

IN THE HIGH COURT OF SOUTH AFRICA
(TRANSVAAL PROVINCIAL DIVISION)

NOT REPORTABLE

Case Number: A 1336/2004

DATE: 13/4/05

In the matter between:

LYNETTE GLADYS DICKEN obo BENJAMIN FRANCIS DICKEN

Appellant

and

THE ROAD ACCIDENT FUND

Respondent

JUDGEMENT

DE VOS, J:

[1] This is an appeal against the dismissal of the appellant's claim instituted against the respondent in the magistrates' court, on behalf of the appellant's son. The appellant's son (a minor) was a passenger in a motor vehicle driven by a Ms Short. The vehicle driven by Ms Short collided with a motor vehicle driven by a Ms van der Walt (the insured driver). The collision occurred in an intersection on the road between Port Shepstone and Marburg on 23 January 2002.

[2] Ms Short's evidence was that she approached the intersection, which is controlled by a traffic light, travelling at a moderate speed of approximately 60 km/h. She admitted that she could not remember the colour indication of the traffic light when she entered the intersection. As she entered the intersection she saw a motor vehicle moving into and across her path of travel ahead and moved to her left in order to avoid the collision but this was not possible. The appellant's minor son testified that the traffic light was amber when the vehicle driven by Ms Short crossed the white line.

[3] On the other hand the insured driver, Ms van der Walt, who was approaching from the opposite direction, testified that she was travelling in the right hand lane, since she intended to turn right at the intersection. When she approached the intersection the traffic light indicated green. She proceeded into the intersection and stopped since there was oncoming traffic. While she remained stationary in the intersection the traffic light turned to red against the vehicles approaching. She started to execute the turn but then noticed a yellow motor vehicle approximately ten to fifteen meters away from the intersection. She slammed on her brakes but as she had already started to turn could not avoid the collision.

[4] A certain Mr Watson who was travelling in the same direction as Ms Short testified that he was already stationary at the red traffic light for approximately three to five seconds when he noticed Ms Short's vehicle entering the intersection.

[5] The disputes between the parties are therefore whether the traffic light at the intersection was red at the time of the collision and whether any negligence can be attributed to Ms van der Walt. In view of the probabilities and the evidence of Ms Short it seems to me that it should be accepted that the light was red at the time Ms Short entered the intersection. The actual question to be decided is therefore whether the appellant proved the one percent negligence on the part of Ms van der Walt in order to succeed with the claim on behalf of the minor.

[6] A motorist intending to turn across an intersection and having advanced into it with the lights in his favour is entitled to continue on his way when traffic approaching from the opposite direction is stopped by the light. This must be qualified with the statement that no motorist may fail to exercise due care according to the circumstances. See *Doorga and Others v Parity Insurance Company Ltd* 1963 (3) SA 365 (D). In this instance Ms van der Walt had a clear view of traffic approaching from the opposite direction but did not notice the vehicle of Ms Short until it was ten to fifteen meters from the intersection. By that time she had already started to execute her right hand turn because she felt that she was holding up traffic approaching at right angles. It seems to me that Ms van der Walt should have kept a better lookout because if she had she would have noticed Ms Short's vehicle earlier and would not have proceeded to move into Ms Short's lane of travel. This is supported by the evidence of Mr Watson who testified that he saw that Ms Short was approaching the intersection at some speed and in fact accelerating into the intersection. It seems to me that the circumstances in this instance were such that Ms van der Walt could and ought to have seen Ms Short's vehicle earlier and could

and ought to have taken avoiding action as she had a clear lookout across the intersection. The vehicle was yellow in colour and clearly visible. A right hand turn against oncoming traffic is an inherently dangerous manoeuvre and due care must be taken at all times in executing such a turn.

[7] On behalf of the defendant it was argued that the appellant has to prove that Ms van der Walt had not taken effective avoiding action when such action could still be taken; which is when she saw Ms Short's vehicle for the first time. It was submitted that Ms van der Walt indeed took all the steps to avoid the collision when she saw or reasonably could have foreseen the imminent danger. The court was referred in this instance to *Guardian National Insurance Company Ltd v Saal 1993 (2) SA 161 (C)*. In this case the court held that the finding by the trial court that the driver had not been keeping a proper lookout at the time of the collision was not sufficient to render the appellant liable since the respondent had to prove that the driver's failure to keep a proper lookout was causally connected with the collision. The critical question being whether the driver ought reasonably to have become aware thereafter, at the stage when effective avoiding action could still be taken that the oncoming vehicle was not going to stop. In that particular case however the precise speed at which the vehicle was travelling when it entered into the intersection and at what stage the driver intended doing so could not be established. Therefore the court found unless these facts can be established on a balance of probabilities the court cannot find that had the driver reacted as a reasonable person the collision would not have occurred.

[8] In the instant case however it is clear from the evidence that Ms Short approached the intersection without the intention to stop, at a relatively high speed. Had Ms van der Walt kept a proper lookout she would have noticed or ought to have noticed that Ms Short was not going to stop. She ought to have taken avoiding action by not starting to execute the turn unless she was sure that Ms Short was going to stop at the traffic light.

[8] Because of the fact that Ms van der Walt did not keep a proper lookout I am of the view that she acted negligently and that her negligence contributed to the accident. In the premise the appeal must succeed and the following order is made:

The appeal is upheld with costs and the order of trial court is set aside and altered to read as follows:

- "1. The defendant is found to be liable for such damages as the plaintiff may be able to prove or as may be agreed to between the parties.
2. The defendant is ordered to pay the costs of the trial!."

A deVos
Judge of the High Court

I agree

N Ranchod
Judge of the High Court