

EDITORIAL NOTE: PERSONAL/COMMERCIAL DETAILS ONLY HAVE BEEN DELETED.

**IN THE DISTRICT COURT
AT AUCKLAND**

**CIV 2015-092-000479
[2016] NZDC 12626**

BETWEEN

MEDICAL ASSURANCE SOCIETY
NEW ZEALAND LIMITED
Plaintiff

AND

WILLIAM FINEPOLO
Defendant

Hearing: 6 July 2016

Appearances: Mr B Pamatatau for the Plaintiff
Mr M Utting for the Defendant

Judgment: 18 July 2016

DECISION OF JUDGE G M HARRISON

The accident

[1] On 27 May 2013 at approximately 8.35 pm a Mitsubishi Legnum motor vehicle, registered number [number deleted], driven by the defendant (Mr Finepolo) collided with a Volvo, registered number [number deleted], driven by Dr Henry Doerr (Dr Doerr) at the intersection of Pakuranga Road and Te Rakau Drive in Auckland.

[2] Dr Doerr's vehicle was insured by the plaintiff and it claims to recover the cost of repairing the vehicle from Mr Finepolo pursuant to its right of subrogation as provided by the insurance policy.

[3] The police attended the accident. They recorded the details I have referred to and also that there were no independent witnesses. Both drivers claimed that the other had not observed a red light, and the police determined to take no action, it being impossible to determine whose version of events a Court might accept.

[4] The repair costs claimed by Medical Assurance totalled \$28,008.94 which Mr Finepolo did not dispute. The hearing was therefore confined to the issue of liability.

The plaintiff's case

[5] The plaintiff called Mr Mark Fisher, its claims technical manager. He was asked how Medical Assurance determined who was liable for the accident. Mr Fisher stated that both drivers claimed they proceeded through a green light, and so, with no independent witnesses, he turned to the Road Code "which says the person turning right should always ensure that it's safe to proceed".

[6] He produced a section from the Road Code as produced by the New Zealand Transport Agency, but only the section involving "turning". His proposition was that a turning driver always has the obligation to ensure that it is safe to do so. Plainly that applies to uncontrolled intersections or even those containing directional arrows but without traffic lights.

[7] I put to Mr Fisher the proposition that the presence of traffic lights would qualify that basic obligation. His answer was as follows:

A. What I am saying is, without being able to prove what was happening with the lights, we've looked at the – going back to the Road Code and looked to see what the Road Code says which says that the right turning driver at all times, regardless of any, any thing, has to make sure that the passage is clear to do so.

Q. Even if he expects the oncoming driver to stop at a red light, assuming its red and doesn't know that he's going to drive through that

A. The Road Code will tell you you've got to look and make sure it's safe before making any manoeuvre which is what we would always fall back to. And it doesn't talk about lights. If you're turning right or left, it's on the onus of the driver to make sure it's safe to do so.

[8] I took it upon myself to access the Road Code, it being a public document published as I have said by the New Zealand Transport Agency.

[9] On p 5 of the section headed "About Driving ... The Give Way Rules" the following is stated:

A green arrow means you can go if you are travelling in the direction the arrow is pointing, provided it is safe.

[10] There then follows a depiction of typical traffic lights with a green arrow indicating.

[11] The following section is headed "Reading the Traffic Signals". It then says:

The following examples will help you get to know what traffic signals and arrows mean.

[12] There then follows a compartmentalised depiction of various traffic light signals and what is permitted. The final one depicting a green turning right arrow contains the following comment:

May go, provided it is safe. All vehicles coming towards you should be stopped.

[13] That section of the Road Code in my view qualifies the proposition of Mr Fisher and permits a driver to turn right on a green arrow provided it is safe, on

the assumption that all vehicles travelling in the opposite direction “should be stopped”. I therefore do not accept that by making a right hand turn Mr Finepolo assumed liability for the accident, the issue being whether he executed his right hand turn when permitted to do so by a green traffic light arrow, or whether he proceeded against a red light when Dr Doerr was entitled to proceed through the intersection when faced with a green light.

Dr Doerr’s explanation

[14] Dr Doerr had worked at his medical practice at the Pakuranga Medical Centre in the morning of the day of the accident, and had returned in the evening for a peer group meeting. He was travelling to his home after the meeting in a westerly direction along Pakuranga Road which is an arterial multilane highway.

[15] It intersects with Te Rakau Drive, a principal if not arterial road also connecting to the Auckland southern motorway. It is a well lit and busy intersection. The weather at the time was light drizzling rain, with a wet road surface although the parties agreed that there was good visibility.

[16] He says as he approached the intersection he was faced with a full green light and as he proceeded through the intersection Mr Finepolo drove abruptly across in front of his vehicle, leaving him with no opportunity to avoid a collision.

Mr Finepolo’s case

[17] Mr Finepolo said that he had picked up his 11 year old daughter from an event and was returning home. He was stationary in the right hand of two right turning lanes facing east on Pakuranga Road, there being two further straight through lanes, waiting for the green arrow to permit his right hand turn. He says that arrow displayed and he commenced his turn when his vehicle was struck by that of Dr Doerr. Photographs of that vehicle indicate extensive damage to the right front being consistent with impact from a vehicle turning right across its path.

[18] After the accident a woman from another vehicle at the intersection, apparently stationary in Te Rakau Drive but intending to turn left on to Pakuranga Road and travel in a westerly direction, came to the scene of the accident to establish if anyone had been hurt. There were no injuries of significance, and she left the scene, perhaps understandably, because it was raining at the time.

[19] Mr Finepolo said that while he was stationary before commencing his turn he was faced with red lights for both the through traffic and the right turning traffic. He said this was because traffic was turning right out of Te Rakau Drive across the intersection to travel in an easterly direction along Pakuranga Road.

[20] He said that his vehicle was the only one in either right turn lane, stationary, waiting for the green arrow. He said that Dr Doerr's vehicle was approaching the intersection as a loan vehicle although there was further traffic some distance behind it.

[21] There was therefore no independent verification either of Mr Finepolo's vehicle being stationary before its turn, nor that Dr Doerr was approaching a green light.

[22] It is impossible for me to decide therefore who was at fault.

Conclusion

[23] At the time of the accident Mr Finepolo was a disqualified driver. He was charged by the police with the offence of driving a motor vehicle while disqualified and it seems that he was not disqualified further on that charge, the sentencing court accepting that exceptional circumstances applied to him driving on the particular occasion, there being no other option but for him to do so to collect his daughter from her event, when not to do so could have exposed her to possible danger.

[24] Mr Finepolo said that his parents were unavailable as was his wife and there was insufficient time for him to arrange a taxi.

[25] In any event I do not regard the fact that he was a disqualified driver at the time of the accident as indicative in any way of his inability or refusal to observe the Road Rules. He lost his licence by reason of conviction for a breath alcohol offence detected at a compulsory breath testing exercise, which is not indicative of any inability to observe, or refusal to observe the Road Rules relating to correct driving at light controlled intersections.

[26] For the reasons already given I do not accept the plaintiff's case that the mere turning right by Mr Finepolo cast any liability on him, different from other drivers negotiating a light controlled intersection. The plaintiff's claim is accordingly dismissed.

[27] Counsel were agreed that costs on category 1A are appropriate and the plaintiff is accordingly ordered to pay the defendant costs assessed according to that category, together with any disbursements as fixed by the registrar.

G M Harrison
District Court Judge