

MSA NATIONAL COURT OF APPEAL 175

NCA PANEL: G. T. AVVAKOUMIDES SC, P. CARSTENSEN SC AND J. GEYSER

R WOLK

Appellant

and

M VAN ROOYEN

Respondent

JUDGMENT

PARTIES PRESENT AT THE HEARING:

Adv N Jordan: Appellant's counsel

Mr R Wolk: Appellant

Mr M van Rooyen: Respondent

Mr H North: Respondent's Attorney

Mr M North: Respondent's Attorney

Ms Karen Britton: MSA Senior Operations & Sport Coordinator

Ms A Brown: GTC Clerk of the Course

Mr V Maharaj: MSA Sporting Services Manager

INTRODUCTION:

1. This is an appeal against the ruling of MSA Court of Appeal 460 dated 13 April 2022. The appeal lies to the National Court of Appeal with leave having been granted to the appellant to appeal against MSA COA 460.

2. The incident forming the subject matter of this appeal took place on 5 March 2022 at the Killarney International Raceway during the second heat of the Global Touring Car of the National Extreme Festival Event.

BACKGROUND:

3. Pursuant to the event and the particular incident, which we will deal with comprehensively hereunder, there was a protest hearing held via the Zoom platform on 16 March 2022 at 17h30. The stewards, having had the benefit of hearing the evidence of both the appellant and the respondent about the incident which occurred at turn 2 (T2), recorded that the respondent admitted during that hearing that he was the challenging competitor insofar as car number #43 (Daniel Rowe) heading into turn 2. The respondent was on the outside of car number #43 which held the inside line going into turn 2. The appellant, approaching turn 2 was in close proximity to car number #43, more specifically approximately one car's length behind number #43, while the respondent was on the outside of car number #43.

4. At some point during the second part of turn 2 (it being recorded that turn 2 comprises a double apex corner) the respondent turned in towards the apex suddenly, thereby causing the appellant to brake and collide with the rear of the respondent's vehicle. The stewards at the protest hearing held that the Global Touring Car and SupaCup Championship Sporting Regulation, Articles 25.2 and 25.3 are not applicable in this specific instance because, any competitor who is challenging for position and is clearly: -

- (i) to the outside of the lead car in a corner; and
- (ii) is behind the lead car's B-Pillar; and
- (iii) where the challenger's front bumper is ahead of the lead car's rear bumper;

unable to defend the open inside race line to any other challenger, i.e. in this case the appellant,

The stewards noted that the respondent clearly and explicitly stated in the race incident report that he was of the opinion that the appellant did not respect article 25.4 of the Global Touring Car and SupaCup Championship Sporting Regulations and that the appellant ran wide on the exit of turn 2 causing the two vehicles to make contact and resulting in the respondent losing control and spinning

off the track.

5. The stewards, as also this National Court of Appeal (we will revert to the decision of the Court of Appeal later) reviewed all the available video footage and determined that, at no stage, at the exit of turn 2 did the appellant run wide. The stewards also noted that the appellant also took evasive action by applying brakes to avoid possible contact with the respondent as contemplated under article 25.4 of the Global Touring Car and SupaCup Championship Sporting Regulations. Consequently, the stewards set aside the penalty against the appellant issued by the Clerk of the Course and directed MSA to amend the results of race 2 and that the appellant be reinstated to the correct finishing order.

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6. The respondent appealed the decision of the stewards. The Court of Appeal quoted and highlighted the Driver Conduct Guidelines contained in Articles 25.1, 25.2, 25.3 and 25.4 and it is unnecessary to repeat the contents of the said articles save to highlight that in Article 25.3 it is provided that:

“If, from the turning point, the lead car stretches the lead to the apex and the challenger’s front bumper is behind the centre (b-pillar) of the lead car, the challenger will withdraw and allow the lead car a

normal racing line, any contact made by the challenger on the lead car behind the b-pillar will be deemed to be the challenger's fault furthermore the bumping of the lead car behind the b-pillar by the challenger is also the fault of the challenger, if the lead car was abiding by the above rules."

7. Article 25.4 provides that:

"From the apex which is 'out', the inner car will take extra care not to drift wide under power forcing the outer car wide and ultimately off the circuit at the exit. This is exaggerated in front wheel drive cars and those drivers should exercise extra caution. The challenger should exercise extra caution to avoid contact, by applying brakes or taking extreme evasive action. If there is no evidence of evasive action this will certainly count against the challenger."

8. The Court of Appeal disagreed with the stewards insofar as the non-applicability of SSR's 25.2 and 25.3 and held that, to the extent that the respondent was challenging car #43 (Daniel Rowe), that challenge was over by the time the incident took place. Consequently the Court of Appeal held that the respondent must be regarded as the lead car and the appellant as the challenger and the responsibility falls to be determined by the strict application of Driver Conduct Rules set out in SSR's 25.1 to 25.4.

9. Having heard the evidence of the parties and viewed the various video footage, the Court of Appeal held that the respondent maintained a consistent line around the corner in the area where the incident took place and made no attempt to crowd the appellant towards the inside of the corner. Furthermore the Court of Appeal held that the appellant, despite contending that he maintained the inside line hugging the kerb in fact drifted outwards and understeered towards the respondent and thus failed to take extreme evasive action as required in terms of the regulations to avoid the incident. Ultimately the Court of Appeal held that the appellant's braking was not sufficient to constitute extreme evasive action resulting in the Court of Appeal overruling the finding of the alternative stewards.
10. The Court of Appeal ruled that the respondent should not suffer an additional penalty by way of loss of points as a result of him finishing behind the appellant and that the appellant should be penalised to the extent which will result in him finishing behind the respondent. The Court of Appeal accordingly imposed a five place penalty upon the appellant and directed MSA to amend the results of the race in question so as to reflect the respondent in sixth position and the appellant in seventh position. It is against this penalty that the appellant appeals to the National Court of Appeal.
11. This court similarly had the benefit of hearing the evidence of both

the appellant and the respondent, both duly represented, and considered the video footage and photographs, all of which assisted greatly. GTC Rule 25 is clearly aimed at situations where there is a challenger and a lead car. In our view the situation contemplated by Article 25 arises when, *inter alia*, a lead car is closely followed by a challenger and the challenger attempts an outbraking manoeuvre nearing a corner, for example by late braking to the lead car's inside. If the challenger is next to the lead car when nearing the turning point and aiming for the apex, the challenger must at least be next to the lead car, that is in front of the B-Pillar before being able to claim entitlement to the corner.

12. It is common cause that racing lines are different in accordance with prevailing circumstances and competitors may choose different lines before entering the corner to prevent the challenger from attempting a pass on the inside. This is particularly so at the start of any racing event. The converse is also possible and frequently competitors make passing manoeuvres on the lead car on the outside.
13. On the evidence before us and the footage and photos, it is clear to us that the respondent took the outside line, choosing a wide entry from the outside of turn 2 and thereby placing himself alongside car number #43 in the train of cars entering turn 2. It is furthermore clear that the respondent was a challenger as far as Daniel Rowe is concerned, and as far as Article 25 is concerned, he attempted to

pass Daniel Rowe but was unsuccessful. It is to us furthermore clear that the respondent, being on the outside, lost time quickly.

14. We emphasize that these events, as in all motorsport disciplines, occur over seconds and split seconds and this should be borne in mind when considering what follows. The appellant at that stage was simply following the line of Daniel Rowe as were the others in the train of cars. The respondent was on the outside and there is no indication of the appellant challenging the respondent in going through the corner. On the contrary the appellant simply followed car number #43. Of particular importance is that this court took cognisance of the slow-motion clips portrayed to the court by the respondent's legal representatives to show the appellant understeering towards the respondent. The slow-motion clips did not show any understeering by the appellant towards the respondent.

15. Two aspects constitute the crux of the decision which follows:

15.1 The respondent admitted that he turned in towards the apex deliberately and explained his justification that he considered the appellant to be the challenger and as such the challenger had to allow him through, thereby considering himself as the lead car. The real situation however is that the respondent was moving slower than the train of cars on his inside which at that specific time

held the better line.

15.2 The respondent was opportunistic in doing so and cannot avail himself of the provisions of Article 25.1. The footage and the evidence are clear: if the appellant did not back off by braking, a collision was unavoidable. Despite the hard braking by the appellant, the collision occurred, nevertheless. We reiterate that the speed at which these incidences occur are rapid and on the probabilities, we find that the appellant could, under no circumstances, have prevented a collision or taken any other drastic action to avoid the collision.

15.3 Lastly, it is noteworthy that the respondent indicated to the court that he would be satisfied if the National Court of Appeal held that the incident was a racing incident and nothing more. The latter submission is of course in direct conflict with the findings of the Court of Appeal and ordinarily a submission of this nature would, in our view, be tantamount to a waiver of the findings in favour of the respondent by the Court of Appeal. The respondent was however not questioned about what he meant by his suggestion that the NCA find that the incident was simply a racing incident.

FINDINGS:

16. We consequently find that the Court of Appeal erred in overruling the protest findings by the alternative stewards. This appeal must accordingly be upheld and the appellant must be refunded the appeal fee less any administrative costs incurred by MSA.

17. MSA is directed to amend the race 2 results and to reinstate the appellant in the correct finishing order in the event on 5 March 2022.

DATE: 12 OCTOBER 2022



G. T. AVVAKOUMIDES SC

electronically signed

P. CARSTENSEN SC

electronically signed

J. GEYSER