233/1958

233/1958

G.P.-S.134917–1955-6–1,000. U.D.J. 219.

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

(APPELLATE [redacted] Division.)
([redacted] Afdeling).

Appeal in Civil Case. (Org. record)
Appèl in Siviele Saak.

EAGLE STAR INS. COY. LTD. *Appellant,*

versus

BASIL SKLAR *Respondent.*

Appellant's Attorney / *Prokureur vir Appellant* Webber
Respondent's Attorney / *Prokureur vir Respondent* Lovius & Block

Appellant's Advocate / *Advokaat vir Appellant* Patr. Matthews (& Trengove).
Respondent's Advocate / *Advokaat vir Respondent* S. Miller Q.C. & Berman.

Set down for hearing on / *Op die rol geplaas vir verhoor op* Tuesday, 4th Sept., 1957.

(ECT)

8.2.5.6.9 (A)

C.A.V.

A. Louw
Act Reg.

Parties: Monday 28th September 1959

Appeal succeeds with costs, and the judgment of the Court a quo is altered to one of absolution from the instance with costs.

A. Louw
Act Reg.

Ogilvie Thompson J.A.
Rumpff J.A.
Schreiner J.A. } Dissenting.
Beyers J.A.

IN THE SUPREME COURT OF SOUTH AFRICA

(Appellate Division)

In the matter between :-

EAGLE STAR INSURANCE COMPANY LIMITED Appellant

and

BASIL SKLAR Respondent

Coram: Schreiner, Beyers, Malan, Ogilvie Thompson et Ramsbottom JJ.A.

Heard: 4th September, 1959. Delivered: 28-9-1959

J U D G M E N T

SCHREINER J.A. :- The general situation at the time of the accident appears from the judgment of MALAN J.A. The learned trial judge held that van Greunen was negligent and that the plaintiff was not.

The first issue, whether the van Greunen was negligent, must be decided independently of the second. It is true that the question whether driver A is negligent may sometimes be dependent on whether driver B was negligent. That may be the position where A's conduct is affected by what he sees B doing. But the present is not such a case. Van Greunen's conduct must be tested to see whether it was negligent without regard to what the plaintiff did. Indeed van Greunen's conduct would be negligent or not negligent in

relation/.....

relation to a possible motorcyclist driving behind the Bay bus, whether or not there was in fact such a vehicle there at the time. A person who in traffic makes a move that unreasonably increases danger to other traffic cannot avoid a charge of negligence merely because other road users could, if careful, have prevented the increased danger from materialising in an accident. Responsibility for any particular accident is, of course, a different matter.

In the present case there was a single stream of south going traffic. The thirty foot wide available roadway was reduced substantially by the presence of parked cars against the eastern kerb. Of the available roadway nearly one half was taken up by the wide buses and the space that must necessarily be left between vehicles at their sides.

Van Greunen's plan was to move out of the stream of traffic and go through the gap in the cycle track to complete a u-turn. He was entitled to do that but in so doing he would have to cross the line of traffic of any south moving vehicles that were not keeping to the single line of traffic. The whole of the eastern half of the double roadway was available to south going traffic. Whether at any particular time there was traffic moving west of the single line followed by the two buses would be material to the question

whether/.....

whether it was proper to turn to the right at such a time, but, as is always the case where there is a stream of traffic, the situation would change from time to time and drivers must make allowance for this fact.

The rule of behaviour for persons crossing a line of traffic is stated as follows in an oft-quoted passage in the judgment of WESSELS J.A. in Milton v. Vacuum Oil Company (1932 A.D. 197 at page 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."

I see no reason to doubt that had there been no Bay bus behind the Tramway bus van Greunen's way of making his turn would have been unexceptionable. He would not then have been unreasonably increasing the danger for other traffic. But the presence of the Bay bus put a completely different complexion on the turning problem. Van Greunen could not see behind the Bay bus and the drivers of vehicles behind the Bay bus could not see van Greunen's bus. Those were the crucial considerations.

A visual warning given to someone who is unable to see it because of an intervening traffic obstruction/.....

obstruction is no warning at all. And a look-out which cannot reveal vehicles in a substantial part of the road, where vehicles may well be, is of no practical use so far as such vehicles are concerned. In relation to vehicles behind the Bay bus, as the plaintiff's motorcycle was, it could make no difference whether van Greunen used his mirrors and his warning signal or not. The position would have been precisely the same if he had used neither. He would not have been relevantly more negligent than, in my view, he in fact was.

Having regard to the presence of the Bay bus the problem of van Greunen was not a matter of warning or of look-out but of making the turn "at an opportune moment "and in a reasonable manner." It really was an obvious procedure that he had to follow and up to a point he followed it. But he did not carry it through so as to make the manoeuvre reasonably safe for vehicles behind the Bay bus. He rightly drew out slowly so as to run his bus parallel to the sides of the road and near to the cycle track. He drove his bus for quite a distance - some 45 yards - in that way. But the distance could not help to make his turn safer unless he allowed the Bay bus to pass ahead before he made his turn. Putting it another way, he should have pulled out sufficiently far from his point of turning to enable him to make his turn

after/.....

after the blind area behind the Bay bus had disappeared through the forward movement of the latter. Had he done so he would not have increased the danger to the plaintiff.

Instead of timing his turn properly he turned at a stage when the Bay bus was still behind the Tramway bus - not directly behind, but further north on the eastern line of traffic. The effect is best described in the evidence of Mke, the conductor of the Bay bus, who was called for the appellant company. After he had described the roaring noise of the motorcycle engine, his evidence in chief proceeds :-

"What did you see? - I saw a motorbike pass with two passengers. I saw the motorbike overtake our bus. Then I noticed that he jerked back because he got a shock when he saw this bus in front of him suddenly.....When he jerked like this what happened ? - I noticed he was trying to swerve. Which way ? - To the right. To escape the bus in front of you ? - Yes. What happened then ? - He could not swerve and escape it because in front there were cars blocking the way and the bus also was blocking the way. What did he do ? - He bumped against the bus. "

The reference to "cars blocking the way" is obscure and was not cleared up. It may refer to the witness's impression of approaching cars coming from south to north which might have prevented a fuller swerve into the western roadway. In cross-examination Mke's evidence reads :-

"And/.....

"And as you looked through the window you saw the cyclist passing the bus and then you saw in front of the cyclist there was the bus blocking the road? - Quite right. As you saw that didn't you think there must be an accident ? - Quite right. You immediately realised there must be an accident ? - Yes.....Would you say the cyclist got a shock because there was a bus standing there blocking his way, is that not what you told us ? - Yes. At the time when he got the shock was it standing or then making the turn ? - It was just entering the lane. It was moving just entering the gap ? - Yes. "

Van der RIET J. then asked the witness whether the plaintiff could not have passed behind the Tramway bus but Mr said it would have been very dangerous as there was no room to pass between the front of the Bay bus and the back of the Tramway bus.

It is clear from this evidence that when van Greunen made his turn the Bay bus was still behind him and as the Tramway bus turned it completely blocked the way of any vehicle coming from behind the Bay bus as the plaintiff's motorcycle did. That the turn must have carried the rear part of the Tramway bus further to the east by reason of the overlap behind the rear wheels is clear. In this respect it made a more complete block than would have been the position if the Tramway bus had remained parallel to the sides of the road until the Bay bus had passed. But a further and more important factor was that through the turning movement to the

west the already slow moving Tramway bus drastically reduced its north to south movement, thus rapidly reducing the manoeuvring room of the plaintiff. The effect was similar to that of a fairly sudden stop. Instead of finding, as he might expect on coming from behind the Bay bus, a vehicle moving in the same direction as himself with enough southward speed to reduce his own overhauling rate relatively to such vehicle, and leaving some space on either side to allow of avoiding action, he was confronted by what was for all practical purposes a wholly blocked road section, the obstructing bus having substantially ceased to move southward, i.e. in the direction in which the plaintiff was moving.

It follows from these considerations that in my view van Greunen made his turn at an inopportune moment and in an unreasonable manner and this constituted negligence on his part which contributed largely to the causing of the collision.

This view makes it unnecessary for me to express a decided view upon the effect of section 80(5) of Ordinance 14 of 1955 (Cape). That provision was obviously intended for the protection of persons who like the plaintiff might be involved in a collision with a vehicle making a u-turn,

and/.....

and it may be that van Greunen's breach of the provision could by itself amount to negligence (cf. Sand and Co.Ltd. v. South African Railways and Harbours, 1948 (1) S.A. 230 at page 243 and cases there cited). As applied to provisions dealing with road traffic the operation of the principle presents difficulties, but if it is to be applied it seems fairly clear that there could have been no accident had van Greunen observed the requirements of the provision, and it would seem to follow that his failure to observe it contributed to causing the accident. The fact that a similar situation might have arisen if van Greunen had not been making a u-turn but had been entering a gateway in the western pavement does not seem to me to affect the question. It would only show that the statutory provision did not cover all the cases in which a right-hand turn might create or increase the danger of a collision.

While in my view van Greunen was negligent I do not agree with van der RIET J. that the plaintiff was not negligent. I think that although he had no reason to expect a road block of the kind that he encountered he should have come out from behind the Bay bus more cautiously. He was negligent in not doing so and his negligence contributed to the causing of the accident. It was in my view a case of combined

negligence/.....

negligence leading to the collision.

It is difficult to compare the degrees of fault in relation to the damage in the circumstances of this case. Van Greunen's negligence was in a way less obvious than that of the plaintiff, though in my view it was no less certainly present. On the other hand, having regard to the blocking effect of making an inopportune turn with so large a vehicle, van Greunen's blameworthiness was serious. I should be disposed to allow the appeal to the extent of holding that the damages should have been apportioned on the basis that the plaintiff should only have recovered half the damages ~~awarded~~ suffered, with the costs of suit. The appellant company would be entitled to the costs of appeal.

E.M. Schreiner 26.9.57

Bagnall, J.A. Concurs

IN THE SUPREME COURT OF SOUTH AFRICA

(Appellate Division)

In the matter between :-

THE EAGLE STAR INSURANCE CO.LTD. Appellant

and

BASIL SKLAR Respondent

Coram: Schreiner, Beyers, Malan, Ogilvie Thompson et Ramsbottom JJ.A

Heard: 4th September, 1959. Delivered: 28 — 9 — 1959

J U D G M E N T

MALAN J. A. :- The respondent was the plaintiff in an action instituted in the Port Elizabeth Circuit Local Division in which he claimed damages from the appellant, a company registered under the Motor Vehicles Insurance Act No. 28 of 1942, as the insurers of a certain motor-bus which was involved in a collision with the plaintiff who was driving a motor-bicycle. The case was tried before Van der RIET J., who awarded the plaintiff damages in the sum of £3373. 11. 3 with costs.

The dispute lies within very narrow limits and the circumstances which gave rise to it will be briefly set out. The collision occurred in Uitenhage Street, Port Elizabeth. This street is divided into two sections separated

by/.....

by a bicycle track, one section carrying vehicular traffic travelling from north to south and the other traffic moving in the opposite direction. The bus and the motor-bicycle were travelling from north to south and we are thus primarily concerned with the eastern section ~~and~~ the width of which, measured from the left-hand side ~~of the~~ kerb to the edge of the bicycle track, is 30 feet.

The evidence indicates that in addition there was space available for to vehicles parked at the kerb ~~the~~ traffic to travel ~~had~~ abreast in two lanes, although these lanes do not appear actually to have been demarcated by white lines or otherwise. The bicycle track at the scene of the accident is 9 ft. 10 inches wide and is raised 8 inches above the level of the street, presumably with the object of preventing street traffic from encroaching thereon. The tracks are not continuous as at various points openings have been left, ~~at~~ with conveniently sloping ramps running from both directions towards the middle of the openings, thus gradually reducing the height of the tracks from 8 inches to the level of the street. The length of each ramp measured along the slope is 10 feet and the distance between the top of the one ramp to the top of the other is 48 feet thus leaving an opening of 28 feet in width at street level. It is common cause that the collision occurred approximately in the middle of such an opening, shortly after 5 o'clock in the afternoon/.....

-noon which was a "peak" period with a large volume of traffic moving simultaneously along both sections of the street.

Shortly before the collision the bus concerned, hereinafter referred to as the "Tramway bus", was driven by one van Greunen and was travelling along the eastern section followed by another bus, referred to as the Bay bus, which was in turn followed by the plaintiff. Each bus was 8 feet wide and 26 feet 9 inches long. The Bay bus was travelling about a bus length behind the Tramway bus, and the plaintiff, on his motorcycle was about the same distance behind the Bay bus. The plaintiff was riding along a line to the left of the centre of the Bay bus and was not visible to van Greunen.

The Tramway bus was a special bus which was on its way to take on board passengers at a factory on the western side of the street. The entrance to the factory premises is immediately opposite the opening in the cycle track, and the bus stop at which the passengers were to be picked up was 49 feet to the north and on the western side of the road. It was van Greunen's intention to pass through the opening from the eastern portion to the western, and there to complete a turn which would bring him, facing northward, to the place where the passengers were to be taken on board. This operation involved a movement to the right in the eastern portion of the road to bring the bus near to the cycle track, and, when the opening was reach-

-ed, a further inclination to the right to take the bus through the opening. At that stage the bus would become a potential danger to north bound traffic on the western portion, and van Greunen might be obliged to stop his bus in the opening until a suitable opportunity to complete the turn should present itself.

The evidence was, and it was not disputed, that when he was at a considerable distance from the opening van Greunen extended the indicator on the right side of the bus to signal his intention to turn into the opening. He looked at the rearview mirror on the right of the bus and did not observe any traffic which might overtake him on the right. He looked at the mirror on the left of the bus and saw the Bay bus but not the plaintiff on his motorcycle. He satisfied himself that the driver of the Bay bus had seen his signal and he drew to the right, towards the kerb of the cycle track. The driver of the Bay bus diminished speed and drew to his left. It was accepted by the learned judge in the court below that for a distance of some 45 paces from the point of impact the Tramway bus travelled about 4 feet from the kerb of the cycle track with its right hand indicator extended. The bus was 8 feet wide, so that it was then occupying 12 feet of the roadway. The line of the Bay bus was about 4 feet to the left of that of the Tramway bus, and it therefore occupied another 12 feet. The rest of the roadway was

taken up by cars parked on the left or east side of the road. At this stage the plaintiff was still riding behind the Bay bus, and could not be seen by van Greunen. As he approached the open-ing in the cycle track van Greunen again looked in his mirrors. He saw nothing coming from behind his right side, and on his left he saw that the Bay bus was conforming to his movement and was "easing off" to the left. He reduced his speed to about 5 miles an hour and then turned into the opening. When the front of the bus was just entering the western portion of the road, and when the left front wheel was at the north edge of the southern ramp of the cycle track, van Greunen stopped his bus. Immediately after he had stopped there was an impact, and he found that the plaintiff had run into the side of his bus on the right hand side at a point about a third of the way from the front of the bus. The collision occurred in the opening.

As I have said, at the moment of impact the bus was stationary - it had just stopped. Part of the body of the bus was diagonally across the opening, the rest was projecting into the eastern portion of the road, ~~as is shown admittedly not exactly on the plan, Exhibit A.~~ To that extent the road was blocked. The exact amount by which the bus projected is not known, but there was a gap between the rear end of the bus and the cars parked on the left, wide enough for the Bay bus

to/.....

to pass between the stationary bus and those cars. At the moment of impact that gap was not yet closed. The driver of the Bay bus said that he was about 6 yards from the Tramway bus when the impact occurred and that there would have been room for the plaintiff to pass between the two vehicles; but it is clear that it would have been dangerous for him to have attempted to do so. The gap was closing and if the plaintiff had attempted to stop between the two vehicles he might have been crushed. For practical purposes, therefore, at the moment of impact the plaintiff's path was blocked.

The plaintiff, who suffered from concussion and consequent amnesia, was unable to give an account of what he did at the final stage. His evidence was that he was riding southwards behind the Bay bus. He had a pillion passenger who did not sit still and at one stage he turned his head to speak to him; nevertheless he kept his eyes on the road in front of him. As he approached the bus stop at a point ~~[illegible]~~ which is 49 feet from a point opposite the point of impact ~~the opening in the cycle track~~, he noticed that the bus in front of him seemed to slow down, because the distance between him and the bus seemed to decrease; he was then a car's length or two cars' lengths behind the bus. He thought that the bus might be going to stop and to pick up passengers at the bus stop, and he decided to swerve to his right and pass it. Before

he/.....

he swerved he had not seen the Tramway bus, so he was not aware of its presence on the road; he says that he did not expect to come across a bus ahead of him that had been turned across the road. He remembers swerving to his right to pass the Bay bus,but remembers nothing more; he does not remember seeing the Tramway bus at all.

The plaintiff's evidence is of little assistance, but there is other evidence which gives a better picture of what occurred. The witness Alfred Mke who was the conductor of the Bay bus was sitting at the back of his bus. He saw the plaintiff on his motorcycle, with a pillion passenger,riding about a bus length behind the Bay bus. He looked to the front and saw the Tramway bus entering the opening in the cycle track. While he was looking at that bus he heard the motorcycle pass the back of the Bay bus. His evidence is as follows:-

"Q. When you saw this bus you say entering the opening did you hear something ?
A. I heard the noise of a motor bike.
Q. Was it different from the noise the motorbike had been making before ?
A. Yes it was different.
Q. How different ? What was the nature of the difference ?
A. It made a noise different to that which it makes when it ordinarily runs; this time it roared.
Q. And then did you look anywhere ?
A. I then looked at the bus I had seen in front.
Q. You looked at the bus and you heard a roar.Where did you look?
A.I looked at the next bus.

Q. What did you see ?

A. I saw a motorbike pass with two passengers. I saw the motorbike overtake our bus. Then I noticed that he jerked back because he got a shock when he saw the bus in front of him suddenly.

Q. When he came first along where was he looking when he started to overtake ~~the~~ your bus. Where was he looking ?

A. I cannot just say.

Q. Then you say he suddenly jerked was he still alongside the side of your bus or was he in front of it ?

A. It was just when he was passing our bus.

Q. When he jerked like this what happened ?

A. I noticed he was trying to swerve.

Q. Which way ?

A. To the right.

Q.What happened then ?

A. He could not swerve and escape it because in front there were cars blocking the way and the bus was also blocking the way.

Q. What did he do ?

A. He bumped against the bus.

Q. When he bumped against the bus where was the bus ?

A. It was just when the bus was going on this lane where the bicycles ride. "

The driver of the Bay bus said that he was driving behind the Tramway bus. He had observed van Greunen's signal and realised that van Greunen was going to turn into the opening. In order to pass on the east side of the Tramway bus he slackened speed and drew to his left. He saw the Tramway bus enter the opening and estimates that he was then about 20 paces behind the Tramway bus. He then heard and saw

the/.....

the plaintiff's motorcycle; he says "the motor cycle came rushing "past and it bumped into the tramway bus " which had now turned into the opening. While the plaintiff had been passing the Bay bus, that bus had moved forward and the gap between the two vehicles had closed to 6 paces at the moment of impact.

An important piece of evidence was given by Mrs Renison. This witness was standing on the side path on the east side of the eastern portion of Uitenhage road at a point 25 feet north of the bus stop A. The bus stop is 49 feet from a point opposite the point of impact, so she was standing 74 feet from that point. She saw the Bay bus and the plaintiff riding behind it on his motorcycle; he was about a bus length behind and to the left rear of the bus. She saw the plaintiff turn his head to speak to his pillion passenger and after an interval which was not "very short" he swerved to his right. He overtook the Bay bus and passed from the witness' view. Mrs Renison said that at the time when the plaintiff passed out of her sight the Bay bus was more or less opposite her. It is clear from Mrs Renison's evidence that when the plaintiff disappeared from her view he was approximately 74 feet from the point of impact. He must have moved to the right sufficiently to clear the Bay bus before he reached that point and he must have had an unimpeded view of the road in front and of the Tramway bus for more than

74 feet before he reached the point of impact. Had he looked, the plaintiff would have seen the Tramway bus, which was still signalling its intention to turn before he reached the Bay bus. The plaintiff evidently did not see it until it was too late. He then tried, unsuccessfully, to pass the Tramway bus on its right, and the collision took place.

The question that has to be decided is whether the plaintiff has proved that van Greunen was negligent, that is, that van Greunen was in breach of a duty of care towards the plaintiff.

The case made on the plaintiff's behalf is that as he emerged from behind the Bay bus he came face to face with a situation which placed him in imminent danger and demanded an instantaneous decision to extricate himself. He thus swerved to the right in the opening but was unable to avoid the collision. He attributes the creation of the emergency to van Greunen's turning into the opening without taking the necessary precautions to safeguard the rights and safety of following traffic.

The particulars of van Greunen's negligence set out in the declaration are :-

"(a)he failed to keep a proper look-out;

(b)he turned to the right in front of the plaintiff's motor bicycle

(i)/.....

(i)at an inopportune moment;

(ii)without assuring himself that he could so turn without endangering the plaintiff;

(iii)without giving any or adequate signal of his intention to turn, alternatively without satisfying himself that the plaintiff had observed and was responding to the said signal;

(iv)he turned the said motor bus in contravention of section 80(3) of the Road Traffic Ordinance No. 19 of 1955. "

I shall deal at once with the allegation of negligence based on a contravention of the Ordinance, upon which the learned judge a quo comments as follows :-

"It is quite clear that a breach of the Regulations is not per se an act of negligence. But in my view a driver in a public road is entitled to assume that other drivers will conform to the traffic regulations in force in that area, though he must always be prepared to avoid, if possible the inevitable and none too rare law-breaker. "

Section 80(3) of Ordinance No.19 of 1955 provides :-

"No person shall turn a vehicle,other than a vehicle propelled by hand, on a public road in an urban area so as to face in a direction opposite to that in which it was facing immediately before the making of the turn,except where the road on which he is travelling is a cul-de-sac or the roadway is clear of moving vehicular traffic for at least one hundred yards to each side of the place where the turn is to be made; provided that no such turn shall be made at an intersection. "

I shall follow the convenient course adopted

followed/.....

adopted during the argument before us of referring to this provision as a prohibition against making a u-turn. Assuming, without deciding, that the manoeuvre upon which van Greunen had embarked was a u-turn which contravened the above-cited provisions of the Ordinance, I do not think that the plaintiff derives any assistance therefrom. For, apart from the fact that plaintiff gave no evidence that, being aware of this provision, he regulated his conduct upon the assumption that van Greunen would observe it, van Greunen's postulated breach of the Ordinance had, in my opinion, no direct bearing upon the issue of negligence in relation to the collision. For van Greunen would have acted no differently had he intended merely to drive across the western half of Uitenhage Street. This van Greunen was clearly entitled to do, and no question of any breach of the above-cited provision of the Ordinance would arise. That is to say, the postulated circumstance that van Greunen was engaged in a u-turn is, quoad the issue of negligence, an irrelevant circumstance. Van Greunen had, in the manner described above, already given full warning of his intention to change the direction of his progress.

The learned judge a quo sums up his conclusions on the other allegations of negligence as follows:-

"On this evidence the sole question is whether he was justified in assuming that there was no vehicle behind the second bus

which/.....

which might be endangered by his turn.

It appears that the second bus was travelling not far behind the Tramway bus, with the plaintiff following approximately a bus length or 27 feet behind the second bus. The driver of the second bus saw the Tramway bus signal to turn, and states that he knew that this was the practice of this bus. So he slowed down and pulled to the left to pass the Tramway bus on its left. He appeared certain that there were a number of cars parked on the eastern curb. His marhin of safety behind the Tramway bus was therefore extremely narrow and required a diminishing speed and care. The eastern side of the road was 30 feet in width, the Tramway bus was approximately four feet from the cycletrack, each bus was 8 feet in width, and there were cars parked on their left.

The inclining of the second bus to the left was visible to the Tramway bus and according to the driver was seen. The slowing up could therefore have been seen also and the driver could and should have realised that any vehicle behind the second bus would inevitably have turned to the right to pass the second bus as it lawfully might do.

In my view therefore the Tramway bus driver was not entitled to ignore the possibility that there might be a vehicle behind the second bus, whose way would be completely blocked by his turn in its path. "

I understand the learned judge to find that when the plaintiff swerved in order to pass the Bay bus he found himself face to face with a sudden emergency created by the Tramway bus in turning across the line of advance of the plaintiff and that the latter endeavoured to avoid the consequences of van Greunen's negligence by turning into the opening and thus collided with the Tramway bus.

In order to attain a reasonably

clear/.....

clear picture as to whether or not plaintiff was, in consequence of van Greunen's conduct, confronted with a sudden and unexpected situation, it will be necessary to refer again to the various positions of the vehicles, the distances which separated them and the approximate speeds at which they were respectively travelling at the moment when the plaintiff swerved to the right from behind the Bay bus. The plaintiff commenced his swerve to the right in obedience to an indication by the Bay bus driver that he intended to move across to the left. The driver of the Bay bus was adapting himself to a signal by the Tramway bus that it was inclining to the right. At that stage the Tramway bus was about 20 paces ahead of the Bay bus and the plaintiff at least a bus length or 27 feet behind the latter. The plaintiff was then considerably more than 74 feet from the point of impact and I base this conclusion upon the evidence of Mrs Renison, referred to above, ~~and~~ which is accepted by the learned judge a quo. The plaintiff was directly opposite her when he disappeared behind the Bay bus. As he had to pass the back of the Bay bus before he disappeared from Mrs. Renison's view, he must have commenced his swerve at a point which is appreciably further from the point of impact than 74 feet.

Assuming in favour of the plaintiff that he was travelling at approximately 25 miles per hour and

the/.....

the Tramway bus at approximately 5 miles per hour and that he obtained an unobstructed view of the street in front of him at a point even 75 feet from the point of impact, the plaintiff would cover this distance of 75 feet while the Tramway bus travelled 15 feet. Again accepting that the Tramway bus was at the time of the collision approximately in the position indicated on the plan it had travelled about 15 feet ~~before the moment of impact~~ in addition to the 75 feet. Two inferences clearly flow from these undisputable facts. Firstly, the distance intervening between the plaintiff and the rear of the Tramway bus, at the time when the plaintiff swerved, was at least 60 feet and its presence could consequently not have placed the plaintiff in a dilemma if he had kept his motorcycle under proper control and had kept a proper look-out. Secondly, if, as is suggested, the plaintiff swerved in an attempt to avoid the Tramway bus immediately after moving from behind the Bay bus, it is inconceivable that the collision could have occurred at the point at which it admittedly occurred and he would, moreover, have struck the rear of the Tramway bus and not its side. In addition, the Tramway bus must have commenced its turn into the opening at the moment when the plaintiff emerged from behind the Bay bus which, in the absence of explanation, makes the contention equally unacceptable.

It was argued at the Bar with

some/.....

some vigour that, in executing the turning movement, the Tramway bus suddenly and to a considerable degree increased its encroachment upon the portion of the street which lay immediately in front of the plaintiff and that it thus completely obstructed his direct line of advance. There is no evidence that the Tramway bus swung out to its left before inclining to its right to enter the opening. The bus occupied some 12 feet of the roadway when it was travelling parallel to the cycle track. If it did not move to the left before inclining to the right, there was no additional encroachment on that account. Some small additional encroachment would be caused by the movement of the end of the bus as it pivoted on its back wheels while the bus was being turned to the right. The evidence, however, was that the movement would not cause much encroachment. Moreover, the forward movement of the bus into the opening would tend to compensate for additional encroachment of that kind. It has not been shown that the turning of the bus caused any material additional encroachment on the road. The evidence does not support the contention that there was a sudden encroachment. Apart from the undisputed evidence that the Tramway bus was travelling at 5 miles per hour, it was physically impossible to turn so cumbrous a vehicle with such a long wheelbase suddenly. It is clear that there would have been a very gradual, and only momentary, increase in the encroachment, which was estimated at 3 to 4 feet, a comparatively negligible increase. The

angle/.....

angle of inclination of the bus away from its direct line of progress must, of necessity, have been acute, which would have enabled ordinarily vigilent users of the road following the Tramway bus to adapt themselves in a relatively leisurely way to the manoeuvre. The picture, which counsel attempted to present, of the plaintiff being suddenly confronted by an "iron curtain" from which escape was impossible, appears to me ~~to~~ more fanciful then real.

But on the assumption that such a situation could be imagined to have arisen, the Tramway bus must have been travelling parallel to the cycle track at the time when the plaintiff swerved from behind the Bay bus. Such an assumption does not make the position of the plaintiff any stronger. The fact is inescapable that the Tramway bus was travelling 3 to 4 feet from the edge of the cycle track and it was the height of folly to attempt to overtake and pass so cumbrous a vehicle in so circumscribed a space. No vehicle as a rule proceeds in an absolutely straight line and it should have been apparent to even the most unobservant motorist following the Tramway bus that only a very slight inclination to the right would crush him against the cycle track. If a motorist chooses to act in such reckless disregard of his own safety, the resulting emergency is of his own creation and he will be solely to blame for the consequences.

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It is said that van Greunen should have satisfied himself that there was no other vehicle approaching from behind the Bay bus before he commenced to turn to the right into the opening. He had at that stage extended his indicator and had observed that the Bay bus was responding to this signal and on looking at the right hand side of his bus he saw no other traffic approaching from behind. There was no reasonable probability that any attempt would be made to pass him on the right by reason of the narrowness of the gap and the fact that the extended indicator was clearly visible. It had to his knowledge been observed by the Bay bus and would presumably be observed by any overtaking motorist who took the trouble to look in that direction and had the slightest regard for his own safety.

As van Greunen had taken every precaution in regard to following traffic, it was, in my opinion, his duty before he commenced to turn, to direct his attention to the possibility of danger threatening from (1)traffic on his left moving in the same direction, (2)users of the cycle track, (3) bicycles actually in the opening and (4) traffic moving along the western section of the street. He owed a prior duty to such traffic and was obliged at that stage to concentrate upon it. To hold that he should in addition take precautions against possible reckless overtaking motorists suddenly emerging from behind the Bay

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bus would, in my opinion, be to place too high a duty upon him. A motorist is not an insurer of the safety of other users of the road. He may act upon reasonable assumptions and is called upon to take precautions against reasonably forseeable contingencies only. Even if van Greunen had seen the plaintiff travelling behind the Bay bus he could not have been expected to foresee that the plaintiff would make so hazardous a movement as he in fact did make. In my opinion, van Greunen was not guilty of negligence at any stage and he should be completely absolved from responsibility for the collision. He had timeously signalled his intention to turn in the only possible way, viz. by extending the indicator, he had at the appropriate time and place looked into the right hand rearview mirror and seen no approaching traffic, he had reduced his speed preparatory to turning and, finally, he was travelling so slowly and so near the edge of the cycle track that no overtaking should have been attempted. His inclination into the opening in the circumstances was slow and gradual and he was entitled to assume that it would be observed.

Decisions dealing with the duty of motorists when moving across the line of advance of following traffic and of traffic travelling in the opposite direction were cited at the Bar. As appears from the review of these cases by DOWLING J. in Regina v. Miller (1957(3)S.A.44), the decisions are far from harmonious, more particularly in relation to the extent

of the duty owed to traffic behind him by a motorist, who proposes to turn to his right. In Rex v. Crenhelm (1932 T.P.D.86) GREENBERG J. expressed the view that it is the motorist's duty, in relation to following, as well as oncoming, traffic, to endeavour to ascertain whether his signal of his intention to turn to his right has been observed. In Rex v. Fratees (1932 C.P.D. 308) WATERMEYER J. stated that when a motorist has given a reasonable signal that he is going to turn, "he is entitled to assume that "the traffic behind him has seen that signal." These divergent opinions have been variously followed in the Provincial divisions. I find it, however, unnecessary to embark on any closer examination of those decisions because none of them directly strikes the dispute before us. For, even if the more exacting view of GREENBERG J. be adopted, in the present case van Greunen satisfied himself that the Bay bus had observed, and accommodated itself to, his signalled intention to proceed to his right. In my opinion, none of the abovementioned decisions support the view that it was, in addition, van Greunen's duty to defer his turn until he had made certain that possible unseen traffic, travelling behind and obscured by the Bay bus, had also observed his signalled intentions to proceed to his right. And, as I have already indicated, I do not consider that, in the circumstances of the case, van Greunen's legal duty to traffic behind him required him to

contemplate/.....

contemplate the contingency that somebody who was possibly travel-ling - as plaintiff was in fact travelling - behind the Bay bus and wholly obscured by it would suddenly, and without first ascertaining whether the coast was clear, attempt to pass the Bay bus.

The plaintiff stated in his evidence that he suffered from amnesia caused by the shock of the impact and that he was unable to recollect what happened after he had swerved from behind the Bay bus. What actuated him in his extraordinary conduct must, if possible, be inferred from the other evidence. He does not in his evidence complain of being faced with a sudden emergency but, in any event, it is abundantly clear that no emergency was created by the Tramway bus. The only reasonable conclusion at which I can arrive is that, in overtaking and passing the Bay bus, he deliberately embarked on a course of conduct which was from the very onset fraught with grave danger and which, not unexpectedly, ended in disaster. Immediately before the Bay bus inclined to the left the plaintiff was travelling ~~behin~~ "blind" in relation to the traffic on his right front and it was his clear duty to exercise great caution in emerging from behind it. It was at this stage that he admittedly opened his throttle, thus accelerating at a time when he

should/.....

should have satisfied himself that there was no obstruction in his direct line of advance. I am satisfied that in the final stages he travelled at an excessive speed and failed to keep a proper look-out. He failed, timeously or at all, to observe the extended indicator and the turning movement of the Tramway bus, and, moreover, obviously disregarded the contingency that the Tramway bus, travelling close to the cycle track with the indicator extended, might incline to the right in the opening for the purpose of avoiding and/or passing traffic on its left moving in the same direction. That the plaintiff succeeded in avoiding the Tramway bus until he reached the opening and that then, with the clear space to his right, he collided with it, is incomprehen-sible except on the supposition that he was grossly negligent.

In my opinion the appeal succeeds with costs and the judgment of the court a quo is altered to one of absolution from the instance with costs.

~~Schreiner, J.A.~~

~~Beyers, J.A.~~

Ogilvie Thompson, J.A.
Ramsbottom, J.A. } Concur