

**IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG HIGH COURT - PRETORIA)**

CASE NO: 17700/2008

DATE: 15 FEBRUARY 2010

NOT REPORTABLE

NOT OF INTEREST TO OTHER JUDGES

In the matter between :

MOGOJE ABEL

First Plaintiff

MOGOJE PAULTUKISE

Second Plaintiff

And

ROAD ACCIDENT FUND

Defendant

JUDGMENT

MATOJANE J

[1] This is an action for damages arising out of a motor vehicle accident. The merits were separated from the quantum by an earlier court order. This judgment is accordingly, concerned only with the question whether the defendant is liable for damages that the plaintiff may have suffered as a result of the accident.

[2] It is common cause that on 12 May 2007 and at Ontdekkers road a white Nissan bakkie driven by an unknown male collided with the second plaintiff who at the time was a pedestrian. The plaintiff has claimed damages from the defendant in the amount of R1277283.50.

[3] The plaintiff has no recollection of the accident and it has been agreed by the parties that he should not testify. An eyewitness, Miss Johanna Lehono testified that she was driving along Ontdekkers road from east to west with Westgate Mall on southern side. It was at about 8h15 and the lighting was good. A white Nissan

bakkie driving in the same direction unexpectedly and without warning swerved from the slow lane and cut in front of her at a high speed, she swerved to the slow lane to avoid colliding with it. The bakkie hit a pedestrian who was about to complete crossing the road and sped off

She was not able to avoid the collision, no matter what she may have tried.

[5] The only witness to testify was the eye-witness. The defendant did not call any witnesses.

[6] The only evidence before me is that of the plaintiff's witness. On her version, the sole cause of the accident was the driver of the white bakkie who unexpectedly and without warning swerved from his lane onto her lane of travel at high speed. On her evidence, he had sufficient time to stop his vehicle and avoid the collision, as she was able to bring her car to a stop timeously and render assistance to the plaintiff after the collision. I accept her evidence. The driver of the bakkie failed in his duty to drive his car with reasonable safety and should have seen the plaintiff who was crossing the road and regulated his driving so as to avoid the accident.

[7] I find that the defendant is liable for the damages that the plaintiff has suffered as a result of the accident.

[8] The following order is made:

1. The defendant is liable to compensate the plaintiffs for 100% of their proven or agreed damages.
2. The defendant shall pay the plaintiffs' taxed or agreed party and party costs on the High Court scale up to and including 12 February 2010, subject thereto that:

2.1 In the event that the costs are not agreed:

2.1.1 The plaintiffs shall serve a notice of taxation on the defendant's attorney of record;

2.1.2 The plaintiffs shall allow the defendant 7 (SEVEN) court days from date of allocatur to make payment of the taxed costs;

2.1.3 Should payment not be effected timeously, the plaintiffs will be entitled to recover interest at the rate of 15.5% on the taxed or agreed costs from date of allocatur to date of final payment.

2.2 Such costs shall include:

2.2.1 The costs of counsel on the senior-junior scale;

2.2.2 The costs of the accident reconstruction report furnished to the defendant;

2.2.3 The qualifying, preparation and attendance costs, if any, of Prof Gerry Lemmer, as allowed by the Taxing Master.

3. The amount referred to in paragraphs 2 shall be paid to the plaintiff's attorneys, Adams & Adams, by direct transfer into their trust account, details of which are the following:

Bank : Nedbank, Pretoria

Branch Code : 1604 4500

Account Number : 1[...]

Reference : GWW/ren/S2109/07

K E MATOJANE

JUDGE OF THE HIGH COURT