



IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CIV. CASE NO. 860/93

In the matter between:

CLIVE BENTLY Plaintiff

and

MR. H. HUDSON Defendant

CORAM : A.F.M. THWALA
FOR THE PLAINTIFF : PERRY MILLIN - RIBA
FOR THE DEFENDANT : MR. R. B. KEYTER

JUDGMENT

The plaintiff claims E14,000 as damages from the defendant as a result of the collision that occurred on or about 14th May, 1992 and at or near the intersection of Wolmarans and Wanderers street, Joubert Park, Johannesburg, R.S.A. a collision occurred between plaintiff's car a 1987 1.6 Toyota registration number MDG 433T and motor vehicle registration number ND 424814, being driven by the defendant at the time of the collision.

The defendant defended the action and in her plea denied liability, She denied that the collision was caused by her negligence as alleged in plaintiff's particulars of claim. She further alleged that in the event of it being found that she was negligent and that her negligence was the cause of the collision, all of which she still denied, then in that his negligence contributed to the collision. The plaintiff's negligence is set in paragraph 8. She prayed

that the plaintiff's claim be dismissed with costs.

The defendant also counterclaims for her vehicle's damages in the amount of E47,114.28 based on plaintiff's negligence. The plaintiff pleaded to her counter-claim. Sole negligence was denied by the plaintiff. In alternative, the plaintiff prayed that the defendant's counter-claim be reduced in terms of the apportionment of Damages Act should the court find that there was contributory negligence by him and that an appropriate order be made as to costs.

By agreement, the parties admitted the following points:-

1. Each party's locus standi to sue.
2. Plaintiff's damages in an amount of E14.000 and defendant's damages in an amount of E21.500.
3. The robots at the intersection of Wanderers working order at the time of the collision.
4. Plaintiff was travelling east to west along Wolmarans street.
5. The defendant was travelling North to South along Wanderers street.
6. The defendant's diagram marked 'A' is accepted as being correct and to be handed by consent.
7. The defendant's photos marked 'B' are what they purpot to be and are handed by agreement listing the admitted facts was marked 'C'.

The plaintiff and his witness gave evidence. The defendant and her two witnesses gave evidence.

The plaintiff's witness, Paul Coetzer stated that he was driving a BMW travelling to the Western direction of Wolmarans Street. The weather was clear. Wolmarans Street is a one way street. It intersects with Wanderers which is a two way street. There are two roadlights at the intersection. He was travelling on the second lane. There was a car in front. It was about 10-15 minutes ahead of him. The vehicles had lights on. The car was a Toyota Corolla i.e. Plaintiff's car. He moved to overtake on the left side because it was slowing down. He was about 25-30m from the intersection. He could see the traffic lights. At that stage they were changing from red to green. When he pulled to the left, the Toyota was ahead of him. He then noticed a Kombi. He was 10-15 m from the crossing line. The roadlights were still green. He applied his brakes and stopped. There was a collision between the Kombi and the Toyota. There was no way the Kombi could stop the way it was travelling in the circumstances. Wanderers is a downhill street from North to South. When he saw the Kombi, it was about one car's length from the stop line. The Toyota ran into the Kombi and the Kombi rolled. The lights were green when the Toyota entered the intersection. He went and parked his car at the garage and came back to check if any body was injured. He gave his business card to the complainant. He told the Toyota driver that he was prepared to give evidence because he saw how the

accident happened.

In cross-examination he repeated most of his evidence in chief. He said the Toyota did not obscure his vision. He was able to notice the Kombi because he was still behind the Toyota when he noticed the Kombi. The front of his car was almost at the tail light of the Toyota. The road where the Kombi was coming is higher than Wolmaran street. He maintained that the Kombi was travelling at the high speed in the circumstances. It could not stop within 5m at the speed it was travelling. The Kombi did not stop at the red robots. The Toyota entered the intersection because the lights were green. He first pointed the point of impact which differed from the point of impact which is on the police report. He then accepted the point of impact marked by the police. He said he was able to stop quickly because he was driving a BMW which is not like a Toyota. At the scene, he did not see an 'AA' car flashing lights. He also did not see an 'AA' driver. He maintained that the robots were red and that the defendant was travelling fast in the circumstances. He went on to say that the 'AA' official did not see the accident because what was put to him he would say did not correspond with the police plan.

The next witness was the plaintiff, Clive Bently who stated that on 14th May, 1992, at 8:00 p.m., he was driving his Toyota along Wolmarans street in the westerly direction. He was travelling in the second lane from the right. He

averaged 30-40km because it is a 60km zone. When he approached the intersection of Wolmarans and Wanderers streets the robbots changed to green. He was about 20-30km travelling at 40km. He noticed a white BMW behind him. He was in the second gear. The white BMW wanted to overtake him on the left side. When he arrived at first line of the pedestrians crossing, the robbot was green. He did not notice where the BMW was but he was concentrating in front of him. He had a right of way. He then noticed a vehicle coming down Wanderers street. The front wheels of his vehicle were on the second line of the crossing. The vehicle had entered the intersection. He applied brakes and hooted. He hit the vehicle on the left handside at the rear. The vehicle rolled on the other side of the intersection of Wolmarans and Wanderers streets. It landed on its wheels. The point of impact is at 'A'. He marked the point of impact in 'A' just opposite the second lane from the right in Wolmarans street. He stated that the vehicle was travelling more than 60kms in a 60km zone. The vehicle did not stop at the robbot although it was red. After the accident, he put on hazard lights. He left the car in the intersection and went to check in the Kombi if people were injured. He did not see any flashing lights in Wolmarans street. He did not see the 'AA' At the Kombi there were many by-standers. One of the ladies in the Kombi complained about her neck. He then went to his car and saw Mr. Coetzer who gave him his business card and told him he saw the accident. He then supplied the necessary

information to the police. He was present when the police measured the scene. He told the police that the defendant did not stop at the robbots. This appears in the police report.

The plaintiff was cross-examined. He confirmed that he went to the kombi to see if there was anyone injured. He made a statement to the police. He helped the police in pointing out the point of impact. After he had submitted his claim to the Insurance, he phoned defendant's husband. He wanted to get the name of their Insurance. He told him that he had a witness. He did not say the witness was a cafe owner in the surrounding area of Wolmarans street. He noticed a white BMW pulling up to overtake him. He could not see traffic lights at that stage. He could see cars moving up and down the intersection. He could see traffic coming down Wanderers street when he was 7-8 in from the crossing line. He kept a proper look out. He saw the vehicle when he was crossing the second crossing line. He said there were no cars in front of him. There were no cars which could impede him as it is a one way street. He was focusing in front of him. If he looked at the right he could have seen the Kombi in Wanderers street. He applied his brakes but did not hear brakes from other cars. He said that the defendants car was travelling at more than 60km. He hit the Kombi. The Kombi rolled and ended up 25m down Wanderers street. If he was travelling at a high speed the Kombi could have hit him. He did not hit the Kombi near the crossing line on the South of

Wanderers street. He hit the Kombi on the centre of the intersection. It is not correct that the point of impact was on the third lane from the North. He was travelling on the second lane when he hit the Kombi. The lights were green for him and red for the defendant.

The first witness for defence was Mrs Hudson the defendant who stated that on the 14th May, 1992 they booked in hotel in Johannesburg. They went to see a film. On their way to the hotel, they lost direction. She tried to look for the hotel. She travelled through an intersection when a car hit his Kombi. When she entered the intersection the robots were green. She said she had been driving in cities since 1968. She was travelling from North to the South at about 40km. She was travelling slowly because she was lost. She said she did not see any traffic coming. She looked left and right. She was then hit by plaintiff's car on the rear. When she was hit on the front part of her car was opposite the first lane from the left i.e. fourth lane from the right. The robots in Wolmaran street were not visible to her. When she was hit the car rolled and landed back on its wheels. She was helped by a man who brought medicine for her. He told her not to worry. The man is the witness Cherry who was employed by 'AA'. The plaintiff came with the police and told her that she was the driver of the other car involved in the accident. The police asked for her name. She did not assist the police to point the point of impact nor did she make a statement to the police at the

scene. She made her statement after sometime and sent it to the police. In cross-examination She stated that she did not know the area well where the hotel was. She was trying to look for landmarks which might lead her to the hotel. She did not pay full attention to the driving. She was travelling at a constant speed of 40km. She did not see any traffic approaching from the left of Wolmarans street. She only heard when she was hit on the rear. She could not point the point of impact but she insisted that it could not be at point 'A' because when she was hit at the rear she was almost at the crossing line. She disputed the point of impact drawn by the police. She maintained that when she entered the intersection the robbots were green. The cause of the accident was the plaintiff who entered when the robbots were red. She said she told the police that she did not know how the accident happened. Counsel was asking her about what was recorded in the police report. She did not hear the plaintiff when he said she entered when the robbots were red. She did not see the 'AA' car flashing lights at the scene of the accident. She only spoke to the man who told her the he worked for the 'AA'. She maintained that she did not see any cars coming form the east of Wolmarans street when she entered the intersection. The plaintiff's car appeared from nowhere. She did not see the 'AA' car moving from the parking area. She was looking ahead. She did not see the BMW driven by Coetze. She took no steps to avoid the accident because she did not see the plaintiff's car.

The second witness for the defence was Mrs. Loven who

stated that she was a passenger in defendant's car. When they went back to the hotel from a film they lost their way. They travelled down Wanderers street and entered a robot controlled intersection in Wolmarans street. The traffic lights were green for them. She did not look for landmarks because she did not know Johannesburg. She could not remember at what speed they were travelling but were travelling very slowly as the defendant was trying to find the way to the hotel. She did not see any cars in Wolmaran street. She did not see any traffic when they entered the intersection. She then looked ahead. She could not tell how the accident happened as their car was almost through the intersection. Their vehicle rolled and came to rest on its wheels. They sat in the car until a man wearing a yellow shirt came to them. He comforted them and bought sugar water for them from the chemist. She did not see the policemen coming to their car. She saw police with police dogs. They were then taken by ambulance to hospital.

In cross-examination she said she did not remember speaking to the police but did not dispute what they wrote in their report. She did not make a statement to the police. She did see Mr. Coetze at the scene. The plaintiff and Coetze did not come to their vehicle. The defendant was trying to locate landmarks. Her attention was divided. She noticed that the robots were green for them. Their car did not go through the red robot. The car was travelling between 30-40 km. She denied that they travelled at an excessive

speed. She did not look to the left and right and did not see traffic in Wolmarans street. they had almost crossed the intersection when the accident occurred. She did not see plaintiff's vehicle. The defendant did not apply brakes. She did not dispute the point of impact marked by the police.

Mr. Cherry stated that on the day of the accident, he was at the intersection of Wanderers and Wolmarans streets. He was on duty as a patrol man for 'AA'. It was about 8:00 p.m. He was in 'AA' vehicle in Wolmarans street ready to pull out of the parking area. The parking space is 10-15mm to the crossing line. He intended to go up Wanderers street. There were no cars at the robbots. The robbots were red. There were two cars in Wolmarans street. They were in the middle of the block. He put his car in the first lane and started moving forward. His car was then facing the westerly direction. He then noticed one of the cars which passed him colliding with another vehicle at the intersection. The car was travelling in the second lane. It was a Toyota corolla. The robbots were still red when the collision happened. He left his car on the first lane from the left. He was travelling in 'AA' car. He put on the rotating lights. It must be observed here that all four witnesses who testified did not see the rotation lights and the 'AA' car though it had distinct colour and an emblem. The vehicle of the plaintiff stood still. He went to the vehicle and found two ladies. He told them that he had seen

the accident. The vehicle which was travelling in Wolmarans street entered the intersection against the robbots. The point impact was towards the end of the second lane from the left i.e. the third lane from the right. The Kombi ended in the first parking lane of Wanderers street. The point of impact is in the middle of the second lane from the left i.e. third lane from the right. He estimated the speed of the plaintiff's car to be 50km. He did not hear any brakes and a hooter.

In cross-examination, he said the robbots were red when he entered into his car. He checked if there were cars in Wolmarans street and noticed two cars coming. He saw their lights. They were travelling in adjacent lanes. The vehicles were 25-30m from him. The vehicles were on the second lane from the South. They were not on the second lane from the North i.e. second lane from the right. The other vehicle did not stop at the crossing line. They were not travelling in a line. He was not sure which vehicle was in front. If one vehicle changed lane, he could see it. The toyota was in the lane close to him, i.e. the third lane from the right. The toyota was the vehicle involved in the accident. He maintained that the plaintiff was in the third lane from the North. He denied that the accident happened in the second lane from the North. He did not see the Kombi prior to the accident. He only saw the Kombi when the accident happened. He did not accept the point of impact marked by the police. He insisted that the point of impact

was further down. According to him the Toyota ended on the second lane from the South.

The police report and the plan were admitted as evidence. 'A' is the Toyota driven by the plaintiff. The Toyota stopped at the point of impact. The Kombi driven by the defendant was carried from the point of impact to 'B' - 24 paces from the point of impact. The police asked the drivers and the passengers about the accident. The plaintiff told the police that the defendant disregarded the red robbot. Both defendant and her passenger told the police that they did not know what happened. The sketch plan and the report were compiled by the police in order to establish if there was negligence which could result in one of the drivers being prosecuted and not for the purpose of any civil claim.

The plaintiff's evidence and his witness is that the defendant disregarded the red robbots. The defendant and her witness also claim that the plaintiff disregarded the robbots. The plaintiff and his witnesses gave evidence as to how they approached the intersection. They claim that the robbot was green when the plaintiff entered the intersection. They described the manner they were travelling. The witness also travelled on the second lane and he tried to overtake him. The plaintiff who was in front entered the intersection first. The witness noticed that the way the Kombi was driving it could not stop. There

was a collision almost opposite the second lane from the North. The point of impact is supported by the police plan. The two witnesses said the robbot was red. It is also recorded in the police report that the plaintiff told the police that the defendant disregarded the robbots..

The defendant and her witnesses did not mention any red robbot to the police. Mr Cherry did not speak to the police. The two ladies said they did not know what happened. Both the defendant and her witness admitted that her attention was divided because she was trying to trace their way back to the hotel. This indicated that she did not concentrate on her driving and hence she did not keep a proper look out. It is not unfair to infer that she did not see that the robbots were red. The defendants and her witnesses's evidence as regards the point of impact is not convincing. The plaintiff and his witnesses are supported by the police plan. It can be seen from the plan that he was travelling on the second lane from the North. Both the defendant and Mr. Cherry put him to further South. This is not supported by any independence evidence. The observation of the robbot by Mr. Cherry is not convincing because if he saw the cars coming while the robbot was red and waited for them according to his description, the robbots must have turned green in the interim. His description of the point of impact and lanes on which the plaintiff and his witness were travelling differs, from that of the plaintiff, his witness and the police plan. I find that on the balance of

probabilities the plaintiff has proved that the robbot was green.

The question now to be decided is whether he was negligent by not keeping a proper look-out and taking such care as can be expected of a person entering an intersection with the robbot in his favour, knowing that the cars might jump robbots. The decided cases do not place a heavy duty on the robbots. The decided cases do not place a heavy duty on the driver. IN IZAAKS V SCHNEIDER 1991 3 SA 675 the head note reads as follows:-

"Where a motorist enters a robbot controlled intersection when the robbot in his favour and the intersection is clear, there was no duty on him to regulate his driving on the assumption that the driver of another vehicle approaching the intersection with the robbot against him might not stop. To expect more of the motorist who entered the intersection with the robbot in his favour would be to make driving impossible".

The judge quoted the cases of NETHERLANDS INSURANCE CO. OF SA LTD V BRUMNER 1978 4 824 A and NATIONAL EMPLOYER GENERAL INSURANCE CO. V SULLMAN 1988 1 SA 27 (A) with approval.

The plaintiff had a right of way in the circumstances. The defendant did not concentrate on her driving because she was lost. I do not find that the plaintiff contributed in the

accident. I grant the plaintiff judgment for the sum of
E14,000 with costs.

The counter claim against the plaintiff is dismissed with
costs.


A.F.M. THWALA

JUDGE