

276/55

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

Appellante

Provincial Division).
Provinsiale Afdeling).

Appeal in Civil Case.
Appèl in Siviele Saak.

BRITISH TRADERS' INSURANCE COMPANY, LTD. Appellant,

versus

Rabbi JACOB NEWMAN Respondent.

Appellant's Attorney
Prokureur vir Appellant *C. Reid*

Respondent's Attorney
Prokureur vir Respondent *G. Aron*

Appellant's Advocate
Advokaat vir Appellant *M.J. Hart*

Respondent's Advocate
Advokaat vir Respondent *H. T. ...*

Set down for hearing on
Op die rol geplaas vir verhoor op *Tues. - Wed., 8-9 May, 1956*

(20 L D) 89

3,416 *9.50* — *12.50*
2.15 — *3.00*

(C.A.V.)

Appeal dismissed, with costs.
Deacon, Dagan, de Boer,
Boruck, v. Blerk (g.) -
11/6/56

IN THE SUPREME COURT OF SOUTH AFRICA.

(APPELLATE DIVISION).

In the matter between:

BRITISH TRADERS' INSURANCE COMPANY LIMITED
Appellant.

versus

RABBI JACOB NEWMAN
Respondent.

HEARD ON :- 8th MAY, 1956.

DELIVERED :- 11th June, 1956.

CORAM :- Hoexter, Fagan, de Beer, Brink, JJ.A. et van Blerk, A.J.A.

J U D G M E N T.

BRINK, J.A. :- This is an appeal from a judgment of

Bresler, J. in the Witwatersrand Local Division, awarding damages to plaintiff in a collision case. I shall refer to the respondent as plaintiff and to the appellant as defendant. The collision occurred in Johannesburg at the intersection of End Street, which runs from North to South, and Main Street which runs from East to West. At this intersection there are traffic lights, one at each corner, which control the traffic. For a period of 30 seconds the lights are green for the traffic in End Street and red for the traffic in Main Street. Then follows a period of $3\frac{1}{2}$ seconds in which the lights are green and amber

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for the traffic in End Street and red and amber for the traffic in Main Street. Thereafter the lights are red for the traffic in End Street and green for the traffic in Main Street for a period of 20 seconds. The cycle is completed by a period of $3\frac{1}{2}$ seconds in which the lights are red and amber for the traffic in End Street and green and amber for the traffic in Main Street.

The collision occurred in broad daylight in the early afternoon on the 17th June, 1954, between a car, a Ford Prefect, driven by plaintiff, and a green Chevrolet motor car, driven by one Collier, which was insured by defendant in terms of Act 29 of 1942, as amended. Plaintiff alleged that the collision was caused by the negligent driving of Collier and a number of acts of negligence were averred, inter alia: that Collier failed to keep a proper look-out; that he drove at an excessive speed having regard to the circumstances of the case; that he failed to keep the car under proper control; that he attempted to proceed across the said intersection at a time when the robot was against him. Defendant denied that Collier was negligent in any of the respects averred, and alleged further that the collision was caused by the joint and simultaneous negligence of both plaintiff and Collier.

At the trial two plans, marked "A" and "B" respectively, were put in by consent of the parties. "A" was a general plan of the area where the collision occurred and "B" was a plan prepared by a traffic inspector, showing the streets which form the intersection and giving details of the collision.

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southerly direction. When he was near to the intersection, he

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The parties were agreed that the collision occurred at point "X" as indicated on plan "B", that is just South of the Southernmost tram line, of which four are indicated running along the middle of Main Street. The portion of Main Street North of the tram lines is 15 feet wide and so is the portion South of the tram lines. The width of the tram lines is also 15 feet. The width of Main Street is given as 46 feet and that of End Street 56 feet. It is clear from the plan that when the collision occurred, plaintiff only had to transverse approximately 15 feet in order to clear the intersection. The plan further indicates that brake marks nine paces long up to the point of impact were made by Collier's car.

The amount of damages was fixed at £150 by agreement between the parties.

The crucial point was whether the ~~pa~~ plaintiff or Collier entered the intersection against the robot lights. The learned judge found for plaintiff and awarded him £150 with costs on the magistrate's court scale.

I proceed now to deal with the evidence. Plaintiff who is a minister of religion, testified that on the date above mentioned he was travelling along End Street in a southerly direction. When he was near to the intersection, he

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observed that the green light of the robot was in his favour, and he entered the intersection. When he was three to four yards in the intersection he noticed that the green light had changed to green and amber. He looked to his left, saw no vehicles approaching from ~~the~~^{that} side, and continued the act of crossing. Suddenly he saw a big car "coming right on top of my car"; it came from his left in Main Street. The next thing he knew was that his car was hit at the back and he remembered that he caught hold of the steering wheel to protect himself; thereafter the car overturned and for a couple of seconds he must have been completely unconscious; when he regained consciousness he saw a crowd of people standing around his car. He was helped out of the car which thereafter was turned on its wheels. After the collision the car was in End Street beyond the intersection, at point "B", marked on plan "B". The distance from the point of impact to the second of the southern pedestrian lines as indicated on plan "B" was 15 feet. The ~~an~~ plan shows clearly that plaintiff had covered two-thirds of the distance he had to travel through the intersection. Plaintiff estimated his speed to be 20 - 25 miles per hour ($30\frac{36}{\text{ft}}$ feet per second). He remembered seeing a van which had stopped for the robot. He did not notice a lady driving a car behind him as he

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approached the intersection. He also stated in his evidence that he was a careful driver; he was not in a hurry and there was no need to speed.

In cross-examination the following question was put to plaintiff:- "Is there any reason why you did not see this other car (the Chevrolet) just before the impact?" and he replied: "I really cannot explain it, but I should imagine, because I had already crossed the second half of the street and was going to End Street where I clear~~d~~ the intersection so I did not worry any more".

Fink, a dairy farmer, was called as a witness by plaintiff. He stated that on the day in question he drove his truck in Main Street at about 2 p.m. on his way to Tallis & Co. to purchase a number of fan belts. He parked his truck on the southern side of Main Street, roughly 100 feet East from End Street. He decided to cross Main Street on foot but did not make use of the pedest^{ia}rain lane at the eastern extr^fimity of the intersection. He crossed safely to the northern side of Main Street, and after having purchased the belts, he walked on the northern side of Main Street until he reached a spot opposite to where his van was parked. He proceeded to cross,

looked to the West and saw no traffic approaching from that side. When he reached the middle of the street he looked towards the East and saw a car approaching from that side; thinking that he would have ample time to cross, he continued to do so but a glance at the approaching car made it clear that it was travelling at a very fast speed and, fearing that he might be run over, he dropped the belts and ran for his truck which he mounted. He did not observe the actual collision, but immediately afterwards saw that the car had collided with a small car, a Ford Prefect, in the intersection. He went to the scene of the accident and helped to turn^{over} the car which was lying on its side, and assisted the plaintiff out of the car. He remonstrated with Collier as to his excessive speed and told him^m that if he had driven his car at a slower speed, the accident would not have occurred. Collier made no reply to this accusation. Fink could gi^{ve} no evidence as to the state of the robot lights as the cars were approaching the intersection. These two witnesses concluded the plaintiff's case.

The main witness for the defence^{was}, Collier, the driver of the Chevrolet car. He testified that on the 18th June he was driving the Chevrolet car which was the property

of his employer, in Main Street from East to West. As he was approaching the intersection of Main and End Street and when he was roughly half a block (i.e. approximately 100 feet) away from the eastern line of the intersection, the lights started changing and it changed completely when he must have been about a car or two cars' length away from the first pedestrian line. He slowed down until the green light showed in his favour whereupon he accelerated; when he started to do so his speed was roughly 20 m.p.h. Just as he was crossing the pedestrian lines he noticed the small Ford Prefect on the opposite side of the road coming across the intersection. He had commenced to accelerate when he noticed the Prefect with its front wheels roughly over the northern tram lines; it was not travelling fast but at a normal speed. Collier thereupon braked as hard as he could and swung to the right to try and pass behind the Prefect with the result that the left front of his car collided with the left rear of the Prefect, which was overturned and came to rest at point "B" in End Street. He agreed that the brake marks shown on the plan as being 9 yards in length, were brake marks of his car. He said that when he entered the intersection the lights were in his favour.

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He could not explain how it was that he did not see the Prefect before he reached the pedestrian lane, because it was within his range of vision. Later in his evidence he stated that it could have been approximately 32 to 48 feet from the point where he first saw the car to the point where the collision occurred. He admitted that plaintiff must have entered the intersection before he did because when he saw the Prefect it was on the northern tram lines, and when the collision occurred it was just passing the southernmost tram line, the distance between the two being, according to map "A", sixteen feet, which the Prefect covered while the Chevrolet covered a distance of 27 feet with its brakes plus a further 16 feet. The probabilities are that Collier was travelling ^{nearly}_A twice as fast as plaintiff.

But there is further evidence against Collier that he was driving very fast, namely that of Fink, whose graphic account of how he dropped the belts and ran for his truck to avoid being run over by Collier, hardly sounds like a made-up story. There is also the accusation made by Fink that if he had proceeded at a slower speed the accident would not have occurred, as well as that made by plaintiff, neither of which he denied.

Defendant called two further witnesses, namely Restein and Mrs. Perie. Restein testified that on the afternoon in question he was travelling from South to North along End Street in a van which he thought was red in colour. When he approached the intersection of End and Main Street the robot changed from green to green and amber and he stopped his car, put the gear into neutral and glanced at his clutch because it squeaked. He says he was stationary and, to use his own words, "out of the corner of my eye I saw the collision in the intersection between the two cars". One car came along Main Street and the other along End Street. He did not pay much attention to them. The plaintiff's car, after having been turned over, stopped about two feet from his van. In cross-examination he was asked: "What you saw was just two cars hitting each other, where they came from you do not know?" and his answer was: "It was pretty obvious but I did not see them come". He was first asked for a statement by a policeman months after the accident. He saw no car behind plaintiff's Prefect, nor did he notice the robot lights.

Mrs. Perie deposed that she was driving a 1939 Ford V8 from North to South in End Street on the 18th June 1954. Ahead of her, travelling in the same direction was

a small car, a Ford Prefect, which she subsequently discovered belonged to Plaintiff, the distance which separated the two cars being approximately 5 yards. They were both approaching the intersection. When she was halfway down the block the robot turned to green and amber. She gave the distance as 50 feet from the intersection. She put out her hand and stopped and tried to roll on so that when she came to the robot it would be green again. The Prefect did not stop. After having applied her brakes she reduced her speed from 20 to 25 m.p.h. to between 10 - 15 m.p.h. The Prefect did not stop but went straight on and a green car coming from East to West hit it on the rear in the intersection. She had no doubt that the Prefect had gone through against the red light. Asked whether she saw the accident she replied: "When the accident happened I was rolling to a stop. I had not yet entered the intersection. I was a good way from the intersection".

In cross-examination she stated that she was asked to make a statement for the first time $4\frac{1}{2}$ months after the accident. She did not see the green Chevrolet motor car which collided with plaintiff's car before the impact. Asked again how far she was from the intersection when she saw the

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impact, she replied that she had already stopped at the North pedestrian line when she saw the impact. Later in cross-examination when asked: "When you finally came to a stop at the North intersection line, where was the plaintiff's car?" she replied: "It had landed on its side". Question: "When you yourself stopped?". Answer: "I had not stopped yet. I was still coming when the green car hit the Prefect. I had not reached the first pedestrian line. I was a little way from it, a couple of yards." Question: "And you never saw the Chevrolet car before it collided with the other car?". Answer: "No,,I did not". She stated further that the plaintiff had crossed three or four of the tram lines in the intersection when the collision occurred.

The learned judge accepted the evidence of plaintiff and ^{where there was a conflict} rejected that of defendant's witnesses. The learned judge clearly believed the evidence of Fink - the latter's action in avoiding Collier's oncoming car and Collier's silence when taxed with his speed as having caused the accident are factors from which the inference can be drawn that Collier was travelling at a very fast speed.

As far as Collier is concerned the learned judge said that he did not make a good impression on him. He

subjected Collier's evidence to close scrutiny and came to the conclusion that he was travelling at an excessive speed and failed to keep a proper look-out; that he had sufficient time to brake his car when he first saw plaintiff's car and thus avoid the collision. He says his brakes were powerful, and that he started braking as he was about to cross the eastern pedestrian line. With these powerful brakes he made brake marks for a distance of 27 feet.

Collier in his evidence admitted that plaintiff was in the intersection before him. The only reason why he did not see him earlier was that he was looking straight ahead since the robot lights were in his favour. This reply can hardly be accepted because he had a full view of the intersection and even though he had his eyes on the robot he must have seen the Prefect earlier than he says he did. He admitted that he was reconstructing the events which occurred. In my opinion the probability is that when he accelerated to cross the intersection he came at a speed which prevented him from stopping his car and avoiding a collision with the Prefect. It is a remarkable feature of this case that not one of the witnesses saw the Chevrolet approaching and passing into the intersection,

but only when the impact occurred; it seems to me that the only explanation for this is that he travelled at so great a speed that his sudden appearance was not noticed until the impact occurred.

The next question is whether there were any grounds on which the learned Judge was entitled to reject Mrs. Perie's evidence to the effect that plaintiff entered the intersection with the robot light against him. Some four months after the occurrence of the accident she was asked for the first time to recall what had happened. Although she admits that she had a clear view down Main Street she did not see the Chevrolet before it actually hit plaintiff's car. What attracted her attention to the collision was the screeching noise of brakes being applied. She could not say which car was responsible for the noise. There are other considerations which point to her observation being faulty. In my opinion her inability to fix with any measure of certainty the position of her car at the time of the collision is a feature which militates strongly against the reliability of her powers of observation and which makes it unsafe to rely upon her evidence. She first said that/ when the accident happened she was rolling slowly to a stop ... "I was

a good way from the intersection". Later she said: "I had already stopped at the north pedestrian line when I saw the impact". A third version was: "I had not stopped yet; I was still coming when the green car hit the Prefect. I had not reached the first pedestrian line". This witness also did not make a good impression on the learned judge who observed as follows:

"However, I have to weigh the evidence of the plaintiff and Fink against that presented for the Defendant with due regard to the fact that the onus rests upon Rabbi Newman, together with considerations of probability and credibility. It was conceded by both counsel that in this case mathematical calculations can hardly play a decisive role.

As far as the Rabbi Newman is concerned he made the impression of being frank and honest. No doubt there are cases in which drivers do ignore the lights, but in this case I have had the evidence of the Plaintiff that he did not enter on the red, and I am prepared to accept that evidence. It has been submitted that he was day-dreaming or that, when he realised that the amber was on when he had entered the intersection, he convinced himself that it had followed on the green. This view entails the finding that Plaintiff then, in reckless disregard of the true facts and in complete disregard of the evidence which could be expected to be forthcoming, persisted in a dubious suit. I do not think, on the view I take of him and on a consideration of the evidence that this is at all probable. He impressed me as the most satis-

'factory of all the witnesses heard and I must add
'that not one of the three witnesses called for the
'Defendant created a satisfactory impression. Collier,
'for example, was never happy in the witness box, and
'had he ^{been} ~~he~~ going at the speed he claims, it is highly
'unlikely that the collision would have occurred, and
'of course there are weaknesses in the evidence of
'Restein and Mrs. Perie. Accordingly the Plaintiff
'succeeds".

According to the evidence of the plaintiff
he entered the intersection on the green light, which after a
few seconds changed to amber. He was travelling at the rate
of approximately 20 miles per hour, which is 29 feet per second.
Plaintiff had covered approximately all but 5 paces, 15 feet
of the intersection. The amber light shows for $3\frac{1}{2}$ seconds and
the entire length of the intersection is 46 feet. Had it not
been for the collision plaintiff had adequate time to cross
over before the amber changed to red. The probability is that
Collier at a great speed tried to cross against the red and
amber, and that it was the latter's action which caused the
collision.

The trial Judge, for the reasons stated
above accepted the evidence of plaintiff and rejected that of
the witnesses for the defendant. In so doing the trial Judge
did not misdirect himself and no good reason has been advanced

for holding that his findings of fact are wrong; on the contrary I am of the opinion that the finding that there was no negligence on the part of the plaintiff and that the collision was caused solely by the negligence of Collier, is correct. The appeal is dismissed with costs.

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Concurred: Hoexter, Fagaw, de Beer, J.J.A. et Van Blerk; A.J.A.

J U D G M E N T.Delivered on 20/12/55.BRESLER J.

The Plaintiff, Rabbi Jacob Newman, sues the Defendant for damages in the sum of £1,000.0.0 sustained as the result of a collision which occurred on the 18th June, 1954, between a motor car, a Ford Prefect, driven by the Plaintiff and a Chevrolet motor car driven by one B.B. Collier, the latter's car being insured by Defendant pursuant to provisions of Act No. 29 of 1942 as amended. The proximate cause of the collision is attributed to the negligence of the said Collier in one or more of the respects which are usually alleged in Declaration dealing with this type of case and the same can be said of the pattern of the Plea.

Two plans were handed in by consent, the second, "B", being that issued for the submission to the Director of Census and Statistics immediately after all the required particulars have been obtained. The Plaintiff was proceeding along End Street from North to South whilst Collier was travelling along Main Street from East to West. The point of collision is marked as "X", that is just South of the fourth tram line of which four are indicated, and the Plaintiff's Prefect came to rest at point "B". The skid or brake marks made by Collier's car, the Chevrolet, are shown as 9 paces in length. Plaintiff was well into the intersection when the collision occurred and was hit on the left rear side by the Chevrolet, which tried to pass behind the Prefect by applying brakes and swerving...

swerving to the right. The Main street intersection was given as 46 feet, possibly, 48 feet, and the End Street one as 56 feet.

The Plaintiff said that he was driving on his correct side and entered the intersection with the green in his favour. When he was three to four yards into the intersection he realised that the green had changed into amber and he proceeded further across the intersection looking to his left but, at the moment
10 he did so, he saw the Chevrolet. He said he was a careful driver who was in no hurry. His speed was estimated at between 20 and 25 miles per hour and he kept his car under control throughout. He saw the Chevrolet just before the collision and recollected that a red van was parked on the South-West corner of the intersection. He noticed it when he was halfway through the intersection. He cannot recollect having seen the Ford car driven by a Mrs. Perie behind him before entering the intersection, but he remembers
20 that after the collision a woman did volunteer evidence. He explains that he did not notice the change over from green to amber because he was not concentrating on the lights all the time after entering on the invitation of the green light. He repudiated the suggestion that his attention may have been wandering and that he proceeded into the intersection without noticing the state of the lights. He described his injuries and discomforts in detail and at this stage it may be convenient to mention that it was agreed
30 upon between the parties that the amount of damages in the event of the Plaintiff succeeding should be fixed

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at £150. Agreement was also reached about the cycle of the robot lights as being 30 seconds North to South in End Street, 20 seconds East to West in Main Street, and the amber 3.5 seconds.

A dairy farmer, one Fink of Bedford View, testified to the fact that Collier's speed in approaching the intersection was fast. Fink had not availed himself of the pedestrian lanes and had crossed Main Street and re-crossed it at about 40 yards from these lanes to the East. He heard the collision but did not see it. On arriving at the scene he remonstrated with Collier about his speed but received no reply. This concluded the essentials of the evidence for Plaintiff.

Collier, the chief witness for the defence, said that he noticed the red change to amber when he was about 35 yards East of the intersection. His speed for the preceding quarter of a mile had been between 20 and 25 miles per hour and when the green showed, he was, he says, some 20 feet away from the intersection and did not anticipate any trouble. Accordingly he accelerated and thereafter noticed a small car only when its front wheels were roughly over the Northern tram lines. It was not travelling fast. Later he said that he had not seen the Prefect until he started to brake but it must be assumed that he did see it at least half a second earlier, that is roughly 15 feet further back than the commencement of his brake marks which covered 9 yards. This means that he saw the Prefect on or over the Northern tram lines when he was some 12 yards from the intersection. If his speed had been in excess of 20 to 25 miles per hour

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he would have been further back when he first saw the Prefect. Whilst he re-acted and moved forward with, his brakes engaged the Prefect moved approximately the distance between the Northern and Southern tram lines plus about three quarters of its length. Its rear portion had not crossed the Southern line when the impact occurred. Making allowance for the frequent inconclusiveness of calculations in this type of case, it does seem that Collier saw the car when he was 36 feet away and that, despite the fact that it was going slowly and that he was braking for 27 feet, he hit it whilst it was not more than 20 feet and that with sufficient force to turn it over and to injure the Plaintiff. It seems reasonable to conclude that the speed on approaching the intersection was at least twice that of the Plaintiff and, on the question of speed, Collier admits that Plaintiff remonstrated with him on the score that it was too fast. There were thus two persons who imputed haste to him in approaching the intersection and it is of some significance that he, Collier, did not suggest any untoward conduct to Plaintiff after the latter had recovered consciousness. His look-out was defective too because he did not see the red van which was parked ahead slightly to his left and he did not see Fink who had jumped out of his way and says he was not sure whether Fink spoke to him and reproached him because of his speed. It seems unlikely, as he answered in cross-examination, that his speed could possibly have been only from 15 to 20 miles per hour. He says that when lights are in his favour he does not look and conceded that Plaintiff was in the intersection/...

section ahead of him. He accepted that at 20 miles per hour he could have stopped with four wheel brakes - and his, he says, were in good order - he could have stopped in 34.7 feet and he conceded that the Prefect may have been in front of him when he first saw it, and in re-examination he conceded that his evidence was absolutely accurate as he did not have much time to notice. It is difficult to understand what prevented him from noticing objects in his vicinity. Not merely did he not see the Prefect until it was almost in his direct path but he failed to notice the red van parked almost in the direct line of his vision. This witness did not make a good impression.

Defendant relies upon the evidence of two other witnesses. They are independent and their evidence, if clear could be decisive of the case. One Restien, who says that he knows the intersection well, testified to having parked the red van at the South-West corner of the intersection when the light turned from green to amber. He then looked down at his clutch which squeaked and the next thing he knew was that there was a collision. He says he saw cars "generally" but could not say he saw the two cars involved prior to the collision. The reason he volunteered to give evidence was due to the fact that the Prefect fell within inches of his van. Months later a policeman came to him for a statement. He did not notice the state of the lights at the moment of the collision, nor does he know what conversation ensued thereafter, apparently because he moved his van away. Although

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he says his attention was only distracted for a second or two by the state of his clutch, his evidence is so vague about the salient circumstances surrounding the collision that it would be inadvisable to rely on it even as a factor on the cumulative aspect. He created the impression upon me that he wanted to say as little as he could.

That leaves the evidence of Mrs Perie. This witness, on the other hand, was quite positive that
 10 whilst she was travelling behind the Plaintiff she braked at the moment the Rabbi entered the intersection against the red light, and she gave her name as a witness immediately after the collision. She was asked some four and a half months after to recollect the incidents. She did not see the Chevrolet until the moment of the impact and this I find somewhat strange. If she actually saw the Plaintiff execute so negligent an act one would imagine that she would follow his progress to see what fate awaited him. She did not know whether the
 20 Chevrolet went fast nor can she say which car caused the screech consequent upon the application of the brakes. Actually it was this noise which attracted her attention to the occurrences within the intersection. She says that she was forty to fifty yards from the intersection when the robot turned yellow with the Plaintiff 7 to 8 yards ahead of her so that he may at that stage have been about 40 yards from the Northern pedestrian lane. Her view was that the collision must have occurred between the third and fourth tramway
 30 lines. Later, towards the end of her cross-examination, she/...

she says that she did in fact keep Plaintiff's car in view all the time. She concluded, according to my notes, by saying that she was definitely concerned because if another car came through, Plaintiff would inevitably be struck. On this evidence it still remains strange why her evidence on the other aspects of the matter show more than traces of vagueness and improbability. On the time she took she was probably not 50 yards from the intersection as she averred she was and
 10 she may be wrong about the position of Plaintiff when the lights changed as he may have been further ahead. Her evidence would have been more consistent, too, if she had gone up to Plaintiff and pointed out the gravity of his conduct to him. This is not an over-important point but in dealing with the type of case in which the reconstruction of events forms an almost invariable ingredient, an immediate accusation might have been an indication of the real state of mind of a witness. However, I have to weigh the evidence of the Plaintiff
 20 and Fink against that presented for the Defendant with due regard to the fact that the onus rests upon Rabbi Newman, together with considerations of probability and credibility. It was conceded by both counsel that in this case mathematical calculations can hardly play a decisive role.

As far as the Rabbi Newman is concerned he made the impression of being frank and honest. No doubt there are cases in which drivers do ignore the lights, but in this case I have had the evidence of the
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prepared to accept that evidence. It has been submitted that he was day-dreaming or that, when he realised that the amber was on when he had entered the intersection, he convinced himself that it had followed on the green. This view entails the finding that Plaintiff then, in reckless disregard of the true facts and in complete disregard of the evidence which could be expected to be forthcoming, persisted in a dubious suit. I do not think, on the view I take of

10 him and on a consideration of the evidence that this is at all probable. He impressed me as the most satisfactory of all the witnesses heard and I must add that not one of the three witnesses called for the Defendant created a satisfactory impression. Collier, for example, was never happy in the witness box, and had he been going at the speed he claims, it is highly unlikely that the collision would have occurred, and of course there are weaknesses in the evidence of Restien and Mrs Perie. Accordingly the Plaintiff succeeds.

20 The question of costs was argued at some length. Mr. Mendelow relied strongly on the judgment in Kriek v. Gunter, (1940 O.P.D., 136 at p. 144), but that was a defamation suit and the language of Van Den Heever J., as he then was, in my view, indicates that the learned Judge was influenced, as he put it, by "The assessment of imponderables", and we know that injury to reputation may be more difficult to assess than physical suffering. In any event, the learned Judge was not dealing with a case such as the present one and his concluding

30 remark that " "we cannot have a system in which only
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men of substance or consequence can invoke the Superior Courts for redress" also indicates that the considerations in Kriek v. Gunter (supra) cannot be applied with any real measure of force to the circumstances of the present case because here, further, the assessment is not one "so discretionary as to be almost arbitrary" (p.144). It seems to me that in the present circumstances the case of White v. Saker (1938 W.L.D., p.173) is more applicable, and the following passage from that judgment indicates the proper approach in the present circumstances

"I think that before Supreme Court costs are awarded on the grounds of difficulty there must be an element of complexity beyond the ordinary. The facts must be so involved as to require much unravelling or piecing together". (per Schreiner, J. as he then was.)

Applying this test I do not think that this case involved more than the ordinary difficulty which Courts encounter, although of course, it was not simple. The Rabbi's injuries were neither extensive nor serious and he was only detained for a few days in bed and lastly he lost no emolument or salary whilst his pain and suffering did not involve any great discomfort.

There will be judgment for Plaintiff in the sum of £150, (One hundred and fifty pounds) with costs on the Magistrate's Court scale.

JUDGE OF THE SUPREME COURT.