

BETWEEN

ACQ

APPLICANT

AND

ZXN

FIRST RESPONDENT

AND

ZXM Ltd

SECOND RESPONDENT

Date of Order:

20 January 2013

Referee:

Referee Perfect

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that the claim is dismissed against both respondents.

Facts

[1] ACQ and ZZN were travelling on the motorway in [the city] in peak hour traffic. ZZN was driving a car in the far-left lane of three west-bound lanes. ACQ was riding a motorcycle between the far-left lane and the middle lane, he says more or less on the line between the lanes, a practice known as “lane-splitting”. The traffic was heavy and stopping and starting in each lane.

[2] In the moments immediately before the incident, the traffic in ZZN’s lane was moving very slowly and the traffic in the middle lane was completely stationary, albeit with a gap in the position adjacent to ZZN’s vehicle. ZZN indicated his intention to change lanes to the right into the available gap and began to move towards the right of his lane. He says he checked his blind spot over his shoulder as he neared the lane markers, saw ACQ’s motorcycle, and moved back to the left. However, in the meantime, ACQ, on seeing the gap, the movement of ZZN’s vehicle to the right and being in ZZN’s blind spot, had taken immediate evasive action which he was committed to by the time ZZN moved back to the left and which resulted in the motorcycle dropping to the ground. The parties agree that the motorcycle dropped to the ground in the area between the two lanes. There was no contact between the two vehicles.

[3] Fortunately, AXQ was uninjured but his motorcycle has been written off. The costs claimed for the loss are \$4,500.00 being the pre-accident value of the motorcycle minus the amount obtained for the wreck.

Issues

[4] The issues to be decided are:

- (i) Were ZZN’s actions negligent?
- (ii) If so, is there contributory negligence on the part of ACQ?

- (iii) If ZZN was negligent, is there any vicarious liability on the part of the Second Respondent?

Decision

[5] I find that there was no negligence on the part of ZZN. AXQ and his insurer's representative, UH, argue that ZZN should have checked over his shoulder before beginning to move to the right. However, rule 2.3(2)(b) of the Land Transport (Road User) Rule 2004 reads:

2.3(2) A driver, when driving on a road marked in lanes,—

...

- (b) must not move from a lane until he or she has first ascertained that the manoeuvre may be made safely.

[6] ZZN says that his front wheel had reached the lane markers but had not crossed it when he moved back to the left. ACQ says that he does not recall ZZN moving back to the left, but as there was no collision and the motorcycle dropped to the ground in the area between the two lanes (that is, ACQ did not end up significantly to the right of his original position), it seems clear that he must have done so. The applicant and his insurer are unable to prove that ZZN left his lane, and if he did not, he has not breached the rule above and there is no negligence on his part. ZZN was entitled to begin the move to the right in his own lane so long as he had finished ascertaining that the way was clear before any part of his vehicle crossed the lane markers. Any failure to do this on ZZN's part has not been proven.

[7] Given the above finding, determination of this issue is not necessary. However, I intend to address some of the points raised by the parties at the hearing as regards common motorcycle practice referred to as lane-splitting. ACQ and UH argued that this is a legitimate practice allowed for in the motorcycle road code, although they had not provided copies of any relevant parts of this code to the hearing. I am unable to find lane-splitting specifically referred to or allowed by this code. The rules of the Land Transport (Road User) Rule 2004 relevant to this practice are:

2.3 Use of lanes

...

- (2) A driver, when driving on a road marked in lanes,—
 - (a) must drive as far as practicable entirely within a lane except when complying with subclause 2.1(2) or when changing lanes;

2.6 General requirements about passing other vehicles

- (1) A driver must not pass or attempt to pass another vehicle moving in the same direction unless—
 - (a) the movement can be made with safety;

2.8 Passing on left

- (1) A driver must not pass or attempt to pass on the left of another vehicle moving in the same direction except in accordance with this clause.
- (2) In any case in which the movement referred to subclause (1) may be made,—
 - (a) the 2 vehicles must be in different lanes; or
 - (b) the overtaken vehicle must be stationary or its driver must have given or be giving the prescribed signal of that driver's intention to turn right; ...

[8] The provisions in rule 2.7 about “passing on right” relate to situations where vehicles are approaching an intersection or using a flush median and are therefore not relevant to this case.

[9] Applying these sections to the practice of lane-splitting, a motorcyclist is in breach of rule 2.3(2)(a) if any part of the motorcycle is on or over the line between two lanes. If he/she is just inside and to the right of the line, he/she is undertaking to the left. Although in this particular case the middle lane was temporarily stationary, in a motorway situation the lane will move at some point making any motorcyclist riding in this manner in breach of rule 2.8(2)(b).

[10] If the motorcyclist is inside and to the left of the lane markers, he/she is passing to the right and the general passing requirements contained in rule 2.6 apply, as they do in all these scenarios. The most relevant part of that rule is whether or not the movement can be made with safety. There seems to me to be no way that a motorcyclist can comply with this requirement in a motorway situation where the only legal way to ride is just to the left of a

lane marker but entirely within a lane – that would bring him/her too close, or potentially too close, to whatever other vehicle is travelling within the same lane (as that other vehicle is entitled to move within the lane).

[11] Of course, the fact that lane-splitting cannot be carried out within the road user rules, does not remove the onus from car drivers to check that the way is clear before changing lanes. Taking into account the fact though that a vehicle may move freely within its own lane, riding between the lanes, while acknowledged to be a practical advantage to riding a motorcycle, seems impossible to do safely and legally.

[12] Given the finding at paragraph 5 and 6 above, this is not relevant, but I note that the Second Respondent would not have been vicariously liable for any negligent actions of ZZN as ZZN was on his way home from work when the incident occurred.