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IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 29745/08

In the matter between:

BAM FUZEKA

Plaintiff

And

ROAD ACCIDENT FUND

Defendant

JUDGEMENT

FRANCIS J

1. The plaintiff instituted an action for damages in her personal capacity and in her representative capacity as the natural guardian on behalf of her two minor children against the defendant – the Road Accident Fund, after her husband, Hulana Abednego Babibi (the deceased) died in a motor collision on 8 March 2007 between the vehicle that he was driving namely a Bantam bakkie with registration numbers and letters NCW 4200 and an unknown truck that fled the scene of the collision.
2. The action was defended by the defendant.

3. At the commencement of the trial, the parties agreed that the sole issue for determination in this action was the issue of liability. Quantum was agreed in the sum of R2 079 251.00 for loss of support. This court was informed that the two witnesses to the accident were deceased but that they had given the police affidavits about how

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the accident occurred. Further that it was agreed at a pre-trial conference that the witnesses' statements would be accepted as evidence at the trial.

4. This matter proceeded before me by way of a stated case in terms of Rule 33(1) of the Rules of this Court. Attached to the stated case were four annexures namely annexure A which is an affidavit by Mzwandile Nzabe; annexure B which is an affidavit by Mbulelo Loqo; annexure C which is a report by Gerald Lemmer an accident and reconstruction expert employed by the defendant to investigate the accident; annexure D is an affidavit by sergeant Mzuvukile Jackson Mnyamana about his observations when he arrived at the scene of the collision and annexure E which is an Accident Report Form.

5. It is clear from the stated facts and from the affidavit of Mzwandile Nzabe who was employed as a security guard that on 8 March 2007 at about 4h00 he saw a truck moving in the direction of Mount Zion from the direction of Nomlacu and saw another vehicle which was moving in the opposite direction of the truck. After the vehicles had passed each other and one minute later he heard three banging sounds. When he later knocked off from work, he went past the area from where the sounds had come from and saw a motor vehicle that was on the side of the road and was

damaged. He then realised that the sound that he had heard earlier was the sound of the accident. He immediately made a statement to the police.

6. Mbulelo Loqo stated in his affidavit that he was driving his City Golf vehicle behind a white truck which was travelling at a high speed. He observed the truck trying to

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avoid a pothole and in the process collided with a white motor vehicle that was coming from the opposite direction. He was in a hurry and did not stop to make further observations and instead called the police. On his way back, he found the police at the scene of the accident and the motor vehicle was still at the scene. He gave his statement to the police about what he had witnessed earlier.

7. Gerald Lemmer an accident and reconstruction expert who was employed by the defendant to investigate the accident compiled a report after he had considered the statements of the two witness as well as the accident report. He concluded that it was clear that the Bantam bakkie was out of control and it had zig-zagged across the road and overturned off the road on its correct side. He said that there is nothing in the observations of the eye-witnesses which are at variance with the laws of physics. The zig-zag motion of the Bantam bakkie was typical of a driver trying to regain control of his vehicle after a collision.

8. It is clear from the affidavits attached to the stated case that the driver of the unknown truck was travelling at a high speed. He then swerved to avoid a pothole and in the process collided with the Bantam bakkie that was travelling in the opposite direction.

The collision caused the deceased to lose control of his vehicle which caused it to overturn.

9. The driver of the unknown truck was clearly negligent in that he was travelling at a high speed and had swerved into the direction of the oncoming vehicle, collided with it which caused the said vehicle to overturn.

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10. It is trite that since this is a claim for loss of support, the plaintiff must prove that the defendant's insured driver was 1% negligent. I am satisfied that the plaintiff has discharged that onus.

11. I find it odd that despite the overwhelming evidence that was presented to the defendant including that of the defendant's own expert witness, it had to put the plaintiff at the expenses of such a trial. I would have thought that one of the purposes of requiring claimants to give notice to the defendant is to investigate claims and where it is clear that the defendant has no defence is to settle such claims. This clearly did not happen in this case. The officials of the defendant should be reminded of their statutory duties and obligations. A time will come when costs orders should be made against such officials in their personal capacity when they do not carry out their duties and defend claims where there is no real defence to such claims.

13. There is no reason why costs should not follow the result.

14. In the circumstances I make the following order:

14.1 The defendant is to pay the plaintiff the sum of R2 079 251.00 within twenty

eight days of date of this order.

14.2 The aforesaid sum is to be paid into the following bank account:

Account name	:	Ndlebe Msuthu Incorporated Attorneys
Bank name	:	First National Bank
Branch name	:	Carlton Centre
Account number	:	6.....
Branch Code	:	2.....

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14.3 Interest *a temporae morae* on the above sum at the prescribed rate per annum.

14.4 The defendant is to pay the plaintiff's costs including counsel's costs and that of the plaintiff's experts.

FRANCIS J

HIGH COURT JUDGE

FOR PLAINTIFF : N YINA INSTRUCTED BY NDLEBE MSUTHU INC

FOR DEFENDANT : X BUTHELEZI INSTRUCTED BY MOLEFE -
DLEPU ATTORNEYS

DATE OF HEARING : 20 OCTOBER 2014

DATE OF JUDGMENT : 21 OCTOBER 2014