand turn at the intersection, intending to cross the flow of traffic approaching from the opposite direction, into Link Road.

[3.6] Both parties suffered damage as a result of the collision.

[3.7] The weather conditions were clear and sunny with good visibility.

THE DISPUTED FACTS

- [4] The central dispute concerns the direction from which the plaintiff was travelling and, consequently, which party had the right of way and the status of the traffic light when each party entered the intersection.

The plaintiff's version

[5] The plaintiff testified that he was involved in another accident on 12 December 2023 and consequently his memory has been affected to such an extent that he cannot recall the details of the accident in question. He does recall that he and a friend, Mr Jarrod Jansen van Vuuren ("**Van Vuuren**"), went to an auction and was on their way back when the accident happened.

[6] Van Vuuren testified that: -

[6.1] He was a passenger in the plaintiff's vehicle, travelling from North to South on the M57 road, intending to drive straight through the intersection. They came from a property auction in Halfway House and were travelling to Hurlingham.

[6.2] The plaintiff was travelling in the far-left lane.

[6.3] As they approached the intersection, the traffic light was green in their favour.

[6.4] When they reached a point shortly before entering the intersection, the traffic light turned amber. The plaintiff proceeded to cross the intersection. The defendant's motor vehicle was turning right very close to them. The plaintiff and Van Vuuren were talking and only noticed the defendant's vehicle just before it hit them. Van Vuuren had no time to say anything to the plaintiff. He confirmed that the defendant hit them on the right side, causing damage to the right fender just behind the wheel all the way to the right rear door. The point of impact was in the far left lane opposite the median of the R25. The plaintiff came to a standstill across the median on the R25's lane for vehicles travelling East to West. At the time the defendant was executing a right turn, onto the R25 towards the East and had to give way to the plaintiff as he had

right of way. According to Van Vuuren, they were travelling at a safe speed, similar to that of other road users, but could not tell the speed. Though he was in conversation with the plaintiff, the plaintiff was looking forward (into the road) but he does not think that the plaintiff saw the defendant as he did not swerve, apply brakes or do anything to avoid the accident.

- [6.5] The defendant collided with the right side of the plaintiff's vehicle while executing her right-hand turn.

The defendant's version

- [7] The defendant's version is markedly different: -

[7.1] She testified that she entered the intersection with the traffic light green in her favour and green for oncoming vehicles.

[7.2] She waited in the intersection for vehicles travelling in the opposite direction to clear.

[7.3] She observed one vehicle from the opposite direction stop when the light turned amber, and two other vehicles then cleared the intersection.

[7.4] After satisfying herself that no further vehicles were approaching from the North to South direction on the M57, she executed her right-hand turn.

[7.5] The defendant did not see the plaintiff's vehicle before the impact.

[7.6] The defendant believes the plaintiff must have entered the intersection from Link Road (travelling from West to East), against a red traffic light. She did not see the plaintiff's vehicle at all prior to impact and only realised there was a vehicle coming on impact.

[7.7] She confirmed the impact on the plaintiff's right hand side and the impact on her vehicle is the front more toward the right. There was also damage to her driver's door which could not open.

EVALUATION OF THE EVIDENCE

[8] This Court is confronted with two mutually destructive versions. In such circumstances, the Court must assess the credibility and reliability of the witnesses, evaluate the probabilities, and determine whether the party bearing the onus of proof has discharged that onus on a balance of probabilities.

[9] In *National Employers' General Insurance Co Ltd v Jagers*¹, the Court held that where there are two mutually destructive stories, the plaintiff can only succeed if the Court is satisfied on a preponderance of probabilities that his version is true and acceptable, and that the defendant's version is false or mistaken and falls to be rejected.

[10] Van Vuuren impressed me as a credible witness who made concessions where he had to, but his evidence was on all material aspects clear and satisfactory. He did not contradict himself and his version is also corroborated by the objective evidence, being the damage to the vehicles and where the plaintiff came to a standstill after the accident.

[11] The same cannot be said of the defendant who was unable to provide satisfactory explanations of how her vehicle could have been damaged on the right door, if the plaintiff came from West to East on Link Road, colliding with her while she had nearly executed her right turn.

[12] Not only did the defendant not impress as a witness, but her version is highly improbable. On her version there were cars standing at the red light in Link Road and the plaintiff would have to pass them on the far-left lane, then

¹ 1984 (4) SA 437 ECD at 440D-G.

drifted across all the lanes, and collided with her at a point across the median. If she was not there, his path of travel would have been into the median. This version cannot account for the damage to her vehicle and it is highly unlikely that the plaintiff's vehicle would not have any damage on the front.

[13] While credibility is important, this matter must ultimately be decided on the probabilities. Several factors favour the plaintiff's version: -

[13.1] The physical evidence: The damage to both vehicles and their final resting positions are more consistent with the plaintiff's version. The damage to the plaintiff's vehicle is on the right side, and the damage to the defendant's vehicle, while affecting the entire front, is more severe on the right front side. This is consistent with a collision where the plaintiff was travelling from North to South and the defendant turned right across his path.

[13.2] The final resting position: The plaintiff's vehicle came to rest shortly after the point of impact in a position consistent with travelling from North to South. On the defendant's version, if the plaintiff was travelling from West to East on Link Road, the plaintiff's vehicle would have been pushed in a different direction and would not have come to rest where it did.

[13.3] The implausibility of the defendant's theory: On the defendant's version, the plaintiff would have had to enter the intersection against a red light from Link Road, cross the M57 where vehicles travelling from South to North had a green light, cross three lanes of the M57 where vehicles travelling from North to South also had a green light, and collide with the defendant's vehicle. This would have required the plaintiff to cross multiple lanes of traffic all of whom had green lights, without colliding with any other vehicles. This scenario is highly improbable, particularly given the evidence that traffic conditions were

moderate with other vehicles present on the road.

[13.4] The expected collision point: On the defendant's version, if the plaintiff was coming from the West on Link Road, he would have collided with the left of the defendant's vehicle, not the right front where the more severe damage is located.

[14] I am satisfied that the accident happened as testified by Van Vuuren. However, that is not the end of the matter. It is clear to me that the plaintiff did not pay proper attention to the road, otherwise he would have taken some sort of action to avoid the accident prior to impact. He did not.

THE LAW

The duty to keep a proper lookout

[15] In *Neuhaus v Bastion Insurance Company*², the Court emphasized that keeping a proper lookout means more than looking straight ahead - it includes an awareness of what is happening in one's immediate vicinity. A motorist should have a view of the whole road from side to side.

Right-hand turns across traffic

[16] In *AA Mutual Insurance Association v Nomeka*³ 1976 (3) SA 45 (AD), the Court stated that to execute a right turn across the line of oncoming or following traffic is an inherently dangerous manoeuvre and there is a stringent duty upon a driver who intends executing such a manoeuvre to properly satisfy himself or herself that it is safe and opportune to do so.

[17] In *Sierborger v South African Railways and Harbours*⁴, the Court held that a turning manoeuvre should only be executed when it is opportune to do so and in a reasonable manner. When a signal is exhibited by a motorist that he or

² 1968 (1) SA 398 (AD).

³ 1967 (3) SA 45 (AD).

⁴ 1961 (1) SA 498 (AD).

she intends to turn across the line of traffic, implicit in such signal is that the driver intends to do so at an opportune moment and in a reasonable manner.

Rights of drivers at traffic lights

[18] However, in *Walton v Rondalia Assurance Corporation of South Africa Ltd*⁵, Fannin J held that no motorist is entitled to proceed blindly through an intersection disregarding all possibilities of other traffic, but that does not mean that a person entering an intersection is obliged to anticipate that traffic will move across his path in defiance of a traffic light which is against it, unless some indication is given by such traffic of an apparent intention to do so.

APPLICATION OF THE LAW TO THE FACTS

The defendant's negligence

[19] I find that the defendant was negligent in the following respects: -

[19.1] The defendant failed to keep a proper lookout. Despite her evidence that she observed the oncoming lane and was satisfied that no further vehicles were approaching, she did not see the plaintiff's vehicle before the impact. The plaintiff's vehicle was a Range Rover SUV, which is a large and prominent vehicle. The conditions were clear and sunny with good visibility. There is no explanation for why the defendant failed to see the plaintiff's vehicle other than that she failed to keep a proper lookout.

[19.2] The defendant executed her right-hand turn when it was not safe and opportune to do so. Given that the plaintiff's vehicle would have been visible to the defendant had she kept a proper lookout, the defendant should not have executed her turn at that moment.

⁵ 1972 (2) SA 777 (D&DCLD) at 779G-H.

[19.3] The mere fact that the collision occurred confirms that the defendant executed her right-hand turn when it was not opportune to do so. The defendant was making an inherently dangerous manoeuvre across the path of oncoming traffic and bore a stringent duty to ensure it was safe to proceed. She failed to discharge this duty.

The plaintiff's contributory negligence

[20] While I have found that the defendant was negligent and that her negligence was the primary cause of the collision, I also find that the plaintiff was contributorily negligent.

[21] The evidence establishes that: -

[21.1] The plaintiff did not see the defendant's vehicle before the collision. Mr Van Vuuren conceded that neither he nor the plaintiff observed the defendant's vehicle before impact, and that the plaintiff did not attempt to brake or swerve to avoid the collision.

[21.2] The plaintiff was travelling in an SUV vehicle which afforded him an elevated perspective of the intersection. It was a clear, sunny day with good visibility. The defendant was in the intersection, having already crossed at least two lanes successfully to reach the point of impact. Despite these circumstances, the plaintiff failed to observe the defendant's vehicle.

[21.3] The plaintiff entered the intersection on an amber light. While this was lawful, a driver entering an intersection on an amber light should exercise caution. There is no evidence that the plaintiff reduced his speed or exercised any special caution upon seeing the amber light.

[21.4] The plaintiff failed to keep a proper lookout. While he was entitled to assume that other drivers would obey traffic regulations, he was not

entitled to proceed through the intersection without any regard for the possibility of vehicles already in the intersection or vehicles crossing his path. Had he been keeping a proper lookout, he would or should have seen the defendant's vehicle and could have taken evasive action.

- [22] The plaintiff's failure to keep a proper lookout constitutes negligence and contributed to the occurrence of the collision. However, his negligence was significantly less than that of the defendant, who bore the primary responsibility for ensuring that her inherently dangerous right-hand turn across oncoming traffic was executed safely.

APPORTIONMENT

- [23] Having regard to all the circumstances, I find that the defendant was 70% at fault and the plaintiff 30%.

ORDER

- [24] Accordingly, I make the following order: -

[24.1] The defendant is ordered to pay 70% of the plaintiff's proven or agreed damages.

[24.2] The plaintiff is ordered to pay 30% of the defendant's proven or agreed damages.

[24.3] The plaintiff is ordered to pay 30% of the defendant's costs of the action and the defendant is ordered to pay 70% of the plaintiff's costs of the action.

[24.4] The issue of quantum is postponed *sine die*.

D COMBRINK
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

DATE OF HEARING: 20 October 2025

DATE OF JUDGMENT: 08 December 2025

APPEARANCES:

On behalf of plaintiff:

Adv L A Visser

Instructed by: Lindsay Keller Attorneys

On behalf of defendant:

Adv M Louw

Instructed by: Cillers & Reynders Inc