

In the Supreme Court of South Africa
In die Hooggeregshof van Suid-Afrika

(*in Suid-Afrika* Provincial Division).
(*in Suid-Afrika* Provinsiale Afdeling).

Appeal in Civil Case.
Appel in Siviele Saak.

MINISTER OF JUSTICE Appellant,

versus

L. S. N. M. A. N. Respondent.

Appellant's Attorney
Prokureur vir Appellant

Respondent's Attorney
Prokureur vir Respondent

Appellant's Advocate
Advokaat vir Appellant

Respondent's Advocate
Advokaat vir Respondent

Set down for hearing on
Op die rol geplaas vir verhoor op

(TPD. 2)

(1st)

— Appeal allowed, with costs — both in this Court and the Transvaal Provincial Division. — The judgment of the Magistrate is restored, namely, "judgment for the Defendant, with costs".

*Centlins C.J.,
Hodder, Geyser, J.J.D.
Pienk, & Hax, J.J.D.*

Boys. 1/12/55.

IN THE SUPREME COURT OF SOUTH AFRICA.

(APPELLATE DIVISION).

Record.

In the matter between:

THE MINISTER OF JUSTICE
Appellant.

AND

L. SNYMAN.
Respondent.

C O R A M :- Centlivres, C.J., Hoexter, Fagan, Brink et
Hall, JJ.A.

H E A R D :- 1st November, 1955. DELIVERED :- 1st December, 1955

J U D G M E N T.

B R I N K, J.A. :- Respondent, to whom I shall refer as the
plaintiff, instituted action against appellant, hereinafter
called the defendant, in a magistrate's court in Pretoria,
in which the plaintiff claimed damages in the sum of £156. 10.
The particulars set out in the summons alleged that on or
about the 3rd October, 1952, in Pretorius Street, Pretoria,
a Police van, belonging to the South African Police, driven
by a servant of the defendant, acting in the course and
scope of his employment, came into collision with an Austin
motorcar and forced the latter vehicle across the path of

/ plaintiff's...../2.....

plaintiff's car, causing a collision between the Austin and plaintiff's car. It was further alleged that the collision was due to the negligent driving of the defendant's servant, and that as a result of it the plaintiff suffered damages in the amount claimed. The magistrate held that there was no negligence on the part of the driver of the police van and gave judgment for the defendant with costs. On appeal from this judgment, the Transvaal Provincial Division allowed the appeal on the grounds that the collision was due solely to the negligent driving of the defendant's servant, and gave judgment for the plaintiff for the sum claimed by him. The defendant obtained leave to appeal to this Court from the court a quo.

In the summons it was averred that the defendant's servant was negligent in one or more or all of the following respects: (a) He failed to keep a proper ^{look-out}; (b) he failed to keep his vehicle under proper control; (c) he drove at an excessive speed under the circumstances; (d) he failed to apply his brakes timeously, or at all; (e) he caused the police van to come into collision with the rear of the Austin motor car which was travelling ahead of him, in

circumstances amounting to negligence; (f) he failed to avoid a collision when he had ample and/or the last opportunity of doing so; (g) he failed to stop when by so doing he could have avoided a collision.

The collision occurred in Pretorius Street at a spot which is a short distance to the east of the intersection of Wessels and Pretorius Streets. According to the plan of the locality, which was put in at the trial, the distance between the eastern line of the intersection and the place where the collision between the Austin car and defendant's van occurred is 86 feet. The width of Pretorius Street is 54 feet. There is a block of ~~flats~~ flats called P. and G. Mansions situated on the northern side of Pretorius Street, which has an entrance on that street between the points marked C2 and C3 on the plan, the width of the entrance being $15\frac{1}{2}$ feet. According to the evidence of Meiring, who was the police officer who investigated the case, he paced off the distance from the north-eastern corner of the intersection of Wessels and Pretorius Streets to the abovementioned entrance, and found it to be 50 paces.

In the collisions with which this appeal

is concerned four cars took part, viz. :- the Police van already referred to driven by Sergeant Myburgh; a small Vauxhall car belonging to, and driven by Mrs. Gor; ^{an} ~~a~~ Austin A40, belonging to and driven by one Pauw, and a Pontiac car, driven by the ~~pat~~ plaintiff. The ^{1a} ~~plan~~ above referred to, which was not drawn to scale, shows the position of each of the cars after the collisions had taken place.

In this case the onus is on the plaintiff to prove that the collision between the Austin car and his car was due to the negligence of the driver of the Police van in colliding with the Austin, and propelling the latter into the path of plaintiff's car.

The evidence for the plaintiff is to the following effect:- On the day in question he was driving his Pontiac car along Pretorius Street from East to West; he was travelling at a speed of approximately 30 miles per hour, on his left and correct side of the street. As he was approaching P. and G. Mansions, he became aware of traffic approaching him from the opposite direction. Suddenly he heard a terrific crash, and then he saw a car coming across the road towards his side of the road. He immediately applied

his brakes fully, and swerved towards the kerb on his side of the street, but, in spite of these precautions, the oncoming car collided with the front of his car and caused extensive damage to it. The car which struck his car was the Austin car driven by Pauw.

The latter in his evidence stated that, on the day in question, he was driving his car in the direction of P. and G. Mansions, where he resides. He drove along Wessels Street from South to North. At the intersection of Wessels and Pretorius Streets there is a stop sign in Wessels Street; when he reached it, he brought his car to a standstill. After satisfying himself that he could proceed with safety, he turned into Pretorius Street, and drove along on the correct side of that street in an easterly direction, intending to turn in at the entrance of P. and G. Mansions. There was another car standing at the stop sign in Wessels Street, waiting to turn into Pretorius Street. Pauw did not know to whom this car belonged, but he discovered later that it was the Vauxhall car driven by Mrs. Gor. Pauw moved off first and Mrs. Gor followed him. He says, further, that he was on the correct side of the imaginary centre line

of Pretorius Street, but not to the extreme north side of the road for that would have made it difficult for him to turn into the entrance to P. and G. Mansions. His position was such that he could easily make his turn into the entrance of the P. and G. Mansions. When he entered Pretorius Street his car was in low gear; he changed into second gear shortly afterwards, but he did not travel at a speed in excess of 10 miles per hour.

Describing the collision between his car and the Police van, he said that after turning into Pretorius Street he heard the screech of brakes and immediately felt a bump at the back of his car. He was thrown backwards and, as he was dislodged from his seat, he was unable to apply his brakes. His car swerved across the street and collided with plaintiff's car which was coming from the opposite direction. This car was almost at a standstill when he collided with it. He denied that he swerved suddenly to the right just before he was struck from behind. He did not see the police van before it collided with him and he had no idea where it came from. When the collision with the van took place, his car was near the middle line of the street,

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but still on the northern side of it.

It is clear from Pauw's evidence that he saw very little of what occurred. He maintained, however, that while he was close to the middle line of Pretorius Street, he was still on the correct side of it (i.e. the northern side), when the collision occurred. He denied that he swung sharply to the southern side in order to make his turn, necessary to enable him to gain entrance to the P. and G. ~~Mess~~^{ns}ions. He was unaware of any traffic at the back of him as he did not look into his mirror to see whether any cars were following him.

Mrs. Gor, who was also called as a witness for the plaintiff, stated that both Pauw and herself pulled up at the stopstreet. Pauw was on her right and he turned into Pretorius Street and proceeded in an easterly direction. She followed him, driving a short distance behind him, but keeping to her extreme left side of Pretorius Street. After the collision her car was almost parallel with the northern kerb of the street, the ^{two} ^{back and front} left hand [^] wheels of the car being respectively 5 and 4 feet away from the kerb. Mrs. Gor said that as her car was proceeding at a very slow pace, she

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heard a crash and felt that her car had been hit, and she noticed a police van standing next to her car. The crash that she heard was not caused by a collision between her car and the police van, but by a collision between the police van and the Austin car. When she got out of her car she examined it and found it slightly damaged on the right hand side. It was, as she described it, "just a scratch".

The driver of the police van, Sergeant Myburgh, and the two constables who accompanied him, ~~also~~ gave evidence for the defendant. Myburgh's account was as follows: At the intersection he ^{saw} ~~saw~~ two cars in front of him, both driving on his left hand side of the street i.e. the northern side. One car was a Vauxhall and the other an Austin, and the latter was in front. There was room for him to pass these cars without his having to cross the centre line of the street. Just as he was passing the Vauxhall, the Austin swerved suddenly to the right across the direction in which his car was proceeding. He applied his brakes immediately. He could not swerve to the left because the Vauxhall was in the way. He could not swerve to the right because ^{the Austin was in his way and} the plaintiff's car was ^{also} coming towards him, and so all that he could do was to apply his brakes. He saw a small gap between the Vauxhall

and the Austin, and he tried to squeeze through it, but it proved ~~was~~ too small and he collided with the rear of the Austin on ^{its} ~~his~~ left side. He was between 20 and 25 feet from the Austin when it swerved to the right, and he was travelling at between 30 and 35 miles an hour.

Mr. Rainier, an attorney, who also resides at P. and G. Mansions, was an eye witness to the accident. He stated that he was standing on the balcony of the first floor of the flats, from where he had a clear and uninterrupted view of the traffic proceeding along Pretorius Street. He had often before seen Pauw drive into the entrance of P. and G. ^{an} ~~Mansions~~. His procedure was to turn towards the centre line of the road and then to swing to the left in the direction of the entrance. On this occasion, he said that Pauw was travelling in the centre of the northern half of Pretorius Street, followed by another small car, i.e. the Vauxhall, and he described the occurrences which led up to the collisions in much the same way as the driver of the police van did.

An important feature of the case centered round the inferences which should be drawn from the

brake marks which were indicated on the plan as being those of the police van. There is a single line marked u-v on the plan which is shown as commencing in the intersection, and proceeding in an easterly direction, and this is stated in the key to the plan as ^{being} 52 feet in length. There are also two brake marks shown immediately behind the van, marked w-n and w-m respectively on the plan, each of which is stated to be 41 feet in length, and the gap between the single line brake mark and the left hand mark of the two brake marks, marked on the plan as v-w is given as 5 feet. When Rainier's attention was drawn to the existence of this gap, he said that it appeared to him that the brakes of the police van were applied just after turning the corner. Then the driver lifted his foot off the brakes, and for a distance of about 5 to 6 feet no brakes were applied. After that ~~suddenly~~ ^{suddenly} brakes were ^{suddenly} applied again, and then the van hit the car. He clearly did not intend to say that he saw the driver of the van taking his foot off the brakes, but it appears that he was obviously making an attempt to reconstruct what occurred on the ^sassumption that what he was saying seemed to him to be correct.

Pretorius Street is 54 feet wide,

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its northern half would thus be 27 feet wide, and Pauw should have anticipated that other vehicles might be approaching him from behind which would endeavour to pass him.

In the case of Milton v. Vacuum Oil Company Of S.A. Ltd., 1932 A.D. 197, Wessels, J.A. said at p. 205: "When a person does wish to cross the line of traffic 'and to turn out into a side street he is entitled to do 'so, but he must give ample warning of his intention 'both to vehicles behind him and to those approaching 'in the opposite direction, and he must do so at an 'opportune moment and in a reasonable manner".

In Pretorius v. African Gate and Fence Works, Ltd., 1939 A.D., 577 the Court held that, applying the precept laid down in Milton's case (supra), a driver must not turn across the line of traffic unless he does so at an opportune moment and in a reasonable manner, and unless he gives ample warning of his intention to oncoming and overtaking vehicles (see p. 575).

The magistrate accepted the evidence of Sergeant Myburgh and of the two constables who were with him in the police van, to the effect that Pauw made a sudden swerve to his right when the van was almost level with the Vauxhall car and, in doing so, turned across the course which he was ^u pursuing. ^{The magistrate} ~~He~~, moreover, accepted the evidence of Rainier which corroborated that of Sergeant Myburgh in this respect.

Pauw's own evidence on the point is by no means convincing.

He denied that he swerved to the right, but in cross-examination, the following question was put to him:-

"Nou as getuienis hier gelei word dat u uitgeswaai het en dat die uitswaai 'n bietjie meer was as wat u gedink het en dat as gevolg daarvan het die ongeluk gekom, wat sou u daarvan sê?"

His reply to that question was:-

"As ek geswaai het moes dit baie effens gewees het want daar was nie noodsaaklikheid vir my gewees om te swaai nie".

Moreover, Pauw admitted that he gave no warning that he was going to turn to the right and that he was totally unaware, until after the collision had occurred, that there was traffic coming up behind him.

The point of impact which is shown on the plan at the point marked "X1" is about one foot from the centre line of Pretorius Street. The damage to the back of the Austin car was on the left hand side of the car. ~~THESE~~ These are both facts which bear out the evidence of the defence witnesses as to the position of Pauw's car when the collision took place.

The matter went on appeal to the

Transvaal Provincial Division, and the learned Judge President found that the magistrate was quite correct in his acceptance of the evidence of the defence witnesses regarding the sudden swerve made by Pauw in the Austin car, and he found, further, that it was that swerve, which was executed without any previous indication by Pauw, which created the danger of a collision. He stated the conclusion at which he arrived in the following terms:

"I have no hesitation in saying that Pauw ~~was~~
'was negligent in doing what he did before he
'satisfied himself that he could do so with safety
'and in failing to warn others of his intention".

He held, ^{however} ~~nevertheless~~, that the brake marks shown on the plan provided the solution of the whole problem of ultimate liability for the collision. He accepted it as proved that the single brake mark shown as u-v on the plan was that of the police van. From this he deduced that the driver of the van was from 30 to 34 yards from the point of impact when he first became aware that Pauw was swerving across the course, and that he had ample opportunity to apply his brakes and to bring the van to a standstill before it could collide with the Austin car. The conclusion he arrived at appears from the following passage in his judgment:

"Whether the driver of the police van was travelling
'at too fast a speed or whether he was not keeping
'a proper look-out I do not know, but he should ~~have~~
'have been able to stop his van within a distance
'of 30 yards. He must have seen the danger because
'the presence of the brake mark indicates that he
'did; he must have seen the swerve to the right
'executed by Pauw when he was that distance away.
'The fact that he failed to avoid a collision
'satisfies me that he was negligent, and he must
'be held responsible for the accident".

Sergeant Myburgh^{evidence} was accepted by the magi-
strate, and he stated that Pauw swerved when the van he was
driving was level with the Vauxhall car and that it was at this
juncture that he applied his brakes. This evidence as to
braking was corroborated by van der Westhuizen and Gerber, w
whose evidence the magistrate likewise accepted. Sergeant
Myburgh denied that he had applied the brakes at an earlier
stage, and he denied that the brake mark between the points
u and v on the plan was made by the van. According to Ser-
geant Meiring, who investigated the accident and ~~drawn~~ drew up
the plan, the ^{brake} mark from u to v was different from those
from ww to n and M on the plan. He described the single mark
as slight and as being a mark which brakes can make without

dragging. The mark between ww and nm and N were those of brakes violently applied.

In my opinion the finding that the mark from U to V was made by the Police van is not supported by the evidence. It is based merely on an inference by Sergeant Meiring, an inference which is clearly in conflict with the evidence accepted by the magistrate. The rejection of that finding makes it impossible to hold that there was any negligence on the part of the driver of the Police van.

It follows that the appeal must be allowed with costs, both in this Court and in the Provincial Division. The judgment of the magistrate is restored, namely judgment for the defendant with costs.

Cap Bink.

Concurred:

Centlivres, C.J.

Hoezter, J.A.

Fagan, J.A.

Hall, J.A.