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

CASE NO: 11884/2021

NOT REPORTABLE

NOT OF INTEREST TO OTHER JUDGES

REVISED

06.06.23

In the matter between:

PUTTER CHIRISTIAAN

PLAINTIFF

And

ROAD ACCIDENT FUND

DEFENDANT

Neutral Citation: *PUTTER CHIRISTIAAN v ROAD ACCIDENT FUND* (Case No. 11884/2021) [2023] ZAGPJHC 632 (06 June 2023)

JUDGMENT

Delivered: This judgment and order was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to Parties / their legal representatives by email and by uploading it to the electronic file of this matter on Case Lines. The date of the order is deemed to be the 6th of June 2023.

Summary: *Motor vehicle accident – Negligence - action for damages – separation of issues – Rule 33(4) of the Uniform Rules of Court – merits – doctrine of sudden emergency restated - insured the sole cause of the collision - defendant is liable for 100% of the plaintiff's proven damages–the defendant shall pay the costs of the plaintiff.*

TWALA J

- [1] The plaintiff sued the defendant out of this Court for damages arising out of a motor vehicle collision that occurred on the 3rd of February 2020 at about 07H20 along Pretoria Road in Benoni. At the time of the collision, the plaintiff was the driver of motorcycle bearing the registration letters and number [...] and the insured vehicle bearing registration letters and number [...]GP was there and then driven by Sergio Alexandre Mathe.
- [2] At the commencement of the hearing, the parties agreed that the merits be dealt with first and the issue of quantum be postponed sine die. The application in terms of Rule 33(4) of the Uniform Rules of Court was granted.

- [3] It is worth noting that, as is usually the case in cases involving this defendant, the matter came before Court for default judgment, the defendant having failed to respond to some interlocutory orders. The legal representative for the defendant only appeared in Court on the day of hearing without filing any papers in opposition of this case. Furthermore, the defendant did not refer the plaintiff for medical legal examination, nor did it have any witnesses to call. However, the defendant proceeded to participate in the hearing.
- [4] The plaintiff testified that he was travelling along Pretoria Road in Benoni from North to South following two motor vehicles which were about five meters in front of him. He was on his way to work and was travelling at a speed of about 60 kilometers per hour. As he was so travelling, he noticed a courier bakkie (*“the insured”*), coming from the Engen garage in the opposite direction. Immediately the two motor vehicles that were in front of the plaintiff passed the insured, without any indication, it turned right in front of him, giving him no chance to avoid the collision.
- [5] He further testified that, where the collision occurred, Pretoria Road has two lanes on each side for traffic travelling North and for those travelling South. The insured was turning right into Raiburn Street. The accident occurred on the extreme left lane where the plaintiff was driving. As a result of the impact, he tumbled over and landed on the pavement. He sustained injuries to his ribs, femur, left arm and head. He does not remember what happened thereafter as he only realised later that day when he woke up in hospital and the nursing sister informed him that he was involve in an accident.
- [6] Under cross examination by the defendant, the plaintiff maintained that he kept a proper look out as he observed the insured coming out of the Engen

garage and without any indication turned right in front of him giving him no chance to avoid the collision. Had the insured signalled his intention to turn right, he would have slowed down and would have been able to take evasive action. He testified that it is the insured who caused the accident for, had he indicated his intention that he was turning right, he would have had the chance to slow down and avoid the collision. In essence, nothing much was achieved under cross examination.

- [7] It is to be noted that during the testimony of the plaintiff, reference was made to exhibit A which is the sketch plan drawn by the plaintiff, exhibit B which is the video footage taken from the security cameras of the Engen garage and exhibit C which are the photographs of the scene of the accident. These exhibits were discovered, and the defendant had no objection in their admission as evidence before this Court.
- [8] It is a principle of our law that for the plaintiff to succeed with its claim against the defendant it must establish on a balance of probabilities that its version is reliable and can be believed. Put in another way, the plaintiff must prove its claim by tendering reliable evidence before the Court. The plaintiff must tender evidence to the satisfaction of the Court for him to obtain the relief that he seeks.
- [9] As indicated above, the defendant came to Court without filing any papers in opposition of the plaintiff's claim. The defendant did not even call any witnesses, not even the insured driver to rebut the evidence of the plaintiff as to how the accident happened. Nevertheless, the onus is on the plaintiff to satisfy the Court that he is entitled to the relief that he seeks, and he can only do so by tendering reliable evidence. In casu, I have no doubt in my mind that the accident happened in the manner described by the plaintiff. The

defendant has failed to tender countervailing evidence and therefore the evidence of the plaintiff stands uncontroverted.

[10] I do not agree with Mr Sondlani that the plaintiff did not keep a proper or any look out – hence he did not take any evasive action to avoid the collision. The plaintiff saw the insured driver coming from the opposite direction from the Engen garage and never indicated his intention to turn right in front of the plaintiff. However, immediately the two vehicles that were in front of the plaintiff passed him, he suddenly turned right, giving the plaintiff no chance to avoid the accident. It should be recalled that the plaintiff said he was five meters behind the two cars and in a split second the insured attempted to turn between the plaintiff and the two cars. I therefore hold the view that the duty was on the driver making a right turn to ascertain that it was safe for him, (including other road users and the plaintiff), to cross the path of oncoming vehicles.

[11] It should be noted that Raiburn Street is a side road and not a controlled intersection. The plaintiff could not be expected to have all the time observed the insured to ascertain his conduct before passing him. It is the uncontroverted evidence of the plaintiff that he kept five meters between himself and the cars in front of him and the insured callously attempted to execute a right turn between the plaintiff and the cars he was following. Having regard to the distance between the plaintiff and the vehicles in front of him and the speed at which he was travelling, to expect him to apply his brakes and swerve to evade the collision is absurd.

[12] In *R v Cawood* 1944 *GWL* 50 *AT* 54 a decision that has been quoted with approval in number of cases the doctrine of sudden emergency was formulated as follows:

“A man who, by another’s want of care, finds himself in a position of imminent danger, cannot be held guilty of negligence merely because in that emergency he does not act in the best way to avoid the danger”.

[13] Ordinarily, one does not expect a driver of a motor bike to just drive without taking any care and precaution when seeing a vehicle that intends to execute a right turn in front of him unless he is committing suicide. I am unable to disagree with Advocate Strydom that there is no other version before this Court except that of the plaintiff which stands uncontroverted. The circumstances of the case Advocate Sondlani referred this Court to, ie. *Smith v Road Accident Fund (2010/37195) 2015 ZAGPJHC 146* is distinguishable from the present case. The plaintiff in that case collided with a bus at the entrance of her place of employment. She waited for the bus but took her eyes off the road and only found herself having knocked by the bus. The Court even found her 70% negligent in the circumstances.

[14] Since there is no other version before this Court, the Court is satisfied that the accident happened in the manner as described by the plaintiff. The plaintiff was faced with sudden emergency and could not evade the collision. It is my respectful view therefore that the insured was the sole cause of the collision which resulted in the plaintiff suffering serious injuries and is therefore entitled to be compensated for his proven damages.

[15] In the circumstances, I make the following order:

1. The defendant is liable for 100% of the plaintiff's proven damages.
2. The defendant shall pay the costs of the plaintiff.

TWALA M L

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION

Date of Hearing: 1st of June 2022

Date of Judgment: 6th of June 2023

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