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REPUBLIC OF SOUTH AFRICA



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

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|-----|---|
| (1) | REPORTABLE: YES /NO |
| (2) | OF INTEREST TO OTHER JUDGES: YES /NO |
| (3) | REVISED. |

CASE NO: 10078/2015

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DATE

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SIGNATURE

In the matter between:

DIMAKATSO MIRRIAM LEGODI

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

MOOSA AJ:

INTRODUCTION

[1] The Plaintiff herein is Dimakatso Mirriam Legodi, an adult female with full legal capacity of [...] Zone [...], Extension 3, Sebokeng who claims

damages in terms of the Road Accident Fund Act¹ for an amount of R 1 400 000.00 (one million four hundred thousand rand).

[2] In *casu*, she sues the Road Accident Fund in her personal capacity as a result of injuries sustained during a collision on 11 June 2014 at approximately 18h45 on Frikkie Meyer Boulevard, Boipatong, Vanderbijlpark.

[3] Pursuant to a judicial pretrial conference held on 19 May 2017, the matter was set down for hearing on 13 June 2017 in respect of the merits only, and that the quantum stand over for determination at a later stage. Accordingly, the trial proceeded in respect of defendant's liability.

ISSUES NOT IN DISPUTE

[4] The plaintiff's identity as alleged in paragraph 1 of the plaintiff's particulars of claim and the Defendant's citation are admitted.

[5] The further detail of the defendant as alleged in paragraph 1 and 2 of the plaintiff's particulars of claim read together with the allegations as set out in paragraph 1 of the defendant's plea.

[6] The jurisdiction of this court to adjudicate the plaintiff's action.

ISSUES IN DISPUTE

[7] The occurrence of the collision on 11 June 2014, as alleged by the plaintiff in paragraph 5 of her particulars of claim as follows²:

7.1 "The plaintiff was travelling northbound on the left hand side lane of a double lane road being Frikkie Meyer Boulevard;

¹ 56 of 1996

² Pleadings bundle – page 6

- 7.2 An unknown person (hereinafter referred to as the “insured driver”) and insured driver in control of an insured motor vehicle bearing unknown registration number and letters, namely a Nissan truck (hereinafter referred to as “the insured motor vehicle”), was travelling in the right hand side, travelling in the same direction as the plaintiff;
- 7.3 A group of dogs were running along the Boulevard and entered the insured driver’s lane of travel. The insured driver swerved into the Plaintiff’s lane of travel to avoid a collision with the dogs;
- 7.4 The plaintiff swerved to avoid the insured motor vehicle and as a direct result thereof the plaintiff lost control of the vehicle;
- 7.5 As a result of the accident, the plaintiff suffered serious bodily injuries.”

[8] The negligence of the insured driver as set out in paragraph 6 of the plaintiff’s particulars of claim, as to whether or not the driver of the insured motor vehicle was solely negligent in one or more of the following ways³:

- 8.1 failing to keep a proper lookout;
- 8.2 failing to exercise the necessary control of the insured vehicle;
- 8.3 driving the insured vehicle at an excessive speed under the circumstances;
- 8.4 failing to take steps to guard against the accident occurring which, by the exercise of reasonable care and caution, the insured driver could have and ought to have avoided;

³ Pleadings bundle – page 7

- 8.5 driving the insured vehicle without due regard and consideration for the safety of other road users and pedestrians, specifically those of the plaintiff;
- 8.6 failing to exercise a level of care becoming of a reasonable person in the circumstances;
- 8.7 driving into the direction of oncoming traffic;
- 8.8 failing to use his breaks timeously; and
- 8.9 causing the vehicle he was driving to swerve into the plaintiff's lane of travel.

[9] In essence, the plaintiff alleges from the pleadings that the collision was caused solely by the negligence of the driver of the insured vehicle. The defendant disputes the aforementioned allegation⁴ and the plaintiff is accordingly called upon to prove all the aspects of the collision.

[10] In order to determine whether the plaintiff succeeded in discharging the onus, it is apposite to consider the factual matrix upon which the matter is predicated. The plaintiff is the only witness who testified in the trial.

EVIDENCE

[11] The plaintiff testified that on 11 June 2014 at approximately 18h45 she was proceeding along Frikkie Meyer Boulevard, Vanderbijlpark on her way home from work, whilst driving a Toyota Yaris motor vehicle with registration number BF 60 FG GP. She is familiar with the area and travels on the aforesaid road on a daily basis. I will now attempt hereunder to coherently summarise the plaintiff's disjointed recollection of the actual events regarding the collision.

⁴ See paragraph 4 of the defendant's plea – page 11 of the pleadings

[12] She did not observe any motor vehicles travelling in front of her at the time. She however observed the lights of a truck in her rearview and side mirror, and observed further that it was swerving from side to side; it subsequently ended up in the right lane. She observed “Nyope guys” on the rear of the insured vehicle and they were offloading the scrap whilst it was travelling parallel to her. She testified that the insured vehicle had been continually swerving from side to side whilst it was approaching her from the rear. It appeared to her that the insured driver was attempting to shake off the “Nyope guys” from the rear of his truck. She was nervous of the scrap metal that was coming off the insured vehicle and continued driving. At this stage, the insured driver hooted at some dogs that were on his lane. The insured vehicle swerved into her lane and kept on driving. She testified that it had come very close to her, but there was no contact between the vehicles. She had observed that the insured driver was attempting to shake off the “Nyope guys” off the rear of the truck whilst hooting at the dogs. She subsequently lost control of her motor vehicle, as a result of the insured vehicle coming into her path of travel and swerving into her lane.

[14] During cross-examination the plaintiff admitted that English is not her first language and that the motor vehicle that she was driving at the time of the accident belonged to her employer. She conceded that she obtained knowledge to claim monies from the Road Accident Fund, as a result of the death of her brother in law pursuant to a motor vehicle accident. She denied that she was prompted with a version from her legal representatives, in order to ensure that she would be successful with her claim against the defendant.

She admitted that she had become nervous at some stage when she observed the “Nyope guys” despite the fact that her vehicle was not being targeted by the aforementioned. She admitted that she observed a crime being committed and agreed that there was no scrap on her motor vehicle and consequently accelerated her motor vehicle when the insured vehicle drew closer to her.

[15] She admitted that she failed to mention the presence and involvement of the “Nyope guys” to the defendant’s representatives, when she deposed to her affidavit⁵, and whilst her memory of the incident was still fresh. In paragraph 4 of the said affidavit, she states that: *“The insured driver was travelling in the same direction behind my motor vehicle in the right hand lane when I noticed that he is travelling in both the lanes. I saw a pack of dogs crossing the road myself and the driver of the truck started to hoot for the dogs to move out of the way. The truck then came into my lane of travel in doing so I tried to avoid the collision and served (sic) to the left causing me to lose control of the motor vehicle and then the motor vehicle rolled.”*

[16] She admitted that the version regarding the “Nyope guys” was not contained in her affidavit and neither in her statement to the police⁶, the contents of which she was satisfied with, at the time of making such statement.

[17] She further conceded that the version regarding the “Nyope guys” was not contained in her affidavit of 06 August 2014, which was made in pursuance of her claim against the defendant. In addition, thereto she also conceded that the aforementioned version was also not contained in the hospital records, when she was admitted to hospital.⁷ She stated that she had told the hospital staff that the other vehicle was a truck, despite the fact that in her statement to the hospital staff she mentions the other vehicle involved being a car.

[18] She denied that the cause of the collision was as a result of her avoiding the dog that ran into her path of travel and further denied that she had not kept a proper lookout at the time in question.

⁵ Claimant’s affidavit – page 15 of the merits bundle (part 1)

⁶ Claimant’s affidavit to SAPS – page 121 of the merits bundle (part 2)

⁷ Hospital admission record – page 73 of the merits bundle (part 1)

[19] She admitted that her attorneys had helped her with a strategy in order to “win” this case. Further admitting that the particulars of claim did not mention the fact that there were dogs in her path of travel.

[20] That in essence concluded the evidence for the plaintiff and her case was closed.

[21] The defendant had no witnesses to call and accordingly the case for the defendant was closed.

EVALUATION

[22] It is common cause that on 11 June 2014 at 18h45 the plaintiff was the driver of a motor vehicle with registration number [...] GP, which was travelling along Frikkie Meyer Boulevard, Vanderbijlpark when she subsequently had an accident.

[23] However, the dispute simply is whether there was any negligence on the part of the insured driver and whether the insured was causally negligent; or whether the plaintiff was solely negligent or contributory negligent.

[24] The plaintiff in her particulars of claim pleaded that she was travelling alongside an insured vehicle, which was on the right-hand lane travelling in the same direction as the plaintiff. Further, pleading that a group of dogs were running along the boulevard and entered the insured driver’s lane of travel. The insured driver swerved into the Plaintiff’s lane of travel to avoid a collision with the dogs⁸. The plaintiff pleaded that the insured driver swerved into the plaintiff’s lane of travel to avoid a collision with the dogs and she lost control of the vehicle⁹.

⁸ Particulars of claim – page 6, para 5.3 of the pleadings bundle

⁹ Particulars of claim – page 6, para 5.4 of the pleadings bundle

[25] The plaintiff submitted hospital records at the time of the lodgment of the claim with the defendant on 21 October 2014¹⁰. The version of the Plaintiff as depicted in the hospital records reads as follows: “ *A female patient Mrs Legodi M.D of 30 years 11 months is admitted in the unit from casualty. She is a patient of Agyebi diagnosed with MVA with head injury. Patient had an accident when she came from work at Sikreyer Street (sic) here in Vanderbijlpark. Patient was trying to avoid a dog in the road and the dog did not get away. Then the other vehicle was coming at the back of her car and she went off the road trying to avoid the other car and the dog. The car rolled with her and she was unconscious during the whole scene. When she woke up she saw moving people and cars. Patient was well orientated when coming in the unit. Patient said she was wearing a seatbelt and was driving the car alone*”.

[26] The plaintiff subsequently made a statutory affidavit dated 06 August 2014, approximately two months after the accident and deposed as follows:

- “ 1. I am an adult female, and confirm herewith that the facts contained in this affidavit are to the best of my knowledge both true and correct.
2. On the 11th of June 2014 at approximately 18h45, I was involved in an accident in which I was the driver of the motor vehicle with registration letters [...] GP.
3. The registration number of the vehicle being driven by the insured driver at the time of the accident is unknown to me.
4. I was travelling north on Frikkie Meyer Boulevard from Vanderbijlpark to Sebokeng. The insured driver was travelling in the same direction behind my motor vehicle in the right hand lane when I noticed that he is travelling in both of the lanes. I saw a pack of dogs crossing the road myself and the driver of the truck started to hoot for the dogs to move out of the way. The truck then came into my lane of travel in doing so I tried to

¹⁰ Merits bundle parts 1 & 2 – pages 63; 120-134

avoid the collision and served (sic) to the left causing me to lose control of the motor vehicle and then the motor vehicle rolled.

5. There was nothing I could do to avoid the collision.
6. I sustained multiple injuries as a result of this accident for which I received treatment in Emfuleni Mediclinic.
7. This accident has been reported to the South African Police Service.
8. This is all I can declare at this time regarding the collision.”

[27] It is trite that the onus rests squarely upon the plaintiff to prove that the insured driver's negligent conduct caused the harm giving rise to the claim¹¹. In this regard, it is clear that the only evidence that this court has to solely rely upon is that of the plaintiff, regarding the accident and the negligence of the insured driver. The plaintiff is a single witness and accordingly the necessary caution must be applied, as I am required to, when evaluating the evidence of a single witness. For judgment to be given for the plaintiff the court must be satisfied that sufficient reliance can be placed on her story for there to exist a strong possibility that her version is the true one¹².

[28] To this end, I have carefully applied my mind and taken due cognisance of the fact that the viva voce evidence of the plaintiff in court is diametrically opposed to the pleadings in her particulars of claim; the evidence that is contained in the hospital records; the affidavit made to the South African Police Services and the affidavit made by the claimant in pursuance of her claim against the defendant.

What is telling is the fact that the only time one becomes aware of the direct involvement of the “Nyope guys” prior to the accident, is at the time when the plaintiff tendered her evidence during the trial. In addition, her version of how the accident occurred and the involvement of the insured vehicle is inconsistent with the various affidavits and documents of record presented

¹¹ Guardian National Insurance v Saal 1993 (2) SA 161 (C) at 162

¹² International Tobacco Co (SA) Ltd v United Tobacco Co (South) Ltd (1) 1955 (2) SA 1 (W) at 13 - 14

during the trial. It is clear in my mind that the plaintiff is attempting to colour and bolster the evidence in respect of her claim against the defendant. This fact is clearly telling on the credibility of the plaintiff and ultimately affects the weight that must be attached to her evidence.

[29] I find the numerous serious discrepancies fatal to the case of the plaintiff and accordingly in my view, these should and must sound the death knell of the plaintiff's case. I am unable to place any reliance on the evidence of the plaintiff regarding the manner in which the accident occurred; the involvement of the insured truck and insured driver; and consequently the negligent conduct of the insured driver. I accordingly find that the evidence of the plaintiff is not satisfactory in all material respects and stands to be rejected.

[30] After carefully considering the totality of the evidence before me, having due regard to the applicable law and the necessary caution to be applied regarding single witnesses, I am driven to conclude that the Plaintiff has failed to discharge the burden of proof that her version is true and has failed to establish negligence on the part of the defendant¹³.

ORDER

[31] **In the result, I make the following order:**

The Plaintiff's claim is dismissed with costs.

C I MOOSA

ACTING JUDGE OF THE HIGH COURT

¹³ Stellenbosch Farmer's Winery Group Ltd and another v Martell et CIE and others 2003 (1) SA 11 (SCA)

**GAUTENG DIVISION
JOHANNESBURG**

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Dates of hearing

13 June 2017

14 June 2017

Date of Judgment

20 March 2018