

IN THE HIGH COURT OF SOUTH AFRICA

(TRANSVAAL PROVINCIAL DIVISION)

CASE NO: 12987/2002  
20/4/2005

In the matter between:

MOYO MOSES

and

AUTOPAX PASSENGER SERVICES (PTY) L TO

tfa CITY TO CITY

Defendant

### JUDGMENT

TOLMAY AJ:

On 10 August 2001 the Plaintiff was a passenger in a bus with registration number 771 CTC GP, which was driven by Mr Shad rack Mokhele (hereinafter referred to as "the driver"). The Defendant was the owner of the bus and the driver was employed by the Defendant as a bus driver. It is common cause between the parties that the driver was acting within the course and scope of his employment with Defendant when driving the aforesaid bus.

It is further common cause between the parties that on 10 August 2001, some time after midnight, the bus while travelling in a southerly direction along the N 1 in the vicinity of a settlement named Matoks, situated between Louis Trichardt and Polokwane, collided with a pedestrian who attempted to cross the road from the western side of the road, i.e. the right-hand side of the road from the driver's perspective. Subsequent to this collision the bus left the road and overturned, which resulted in passengers, including the Plaintiff, being injured.

Although I was initially brought under the impression that the matter was only proceeding before me on the question of negligence, it transpired after the Plaintiff's opening address that while Defendant's counsel agreed that the merits and quantum should be separated, he was of the opinion that the question regarding the disclaimer should also be decided by this court. The Plaintiff brought an application for separation of issues in terms of Rule 33(4) of the Uniform Rules of Court and requested that the question of negligence be heard separately. I acceded to Plaintiff's request

Plaintiff's case is that the driver was negligent. Defendant denies that and pleaded that the accident was caused by a sudden emergency, and if it is found that there was no sudden emergency, then it is pleaded that the accident was caused solely by the negligence of the pedestrian.

It is trite law that the Plaintiff carries the onus of proof regarding the question of negligence of the driver and Defendant carries the burden to prove sudden emergency.

The parties are furthermore in agreement that the Plaintiff needs only to prove negligence to some degree on the part of the driver in order to succeed.

The parties agreed that the Plaintiff was asleep at the time of the accident and could not testify regarding the facts of the accident.

**THE SCENE OF THE ACCIDENT:**

The accident took place in the vicinity of a settlement named Matoks which extends on the eastern and western side of the road.

On the western side of the road the township starts north of the scene and extends south well beyond the place of the collision. On the eastern side the settlement extends alongside the road but ends before the scene of the accident where the fence of a game farm is visible.

There are two intersections prior to the place where the accident occurred. At the first intersection there is a road sign which indicates a place called Ramagoepa, if one should turn east, and when turning west the board indicates Matoks. One kilometre further south of the first intersection one gets the second intersection, the crossroad leading to Makgatlu and Matseke respectively.

The accident occurred approximately 1 50 metres south of the second intersection. According to Defendant's expert, Mr Blackburn's sketch, the accident occurred 60 metres north of the fixed point 43.0. The second intersection is at the fixed point 43.2.

The area from the fixed point 47.2 through the south is a build up area. Traffic signs warning the drivers of the prevalence of pedestrians had been erected. Traffic signs both prescribing a speed limit of 60 kph and warning against pedestrians appear before the second intersection to the south and well beyond the scene of the accident.

The first traffic sign which limits the speed to 60 kph and which warns drivers of the prevalence of pedestrians appears at the fixed point of 44.2 km. This is 1,2 km north from the subsequent fixed point at 43.0 where the bus came to a halt after the accident.

The bus was travelling in a southerly direction which is indicated as Point A on the police plan and the pedestrian crossed the road from the western side, i.e. the right-hand perspective of the driver which is indicated as Point B on the police plan. Tyre marks appeared on the road surface which are indicated as Points C and D on the police plan. These tyre marks indicate movement to the right over the barrier line. The one tyre mark, namely Point C, continues and eventually leaves the road surface at Point G. The tyre mark D disappears at one point and seems to change to a gauge mark indicated as Point F, which eventually leaves the road surface.

**THE EVIDENCE:**

The Plaintiff was asleep at the time of the accident and did not testify. The Plaintiff did not call any witness who saw what happened.

The first witness called by the Plaintiff was Thomas Smith Nefdt who is an inspector in the South African Police Services and who was the official drafter of the police plan of the accident and photographer at the scene of the accident. Nefdt also testified to the prevalence of pedestrians also at night, and to the basic layout of the area surrounding the scene of the accident.

Karel Petrus Coetzee was then called by the Plaintiff. He is a professional engineer and testified to the erection of road signs. He is a member of an engineering firm who on behalf of the South African National Roads Agency maintain the road at the area of the accident. He testified that because of a problem with pedestrians the speed limit was reduced from 120 kph to 60 kph. According to him the signs limiting the permissible speed and warning about the danger of pedestrians were erected on 19 April 1999. He testified that the signs were erected after consultation with the community and as a result of problems with pedestrians.

Then a certain Mr Mzama Thomas Hlungwani, an inspector in the South African Police Services stationed at Bandolierskop, testified. He is the inspector who was called to the scene. According to him he completed the official accident report at the scene of the accident and obtained the driver's information, as well as a description of what happened. This he obtained from the driver. It must be stated at this stage that the driver denied ever having talked to Mr Hlungwani. Mr Hlungwani testified that there were many accidents in this area and also testified regarding the prevalence of pedestrians during the night and day. According to his testimony he received a radio call at 00:30 and arrived on the accident scene approximately 10 minutes later. It must be stated, however, that the time of his arrival at the accident scene is indicated on the officer's

accident report as 01 :35. There is a dispute between the parties regarding the exact time that the accident occurred, but nothing much turns on that. According to Hlungwani he obtained the following statement from the driver:

*"I was coming from north going south travelling toward NT main road after reaching Makhele I saw two pedestrians next to the edge of the road. The other pedestrian tried to cross the road and wanted to cross to eastern side where I lost control and collided to that pedestrian and she died instantly.*  
*"*

It must be noted that the driver's version of how the accident happened, was not put to Hlungwani. It was only put to him that the driver talked to and gave a statement to another policeman, allegedly one Madigo Toko. This person could not be properly identified by the driver. Mr Hlungwani denied that there was another policeman by that name at the scene of the accident who obtained information from the driver.

Next a certain Nkosilathi Thebe testified. She was a passenger on the bus but did not see the accident as she was asleep at the time. She testified that they were in a hurry but her evidence did not contribute to resolve the disputes and no inference regarding the speed of the driver

can be drawn from her evidence.

Then a Mr Ayhuingwi Ernest Murigwatho testified. He is an inspector in the South African Police and the driver made a statement to him on 10 October 2001. This statement was admitted by the driver and Mr Shoakane, who appeared on behalf of the Defendant, during cross-examination did not put any version to him that differed from the statement by the Defendant to Mr Murigwatho. As a matter of fact, the whole statement was read to Mr Murigwatho and he merely confirmed the content thereof and no further questions were asked regarding the statement and/or content thereof. This statement reads as follows:

*"On 2001/08/10 at about ± 01:30 I was driving a city to city bus registration eTe 771GP. I was driving on N1 main road from north to south. I was ferrying the passengers to Gauteng (from across the border).*

*At Matoks I saw two people on the right-hand side of the road. I was driving at a speed of ± 60 kph. The two persons referred to above, were one male and one female. Suddenly the female jumped into the road. She was then hit by the bus on the left side of her face as she was again trying to turn back to where her male partner was. As she*

*was falling down and I was trying to hit her (sic) by the wheels of the bus, I made a move to go the right-hand side of the road. It was then that the bus lost control and overturned and stood on its side. I was the first person to climb out of the bus and tried to help the people. I was injured as well and all the passengers went out and there was one person trapped inside. Later the police arrived. I then learned that one passenger was killed and the pedestrian also was killed on the scene.*

*I did not intentionally hit the pedestrian but she unexpectedly tried to cross the road and made a sudden turn and the bus overturned as I was trying to avoid hitting her by the wheels. I was also sober during the accident. "*

Then Robert Edmund Van der Merwe testified. He is the photographer who took photographs of the scene of the accident and the surrounding area. His evidence merely confirmed the prevalence of the already mentioned road signs and the general appearance of the area at the scene of the accident.

Barry Grobbelaar, an expert in motor vehicle accident reconstruction, testified on behalf of Plaintiff. He has a Masters Degree in Mechanical Engineering and has a consulting business in automotive engineering. The bulk of his work pertains to the reconstruction of motor vehicle accidents. According to Mr Grobbelaar it is probable that the bus was travelling at least 96 kph prior to swerving. He came to this conclusion by interpreting the tyre marks on the accident scene. He based his calculation on the scale plan drawn by P N Blackburn, who was the Defendant's expert.

He furthermore testified that it is probable that if the bus was travelling within the prescribed speed limit of 60 kph prior to the initiation of the tyre mark on the road surface, the driver would have been able to avoid capsizing the vehicle. He based this on the following:

The full measure of the tyre marks is measured on the road surface and indicated on the police plan as 52,7 metres. According to him these marks were therefore left after the bus driver had seen the impending danger and decided to react to it and therefor the visualisation, perception and reaction time of the driver occurred prior to the swerve marks being left on the road surface on the police plan. According to him, if the driver of the bus had been travelling within the speed limit of 60 kph and braked instead of swerving to the right, it is probable that he

would have been able to bring his vehicle to a stop within 24 metres. The bus remained a distance of 52,7 metres on the tar surface after the driver of the bus had reacted and the bus would therefore not have left the road and overturned if the driver therefore had braked instead of swerved to the right. He is of the opinion that even if the driver had braked from a speed of 96 kph instead of swerving, he would have been able to bring his vehicle to a stop on the road surface within the braking distance of 60 metres.

If the driver had been travelling at 60 kph the bus would have been considerably more controllable than at 96 kph due to the effect of speed on the generation of side forces on the wheels during a swerve. He is of the opinion that the driver of the bus would have been able to have kept his bus on the tar surface without leaving the road to the right due to the lower speed, smaller generation of side forces and longer time available to bring the bus under control.

He could not state from the physical evidence available to him whether the driver of the bus would have been able to avoid the collision with the pedestrian if he had been travelling at 60 kph.

He testified that the tyre marks were probably swerve marks left by only the front tyres of which the angle was greater than the direction in which

the bus was travelling and therefore a sideslip between the tyres and the road surface occurred leaving tyre marks on the road. If they were brake marks it is probable that they would have been straight due to loss of steering if the front wheels of the bus were locked during braking. He said that as the bus started reacting to the sudden steering input to the right as indicated by the angle of the front wheels and the vehicle itself started swerving to the right, load transfer occurred to the left side of the bus, thereby overloading the left side wheels and the mark left by the right front wheel discontinued. Whereas the marks left by the left wheels and especially the left front wheel became more pronounced. If the driver had been braking at this point, the unloaded right front wheel would have locked up first and a brake mark would have been left on the road surface by the right wheel. According to him the absence of such a mark is a clear indication that the bus was not being braked at this point.

For the first time during the trial the driver's version of what happened was put to a witness.

Initially it was put to Grobbelaar by Mr Shoakane during cross-examination that the pedestrian crossed the road from the western side, i.e. the right-hand side of the road from the driver's perspective and that the driver initially swerved to the left and then to the right. Later this

was changed to a statement that the driver initially moved to the right, i.e. in the direction from which the pedestrian was coming, and then after the pedestrian has crossed the middle line, swerved to the right again. The pedestrian was only hit after the first swerve when she turned around to go back in the direction from which she initially came. This means that he initially must have missed the pedestrian and only hit her after she made the U-turn. It was also put to Mr Grobbelaar that the curve of the radius was not put in the correct position by Mr Blackburn and that Mr Grobbelaar was therefore not in a position to calculate the speed of the vehicle by interpreting the tyre marks which appeared on the road surface. No evidence was put before me to explain where the radius should have been, and no alternative or correction of the scale plan drawn by Mr Blackburn was put to Mr Grobbelaar.

After Grobbelaar's testimony Plaintiff closed their case. Defendant requested absolution from the instance, which application was refused.

The driver testified on behalf of the Defendant. He is the only person who actually saw what happened. Unfortunately his evidence is far from satisfactory.

The driver testified that approximately 2 km before the scene of the accident he was overtaken by two other buses from City to City. He

was travelling at a speed of, as he put it, even less than 60 kph. He testified that the two buses were travelling in front of him. He saw a male and a female at the side of the road on the left-hand side. He saw them in the light of the bus travelling in front of him. He testified that the bus in front of him was approximately the length of the court room (which was measured at  $\pm 10$  paces) in front of him. This indicates that he saw her a considerable time before the accident occurred. In the light of that the whole question of whether he could see the pedestrians becomes virtually academic. As he approached, the female ran across the road and he tried to avoid contact with her by swinging the bus in the direction where she came from, which means that he moved to the right. He managed to avoid her but she made a U-turn and turned back to where she came from. Apparently she made this U-turn just after she crossed the barrier line. When she made the U-turn she collided with the front left corner of his bus as he was swinging away from her, according to this version. Thereafter the bus careered out of the road and overturned. This version is in contradiction with the version which was given to Inspector Murigwatho.

The driver denied ever having spoken to Inspector Hlungwani and remembered talking to one policeman whose name was given as Modiga Toko. But for a name, the Defendant could never identify this person. One would expect that some attempts would have been made to trace

this mysterious policeman. He denied categorically supplying any information to Hlungwani. The driver furthermore admitted signing the statement before Murigwatho approximately a month later. The statement was read to him and he agreed with the entire content thereof.

He also testified that he had driven this road for approximately one year prior to the accident, twice a week at night. He saw the traffic signs indicating the speed limit and the warning regarding pedestrians.

It is interesting to note that only when he was directly asked whether he applied the brakes, that he said he tried to apply the brakes and hooted. It must be noted that this was not incorporated in the report made to Murigwatho. It is also interesting to note that initially he said he tried only to brake, later on he changed this and stated that he did indeed brake. Inspector Murigwatho was also not cross-examined regarding these aspects which he allegedly left out from his report. I do not accept that the driver either braked or hooted. Firstly, it was never put to Murigwatho that his report was incomplete in so far as it does not make reference to either hooting or braking. If one considers Grobbelaar's evidence it also seems improbable that he did brake.

The driver testified that he has a Code 14 licence which was granted to him during 1992. He also testified that he attended various driving

courses to drive heavy duty vehicles and has been a professional driver for most of his adult life.

The driver insisted that he travelled at a speed of even less than 60 kph. If that is so, he should have at least been able to bring the bus to a standstill without leaving the road surface and overturning the bus. I say this with reference to Grobbelaar's evidence which clearly stated that if the driver was driving at 60 kph, he would have been able to avoid capsizing the vehicle.

Although initially it was put that the pedestrians were wearing clothes that were not visible he testified that despite the fact that their clothes were dark, he did see them. He even noted them standing close to each other and could also identify their gender and he saw that it was a woman who entered the road. The whole initial attempt to attach any significance to the colour of the pedestrian's clothes is surprising.

He conceded that he foresaw a possibility that the pedestrians might do something unforeseeable.

The next witness on behalf of the Defendant was Paul Nicholas Blackburn who is an expert in accident investigation. He stated that he is not an expert in reconstruction but that his expertise is more relevant

to investigation and description of what transpired at the accident scene.

He is not qualified to make any calculation regarding the speed of the bus.

He testified that Grobbelaar could not calculate the speed of the bus as the radius as contained in his plan was not put in the correct place. Mr Blackburn's plan, according to himself, is a scale plan. Although various attempts were made to explain how the radius could be in an incorrect place on a scale plan, no coherent explanation was given.

His report is a preliminary report and is based on the evidence of a certain Paulney who was not called by the Defendant. Paulney told Mr Blackburn that he saw the pedestrian in the centre of their driving lane crossing the road from left to right. Paulney also told him that the driver of the bus tried to wrench the bus to the right. As already stated Paulney never testified and according to the driver's own evidence this is not what happened.

His report was also based on the fact that he thought that the pedestrian that was killed was a child.

He testified that he received Grobbelaar's report during 2003 and requested his attorney to obtain for his consideration the police plan and

Van der Merwe's report. This was also only given to him on the Monday prior to the starting of the trial. Counsel for Defendant tried to put the blame for this squarely on Plaintiff's shoulders, but never explained why an application was not brought timeously to compel further discovery. I have dealt with this in my ruling regarding Defendant's request for postponement after Blackburn's testimony. Since 2003 Mr Blackburn was aware of Mr Grobbelaar's calculations and how he came to his conclusions. Despite that no attempt was made to file a supplementary report.

Mr Blackburn concluded that the collision was caused by the pedestrian crossing the road unexpectedly and stated that the driver's reaction was natural under the circumstances.

It is clear that Blackburn did only a preliminary report and he based this report on the hearsay obtained from Paulney who contradicts the evidence of the driver. Mr Blackburn valiantly tried to state that irrespective of the facts now before the Court, he would not amend his opinion. In the light of the evidence very little value can be attached to Mr Blackburn's report.

The Defendant then called a certain Mr Conrad Walter Lotter as an expert. Mr Lotter did not complete an independent report but it is merely

stated at the end of Mr Blackburn's report that this report was checked by Mr Lotter. The Plaintiff's counsel objected that he be called as an expert. I overruled the objection and Lotter testified. Mr Shoakane, on behalf of the Defendant requested a postponement so that Mr Lotter could supply a supplementary report. This request for postponement was refused and the reasons for that are set out in my ruling contained in the record.

Mr Lotter testified that Mr Blackburn operates as an expert investigator and he himself operates as a reconstruction expert. Mr Lotter is a mechanical engineer who has wide experience in the reconstruction of accidents. He testified that the report of Blackburn was prepared on behalf of the Defendant and was checked by him. A complicated reconstruction of events would be required and if specific calculations can be done from the available evidence, he would be the person to see to that. Mr Lotter did not deem it necessary in this particular matter to do any calculations and he merely checked the report. This is surprising in the light of Mr Grobbelaar's report of which he had since 2003.

Mr Lotter testified that the natural reaction of a driver would be to swerve away from the obstruction. Despite that, he testified that although the driver moved to the right, which was the direction from which the pedestrian was coming, that the driver's reactions remain

natural under the circumstances.

A lot of time and energy was spent regarding whether Lotter should be allowed to testify on the calculations made by Grobbelaar. Nothing regarding any calculations is contained in their report. The Defendant's experts, despite the fact that they had Grobbelaar's report since 2003, did not file a supplementary report to counter Grobbelaar's method of calculating the speed at which the bus travelled. In conclusion he persists with his opinion that the driver's reaction was reasonable and that the accident was caused by the pedestrian crossing the road.

The Defendant's experts' report was of little value.

#### EVALUATION OF THE EVIDENCE:

When determining whether the driver was negligent the following test should be applied:

See: Kruger v Coetzee 1966(2) SA 428 (A) at 430G where the following is said:

*"For the purposes of liability culpa arises if:*

(a) *a diligens paterfamilias in the position of the Defendant;*

(i) *would foresee the reasonable possibility of his conduct injuring another in his person or property and causing him patrimonial loss;*

(ii) *would take reasonable steps to guard against such occurrence; and*

(b) *the Defendant failed to take such steps. "*

In this case the testimony of the driver was that he had driven this road for approximately one year prior to the accident and had driven along this road approximately twice a week at night. Furthermore he testified that he saw the traffic signs and was alive to the prevalence of pedestrians due to the traffic signs. In the circumstances it is clear that he foresaw that pedestrians are prevalent in that area and that he should keep a proper look-out for them.

He furthermore testified that he foresaw that approaching pedestrians on the side of the road may do something unexpectedly or irrationally. He

testified that he saw the two pedestrians at the side of the road in the light of the bus in front of him and furthermore he was also in a position to identify that they were male and female. The question that then arises is whether he took reasonable steps to prevent the accident occurring. I have already dealt with the various versions given by and on behalf of the driver. The driver testified that he only swerved after he hit the pedestrian. How is it possible that he managed initially to miss the pedestrian but still hit her with the front corner of the bus after she made the U-turn. This is so inherently impossible that it smacks of falsehood. Nothing was said in the warning statement regarding any other evasive actions that he made to avoid the accident, It was never put to Mr Murigwatho, who took the statement, that he did not take a full and proper statement and it was only at a very late stage of his evidence that the driver testified that he braked and even that he hooted. He testified that he told this to Mr Murigwatho but this was never put to Mr Murigwatho.

Under the circumstances it would seem that the only evasive action that he took was to move to the right and then to swerve further to the right. When all the evidence is evaluated it would seem that the driver did not take sufficient evasive measures to avoid the accident.

In the matter of Manuel v SA Eagle 1982(4) SA 352 the Court ruled that

a motorist who sees a pedestrian on the road, or about to venture thereon, should regulate his driving so as to avoid an accident. If the driver is unable to justifiably assume that the pedestrian recognised or intend to respect the driver's right of way, the driver must regulate his driving to allow for the possibility or probability that his vehicle might not enjoy an unobstructed passage.

In casu the driver testified that he foresaw the possibility that the pedestrian might do something irrational. Despite that, there is no evidence that he did anything to adapt his driving accordingly. Under the circumstances the driver should have foreseen the possibility that a pedestrian could cross the street and should have adjusted his driving accordingly.

The driver is a professional driver and as such he had a duty to guard over the safety of his passengers.

Due to the different versions put on behalf of the driver and his own testimony, especially the fact that certain issues were not taken up with Inspector Murigwatho, specifically regarding the braking and hooting, I do not accept the Defendant's evidence that he did brake or hoot as indicated by him in one of his later versions. There is also the testimony of Grobbelaar that confirms this, by stating that the marks on the road

did not indicate any braking.

Under the circumstances it is clear, on a balance of probabilities, that the driver did not take the necessary precautionary measures in order to avoid the accident.

Regarding the speed at which the bus was driving the driver testified that he travelled at a speed of 60 kph or even less. I am, due to the contradictions in the driver's testimony and the inherent improbability of the evidence that he initially missed the pedestrian and only hit her with the front of the bus after she made a U-turn and Mr Grobbelaar's evidence, not persuaded that he kept to the speed limit. If he kept to the speed limit the bus would furthermore have been more controllable and he would in all probability not have left the road surface and overturned. I reject his evidence that he kept to the speed limit and accept that he did drive too fast under the circumstances.

Although I accept that the pedestrian crossing the road created some sort of an emergency situation, her actions did not create a sudden emergency as defined by the law.

A driver who is suddenly confronted with an unexpected danger may and probably will act different from a driver who does not have to act without

much time to make a decision and on the spur of the moment he may do something which causes a collision. This is accepted law, but one also has to take into consideration that there are certain limitations to the doctrine of sudden emergency.

In the matter of Good v SA Mutual Fire and General Insurance Co Ltd 1979(4) SA 301 (W) it was stated that it is not every error of judgment which is excusable as not amounting to negligence, but only those which a reasonably careful and skilled driver of a vehicle might commit. In casu the driver saw the pedestrian and actually foresaw unexpected or irrational behaviour. When she ran into the road he did not take sufficient evasive action to prevent the incident from occurring. In casu the driver contributed to the emergency by driving too fast in an area where the speed limit was 60 kph and where the prevalence of pedestrians was well known. He furthermore did not take sufficient precautionary measures to avoid that the incident occurred as already stated.

Under the circumstances the driver appreciated the danger when he testified that he foresaw that a pedestrian could do something irrational. He saw her timeously and in as much as her action mainly contributed to the accident there were also evasive actions, namely to brake and swerve away from the pedestrian, that he could have taken to avoid the

collision and the subsequent overturning of the bus.

If the driver drove within the speed limit he might have, at the very least, avoided the overturning of the bus if not the collision with the pedestrian and in terms of the doctrine of sudden emergency he may only be excused from liability if he himself in no way contributed to the emergency. A reasonable driver is expected to be alert and to have a certain nerve and must be able to cope with difficult situations which arise suddenly.

See: Butt and Another v Van der Camp 1982(3) SA 819 (A)

Under the circumstances to have swerved so violently to the right as to lose complete control over the bus which then led to the overturning of the bus, must indicate at least a degree of negligence on the part of the driver.

The competent driver who suddenly saw someone running into the road and is faced with a crisis must at least bear in mind that the safety of the other passengers in the bus is his duty and should not swerve so violently that it causes the overturning of the bus.

It must also be taken into consideration that the driver of the bus has

more experience than the average driver and is required to consider more facts and circumstances and to be in a better position than the ordinary driver to deal with unexpected situations.

I am also confronted with different versions by the driver and the inherent improbabilities in his evidence as already indicated. It is impossible under those circumstances to find that the Defendant has succeeded in proving sudden emergency. I accept that the pedestrian's action must have caused a difficult situation but there is no doubt that there was at least some amount of negligence on the part of the driver.

It is quite clear that the pedestrian was negligent and was it not for her actions the accident would not have occurred, but the driver was also negligent as set out previously. It is quite clear that the driver's version of what happened is so inherently improbable that I must accept that he drove too fast under the circumstances, did not keep a proper look-out and did not take the necessary precautionary measures to avoid the accident.

The Plaintiff requested that I should make a specific order regarding the costs of perusing the record and research. This should rather be decided by the Taxing Master and therefore I make no order regarding that. Counsel did not ask for the qualifying fees of the experts. In the light

thereof I make no finding in this regard.

In the premises I find that:

- 1 . The Plaintiff has succeeded in proving that the driver was negligent, and that such negligence resulted in Plaintiff's injuries.
2. The defence of sudden emergency fails.
3. Defendant is ordered to pay the costs of this trial.

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