

SOUTH AFRICA / JUDGMENT

Horn v S (A201/19) [2020] ZAGPPHC 202 (26 May 2020)

[2020] ZAGPPHC 202

COURT

North Gauteng High Court, Pretoria

BEFORE

BAM, P PHALANE

CASE / FILE NUMBER

A201/19

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

Case Number:

A201/19

In the matter of

M L

HORN

Appellant

vs

THE

STATE

Respondent

JUDGMENT

BAM, J

1. On 20 July 2018 he appellant was convicted in the magistrate's court Pretoria, sitting at Hatfield, on a charge of Negligent Driving in terms of Section 63(1) of the National Road Traffic Act, Act 93 of 1996, count 1, and sentenced to a fine of R4000 or 4 Months imprisonment. The appellant, with leave by the trial court, now appeals only the conviction. The appeal is contested by the State.

2. It seemed that at the inception of the trial the State considered to add two more charges namely the alleged contraventions of Section 61 of the same Act (failing to stop after the accident and to ascertain the nature and extent of injuries). However, before the appellant pleaded, the charges were withdrawn.
3. It was the State's case that the appellant drove her vehicle negligently in that she did not keep a proper lookout when she

collided with the complainant at the intersection of Ann Wilson Street and Stormvoel Road. This allegation was disputed by the

appellant on the basis, firstly, that she did not drive negligently, and secondly, that she did not hit the complainant.

4. We do find it expedient to record that it was common cause that Stormvoel Road carried traffic on two lanes East to West and on two lanes West – East, and that Ann Wilson street, intersecting with Stormvoel Road, carried traffic on two lanes North -- South and two lanes South – North. Although the evidence was not clear at all relevant times, we venture to record that what follows is an accurate summary of the evidence before the court a quo.

(i) The complainant testified that before the incident she walked on the side walk (pavement) on the right hand side of the street (Anna Wilson Street) in a Northerly direction on her way to the intersection of that street and Stormvoel Road, carrying traffic

from West to East, with the intention to cross Stormvoel Road in a Northerly direction. Upon her arrival at the intersection the robot was red. After the robot had changed green in her favour, she (safely) crossed the first two lanes of that road, carrying traffic from West to East, but after having entered the third lane of Stormvoel Road, i.e. the first lane carrying traffic from East to West, a vehicle bumped into her from the left and she fell down. She did not see where this vehicle came from. The vehicle did not stop and drove on. She was assisted by a female person to sit on the sidewalk on the right hand side of the street. She sustained bruises to her left side and was later treated at a hospital, and discharged late that same evening.

(ii) The appellant testified that she was accompanied by her two children, driving along the first lane of Ann Wilson Street in a Northerly direction. She intended to turn right into Stormvoel Road, heading West. At the intersection the robot was red. There were vehicles in front of her waiting for the robot to change. When the robot turned green she drove on behind the other vehicles into the intersection. She kept a lookout for oncoming traffic from the Northern direction and for any pedestrians to her right before she started to execute the turn. There were no pedestrian. As she turned she saw a pedestrian standing about 3 to 4 metres directly in front of her vehicle and took evasive action to her left and did not hit the pedestrian. The pedestrian jumped back and landed on her backside. The pedestrian got up immediately and then sat down on the pavement. The appellant stopped her vehicle a few metres further. The woman got up and sat down on the sidewalk. The appellant then instructed her son to open the rear side window of her vehicle to enquire about the woman's situation. The woman indicated that she was all right

and waved them away. She then drove on.

5. According to the complainant she was assisted by another female to sit down on the side walk. She also referred to two male persons who enquired about her condition and the vehicle involved. It seems as if the two male persons, and the female, could have been eyewitnesses of the incident. However, there was no explanation why they were not called as witnesses. Any reference to what these people had to say to the complainant was therefore inadmissible.
6. The two versions on record, pertaining to whether the accused's vehicle bumped into the complainant and whether the accused stopped at the scene are not compatible and are mutually destructive.
7. The trial court concluded that the appellant was at fault, that she was guilty of negligent driving in that she did not keep a proper lookout and collided with the complainant. The trial court also found that it was improbable that the complainant fell on her behind when she took fright of the vehicle as testified by the accused.
8. The trial court correctly remarked that the State bore the onus. In that regard the law is clear. The accused bore no onus. In the event of the accused's version being reasonable possible true, that version has to be accepted. It is only if the State's case, after consideration of all the facts, is found to be totally acceptable and unshaken, that no room exists for a finding that the accused's version may be reasonable possible true. See *S v Trainor* 2003(1) SACR 35 SCA pars [8] and [9].
9. In our view several aspects pertaining to the accused's version, being that of a single witness, are troublesome and of concern,

namely:

- (i) The accused and the complainant, on the probabilities, at the intersection started off at the same time when the robot turned green. On the probabilities the accused's vehicle would have reached the intersection before the complainant. This probably explains why the complainant, on the accused's version, was not visible when the accused executed her turn to the right.
- (ii) The complainant did not see where the accused's vehicle came from. It is clear, as conceded by the complainant that the complainant did not even look at the intersection where the accused was on the point of driving West into Stormvoel Road.
- (iii) The complainant admitted that she was in a hurry, explaining the accused's version, and consistent with it, that the complainant

was not in the intersection but then suddenly stood in the middle of the road directly in front of the accused's vehicle – a distance of 3 to 4 metres away. It has to be inferred that it is reasonable possible that the complainant rushed into the intersection without looking, as she conceded, whether there was an oncoming vehicle driving into Stormvoel Road.

(iv) According to the complainant the accused's vehicle hit her on the left side of her body and she sustained bruises. There was however no proof of the nature and extent of the bruises, nor any proof of the nature of her treatment at the hospital, also taken into account that the complainant was treated and discharged. Although this aspect may be blamed on poor investigation, it has to be inferred that the injuries were not serious at all. It must also be taken into account that the accused drove a large vehicle, Landrover 3, which, on the probabilities, if it did collide with the complainant, would have caused serious injuries. The trial magistrate's finding that it was not probable that the complainant could have sustained her injuries by falling when she jumped away on the accused's version, without being hit by the vehicle, amounts to speculation.

(v) It went unexplained (although it may not be fair to hold it against the complainant) why the State, after having consulted with the complainant, firstly attempted to add charges in terms of Section 61 of the relevant Act (failure to stop and render assistance after a collision), and then subsequently, at the trial, abandoned that consideration. Unexplained, this issue clearly does not count in favour of the State's case.

10. It follows that the version upon which the State's case relies cannot be held to be totally acceptable and unshaken. It

appears that the complainant, on her own version, to say the least, was grossly negligent in attempting to cross the lane of Stormvoel

Road where she said the incident occurred.

11. Accordingly, pertaining to the facts, it has to be considered whether the accused's version is reasonable possible. In taking into account all relevant circumstances, as well as the evidence adduced by both the State and the accused, I am satisfied, especially with reference to the summary of the accused's version above, that it has to be concluded that the accused's

version of the events is reasonable possible true.

12. However, that is not where the matter ends. It still remains to be considered whether the accused, on the admitted facts, was not in any event negligent in nearly hitting the complainant in that intersection.

13. The objective test for negligent driving comprises three elements (See PRINCIPLES OF CRIMINAL LAW - Fourth Edition, Chapter 29; Jonathan Burchell.)

(i) Reasonable foreseeability: Would a reasonable person, in the same

circumstances as the accused, have foreseen the reasonable possibility of the occurrence of the consequence or existence of the

circumstances in question, including unlawfulness?

(ii) Duty to guard: Would a reasonable person have taken guard against that possibility?

(iii) Failure to take reasonable steps: Did the accused fail to take steps which she should reasonably have taken to guard against

harm?

If a reasonable person would have foreseen the possibility of the occurrence of the consequence in question and would have guarded

against it, the final enquiry is whether the accused took the steps which a reasonable person would have taken to guard against it.

14. The question usually arising is what exactly is the standard of a reasonable person. In *S v Burger* 1975(4) SA 877 (A) at 879D-E the criterion of the reasonable man was described as follows:

“One does not expect of a diligens pater familias any extremes such as Solomonic wisdom, prophetic foresight, chameleonic caution, headlong haste, nervous timidity, or the trained reflexes of a racing driver. In short, a diligens pater familias treads life’s pathway with moderation and prudent common sense.”

15. After consideration of all available facts and applying the test referred to above, although there were a few unexplained aspects (eg the States failure to call possible eye witnesses, I am of the opinion that it cannot be found that the accused did not act reasonable in the circumstances.

ORDER

1. The appeal against the conviction succeeds.
2. The conviction and sentence are set aside.

AJ BAM

JUDGE OF THE HIGH COURT

P PHALANE

ACTING JUDGE OF THE HIGH COURT

26 May 2020

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Prepared on 9 October 2026 · Esheria