

# Nicholson v Lennard 8 ALR (Mal) 364

## Summary

<b>Court:</b>	Supreme Court Of Appeal
<b>Bench:</b>	The Honourable Chief Justice Skinner, JA., Honourable Justice Jere, JA., Honourable Justice Villiera, Ag. JA.
<b>Cause Number:</b>	8 ALR (Mal) 364
<b>Date of Judgment:</b>	November 08, 1977
<b>Bar:</b>	Hanjahanja, Counsel for the Appellant Mhango, Counsel for the Respondent

The Defendant appealed to the Appellate Court against a judgment of the High Court, Principal Registry, which had found her 20 per cent contributorily negligent in a motor vehicle collision claim. The Plaintiff, driving his taxi, was involved in a collision with the Defendant's private vehicle while the latter attempted to overtake on the Dedza to Blantyre road. The dispute arose because the Defendant had earlier observed the Plaintiff driving erratically but subsequently followed him for some distance while he drove with care. When the Defendant finally decided to overtake, she slowed, put on her indicator, and sounded her horn. As the Defendant began the manoeuvre, the Plaintiff, without signalling, drew his taxi towards the right-hand side of the road, blocking her path in a move towards an access road, causing the collision. The Plaintiff had

not checked the position of traffic behind him before turning.

The High Court (Mead, J.) found that although the Defendant gave adequate warning, her prior knowledge of the Plaintiff's erratic driving required her to exercise a degree of 'care above the average.' Because the Plaintiff had not given a positive sign that he was aware of her intention to overtake, the trial judge found the Defendant slightly negligent for not continuing to sound her horn until her lingering doubt was dispelled, apportioning 20 per cent liability to her and 80 per cent to the Plaintiff, and awarding costs on a proportionate basis. The principal legal questions before the Appellate Court were whether the finding of negligence against the Defendant was against the weight of the evidence and whether the trial judge's inference from the facts was correct. The appeal was allowed. The Court, accepting the trial judge's findings of fact, determined that an incorrect inference had been drawn from them. The Majority reasoned that the Plaintiff's earlier erratic driving was too remote, and the Defendant, having observed him driving carefully for a considerable distance and having given correct and adequate warning of her intention to overtake, was entitled to assume he would continue to drive carefully. Consequently, the accident was held to have been caused solely by the Plaintiff's negligent turn across the road without checking or signalling. The Court set aside the High Court judgment and ordered the Appellant to be awarded her costs of both the trial and the appeal.