

SOUTH AFRICA / JUDGMENT

Hartley v Road Accident Fund (44376/2014) [2016] ZAGPPHC 282 (10 March 2016) [2016] ZAGPPHC 282

COURT

North Gauteng High Court, Pretoria

BEFORE

MF Legodi

CASE / FILE NUMBER

44376/2014

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HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 44376/2014

DATE: 10 MARCH 2016

IN THE MATTER BETWEEN

HARTLEY SIDNEY JOHN

V

THE ROAD ACCIDENT FUND

- [1] A collision which occurred on 8 October 2011 between a BMW motorbike ridden by the Plaintiff, Mr Sidney John Hartley and a Polo Volkswagen vehicle with registration [S..... GP] (the insured vehicle), driven by Ms Lenna Els (the insured driver) became the subject of the dispute in these proceedings.
- [2] The dispute is between the plaintiff and the Road Accident Fund (the Fund) in terms of which the plaintiff is claiming damages against the Fund as a result of the injuries he sustained during the collision aforesaid. The issue to be determined is whether the plaintiff in anyway contributed to the cause of the collision

- [3] Two witnesses namely, the Plaintiff and the Mrs Charissa Swart (Swart) testified in these proceedings. The defendant closed its case without leading any evidence.

In a nutshell the evidence by the plaintiff and his witness was to following effect: The plaintiff was riding on his bike from west to east on the Paul Street, in Morelletta Park Pretoria. He was following other vehicles approaching a four way stop sign. He was

immediately following the insured vehicle at a distance of between 3 to 4 meters. The insured vehicle was travelling slowly towards the stop sign intersection when the plaintiff moved more to his right to check if it was safe to overtake. In the course of that, the insured vehicle unexpectedly moved to its right across the centre line. The plaintiff also swerved to the right in an attempt to avoid the collision, but hit the rear right of the insured vehicle. The point of impact was indicated as being on the centre of the lane from the opposite direction. The plaintiff fell off the bike onto the pavement with his lower part body on the pavement and the upper part on the grass.

- [4] To give a brief layout of the road: It is a tarred road with single lane from both sides. On the left hand side towards the direction where the plaintiff was proceeding, there is a high wall apparently surrounding an estate. One cannot access the estate on the left from Paul Street. However, on the right in the direction where the plaintiff was heading to, there are drive ways leading to the residential areas. On both sides of the road there are trees.
- [5] After the collision the insured driver was overheard by Swart telling other on-lookers at the scene that she was looking for a particular house number which she could not find and that she was making a U-turn when the collision occurred.
- [6] As indicated earlier in this judgment, the real issue is whether the plaintiff in anyway contributed to the cause of the collision. The parties had settled general damages in the amount of R 300 000.00 subject to the determination whether the plaintiff contributed to the cause of the collision or not.
- [7] I find it necessary to restate the principle relevant to the facts of the present case. Before overtaking another vehicle, a driver is under a duty to satisfy himself that it is safe to do in order to prevent a motor vehicle accident due to negligence. In discharging this duty, the main concern of the overtaking driver travelling on a single carriage way is, inter alia, traffic ahead proceeding in the same direction. Similarly, the driver of the vehicle intending to pass another vehicle proceeding in the same direction, more to overtake, must pass to the right thereof at a safe distance. There is no general rule that an overtaking driver is under a duty to warn the driver ahead that he is about to overtake.
- [8] On a main road an overtaking driver is generally entitled to assume that slower traffic being overtaken will continue on its course on the left road. A duty to warn either by flicking headlights or by hooting will depend inter alia on the visibility, the movement of the vehicle ahead, its speed, or any other indication that its driver may be intending to move to its right. An overtaking driver may be under a duty to give a proper warning when he intends passing closely to the vehicle being overtaken or where he should anticipate that it may move

laterally. (See *Weswik v Crews* 1965 (2) SA 690 (A). The underlining above is my emphasis.

- [9] The driver of vehicle on a public road must upon becoming aware of the other traffic proceeding in the same direction and wishing to overtake his vehicle, cause his vehicle to travel as near to left edge of the roadway as is possible without endangering himself or other traffic or property on the roadway, and may not until the overtaking vehicle has passed.
- [10] On the other hand, the driver of a vehicle on a public road who decides to turn to the right must before reaching the point at which he or she deciding to turn, indicate his or her intention to turn and must not effect such turn unless he can do so without obstructing other traffic and if he is driving in a vehicle on the roadway of a public road where such road is intended for traffic in both directions, he or she must steer such vehicle as near as circumstances may permit to the immediate. (See *Voortrekker Apteek v Serfontein* 1979 (3) SA 906 (O).
- [11] A driver who intends to turn should ascertain whether there is following traffic, signal his intention to turn clearly, and must refrain from turning until an opportune movement. A driver should look attentively in his rearview mirror to ascertain whether there is traffic following his vehicle. His duty is a continuous one. One look in the rearview mirror may not be sufficient. The circumstances may require the driver to look repeatedly in his rearview mirror particularly once he or she becomes aware of the presence of the following traffic. A driver is under duty to warn following traffic that he intends to turn to his right. To this end, he must signal his intention clearly and timeously. It is not sufficient, however for the driver who is about to turn right

to signal his intention, even if the signal is given in good time. He is under further obligation to refrain from making a turn until an opportune moment, i.e. at a time when the maneuver will not obstruct or endanger other traffic. His signal signifies that he intends turning at an opportune moment. To carry out right hand turn safely a driver is invariably obliged to make assumptions he or she is entitled to make vis-a- vis following traffic. He must satisfy himself that the following traffic has seen and is reacting to his or her signal. (See *Bata Shoe Co v Moss* 1977 (4) SA 16 (W).)

- [12] What is stated in paragraphs 8 to 10 above is applicable to the insured driver in the present case as she made a turn to the right. She was not called to testify and to explain herself as to the circumstances under which the collision occurred. For this reason, I am prepared to accept that the collision occurred as testified by the plaintiff and his witness, in particular that the insured driver made a U-turn after she could not find the house number she was looking for on her right. Clearly in the circumstances of the case, she had a heavier duty not to make a U-turn when there was oncoming vehicle driven by Swart and the plaintiffs bike coming from behind and busy overtaking. I deal later with the suggestion that the plaintiff was not overtaking.

- [13] The insured driver gave no signal that she was turning to the right. She was driving slowly and suddenly moved to her right across the center line and in the process collided with the plaintiff's bike. The insured driver was clearly negligent and what remained to be determined is whether he was solely responsible for the cause of the collision. Put differently, whether the plaintiff contributed to the cause of the collision.
- [14] The duty of a motorist intending to overtake or overtaking is set out in paragraphs 7 and 8 of this judgment. Added to what is stated in the aforesaid paragraphs, is the duty to keep a reasonable following distance. Counsel for the Fund took the point that the plaintiff must be found to have contributed to the cause of the collision by not keeping a reasonable following distance.
- [15] In the 'Arrive Alive' website, and dealing with safe following distances and road crashes is, inter alia, stated:

"Adequate following distances enforce drivers to adjust in emergency situations and bring their vehicle to a stop safely..."

Totally stopping distance involves the following:

Human perception time: the time required for a driver to recognize a potential hazard. This time is answered to be approximately 0.75 seconds in normal situations.

Human reaction time: Once hazard has been perceived, the driver must, respond by applying brakes. The average reaction time is about 0.75 seconds. Vehicle reaction time: This is the time it takes for the vehicle to react once the brakes have been applied by the driver. Vehicle reaction time is very quick, usually assumed to be about 0.05 seconds.

Vehicle braking capability: This refers to the vehicle's ability to come to a complete stop once the brakes have been applied. "

- [16] It is further stated in the website that most international road safety campaigns refer to the "2"
- "3" second rule as a guideline for safe following distance. A point on the road is noted; 2-3 seconds are counted and if that point is still visible then there is probably enough following distance. The 2-3 seconds rule is said to be advised measure when driving conditions are ideal and that it should be seen as a bare minimum to be adjusted to at least 5-6 seconds in inter alia situations like when following vehicles with different characteristics; i.e. motor cycle and trucks.
- [17] No evidence dealing with what is stated above was led. However, the plaintiff told this court that at the time the insured driver made a turn to the right, he was about 3 to 4 meters away from the insured vehicle. The estimated distance by Swart was 4-5 meters. The speed at which the insured driver was travelling was not disclosed neither did the plaintiff provide an estimation of the speed he was travelling at time when he tried to avoid the collision by swerving to the same direction. Therefore any suggestion of unreasonable following

distance and speed should be seen in this context. The fact that the plaintiff did not apply brakes and could not avoid the collision would not necessarily be indicative of unreasonable following distance.

- [18] Overtaking and passing on the right with intention to overtake has no significant difference. Therefore although counsel for the plaintiff wanted to suggest that the plaintiff was not overtaking at the time of the collision, but that he was checking whether it was safe to overtake or not, exhibit C used to cross-examine the plaintiff suggests otherwise. Exhibit C depicts the drawing of the road in question, the direction and positions of the insured vehicle and the bike just before the collision. The insured vehicle is depicted as being more to the left and the plaintiff's bike more to the right. The positioning of the bike does not depict mere checking whether to overtake or not. The process of overtaking had already begun. I therefore deal with this case on the basis that at the time of the collision the plaintiff was overtaking.
- [19] It is so that before overtaking another vehicle, a driver is under a duty to satisfy himself that it is safe to do so. While there was oncoming vehicle or vehicles at the time the plaintiff was so overtaking, the lane of his travel is wide enough to be able to pass another vehicle without encroaching on the center line, taking into account the fact that the plaintiff was on a bike. Exhibit A is a photo which also depicts the road in question and the point of collision. Of importance, there are two vehicles depicted on the photo following each other approaching towards the intersection. The one behind is Volkswagen Polo or Jetta. It is more to the left and on its right, that is, between it and the center line, there is enough space which in my view, would have allowed the motorbike to pass on the right without posing danger to the oncoming vehicles. It therefore appears that, had the insured not made sudden right turn, the plaintiff would have been able to overtake the insured vehicle to the right at a safe distance.
- [20] The insured vehicle was slower and that was confirmed by Swart. While the uncontested evidence was that the motorbike had its headlamp on, in the circumstances of the case and as is also a general rule, the plaintiff was under no duty to warn the insured that he was about to overtake. The plaintiff was entitled in the circumstances to assume that the insured driver will continue to keep the insured vehicle on its course to the left of its lane towards the intersection. There is no evidence that the movement of the insured vehicle, other than been slower, was such that it intended to move to its right in which case the plaintiff would have been under duty to give other warning signs like flicking or hooting. Whilst the locality is that motorist driving in that direction, might turn to the right to access residential areas, evidence in this case is that no such warning was given by the insured driver. On the facts of the case, I am unable to find that the plaintiff has in any manner contributed to the cause of the action.
- [21] Consequently an order is hereby made as follows:

[21.1] The defendant is held liable to pay 100% of the defendaffi's proven damages;

[21.2] Judgment in the amount of R300 000.00 for general damages is hereby granted;

[21.3] The defendant to pay interest at the rate of 15.5% per annum from date of judgment to date of payment;

[21.4] The rest of the head of damages is hereby postponed sine die;

[21.5] The defendant to pay costs of the action to date hereof.

MF LEGODI

JUDGE OF THE HIGH COURT

FOR THE APPLICANT: ADV I LINGENVELDER

INSTRUCTED BY: ADAMS & ADAMS

FOR THE RESPONDENT: ADV.T.TSHABANGWE

INSTRUCTED BY: TSEBANE MOLOBA ATTORNEYS

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