

IN THE HIGH COURT OF SOUTH AFRICA

(NORTH AND SOUTH GAUTENG HIGH COURT, PRETORIA)

CASE NO: 57984/2008

DATE: 21 APRIL 2010

NOT REPORTABLE

NOT OF INTEREST TO OTHER JUDGES

In the matter between:

CHRISTOFER PHILLIP CAMERON

Plaintiff

And

ROAD ACCIDENT FUND

Defendant

JUDGMENT

PHATUDI J

[1] The Plaintiff claims for damages he sustained as a result of the Motor vehicle accident that occurred in the morning of the 21 December 2006. The accident occurred on the N1 South in the vicinity of Springfontein, Free State Province. The Plaintiff was the driver of the Motor vehicle bearing registration number P[...] that collided with the insured motor vehicles with registration numbers C[...] and B[...] driven by PM Mashini and E Odendaal respectively.

[2] At the commencement of the trial, I enquired from Mr Botha, counsel for the Defendant, if the Defendant intent pursuing the point that this court does not have jurisdiction. He submitted that he holds no instruction to that effect notwithstanding the Defendant's plea that "the cause of action arose within the jurisdiction of the High Court of South Africa (Free State Provincial Division)." There is neither a special plea nor any point in limine raised to that effect.

[3] Mr Lombard, counsel for the Plaintiff, submitted that the parties have agreed to separation of merits and quantum. I, on that strength, ordered separation of the merits and quantum in terms of Rule 33(4) of the Uniform Rules of the Court. The only issue to be determined is whether the insured driver of the motor vehicle with registration number C[...] was the sole cause of the accident or, to what extent was he negligent.

[4] The following are submitted as common cause;

4.1 The collision occurred on the 21 December 2006.

4.2 The collision occurred on the N1 South Springfontein, Free State Province;

4.3 The motor vehicles involved are as recorded. The Plaintiff was the driver of the motor vehicle with registration number P[...] that collides with the insured motor vehicle with registration number C[...] driven by Mr Mashinini.

[5] Christopher Phillip Cameron, (the Plaintiff), testified that on the day in question he was driving on N1 South heading for Colesburg. He reduced speed to 100km/h or less as the rain started drizzling. He noticed a truck some ± 30 meters ahead of him and thought that it was moving. He laboured under the impression that the truck was moving because one portion of the truck was in the middle of the road and the other in the “emergency lane”. He then hit the brakes. Five (5) seconds thereafter, one Camry motor vehicle hit his car from behind causing a pileup.

[6] He described, under cross examination, the road as being narrow with yellow shoulder lane (emergency lane) of approximately a meter and a half. There is a further $1\frac{1}{2}$ to 2 meters of gravel from the edge of the tar road.

[7] He conceded in further cross examination, after having been referred to paragraph 4 of the affidavit, annexed to trial bundle that he “observed a stationary truck” some 30 metres ahead of him, which was “standing halfway over the yellow line and half way on the N1”. He aquaplaned (slide uncontrollably on a wet surface) as it was drizzling. The whole front of his motor vehicle hit the back of the truck.

[8] Petrus Mashinini, the driver of the insured motor vehicle truck with registration C[...], testified in “Zulu”, and Mr Royce Buda interpreted to English. He testified that on the day in question he was indeed the driver of the truck. The three (3) component truck, a “horse, trailer and trailer” is 22 m long. He was heading to Cape Town when the accident occurred.

[9] He caused the truck to stop due to an “airlock problem”. He pulled off the road and switched the hazards on. He sent his assistant, one Vuyo, to check if the hazards were flickering at the last trailer. Vuyo confirmed

that the hazards were flickering. He was busy taking the “triad-angles” out of the truck. At that moment of retrieving the “tri-angles,” a motor vehicle came from behind and collided with the truck from the back. The whole front of that motor vehicle got damaged. He said that it had just rained and the road was wet.

[10] He, under cross-examination, said that a portion of the last trailer of the truck was ± 50 cm from the edge of the tarred surface to the yellow line (within the emergency lane). He denied the Plaintiff’s version that the truck was half way in the middle of the drive lane. He, in response to my question on a place of impact, said that the accident occurred in the “emergency lane”. None of the counsel questioned him from that response.

[11] I then enquired from Mr Lombard, counsel for the Plaintiff, to refer me to the “sketch plan” or “Photos” or any *aide* indicating the place of impact. He concedes that no such documentation has been filed or is in his possession.

[12] Mr Lombard referred me to **AA ONDERLINGE ASSURANSIE ASSOSIASIE VAN SA V VAN RESNBURG EN ‘N ANDER 1978(4) SA 771(A)**. He submitted that the court of appeal confirmed the negligence apportionment of 20% in favour of the motorist and 80 % against the stationary vehicle. He submitted that the insured driver of the insured motor vehicle should be found to have been 100% negligence or, in the alternative, 80% negligent. He lastly submitted that the Defendant be ordered to pay the Plaintiffs costs.

[13] In rebuttal thereto, Mr Botha submitted that the Plaintiff failed to prove the Defendant’s negligence on the balance of probabilities. He, contrary to the decision referred to by Mr Lombard, referred me to **WINDRUM V NEAUBORN 1968(4) SA 286(T)**, where the court apportioned 80% of the negligence on the part of the Plaintiff and 20 % against the insured motor vehicle. He submitted that I should follow the said formula of apportionment. He lastly submitted that the costs be apportioned accordingly.

[14] In my evaluation of the evidence tendered and submissions made by both counsel, I find it necessary to first determine the place of impact. It will assist in determining the negligence on the either party.

[15] On the Plaintiff’s version, he “observed a stationary truck” some 30 metres or more ahead of him, which was “standing half way over the yellow line and halfway on the N!” He then hit the brakes but his motor vehicle slid uncontrollably due to wet surface caused by rain and collided with the back of the truck. This is uncontested. He is only questioned on why he failed to say that his motor vehicle aquaplaned in his examination in chief. He apologised for that oversight. On Mr Mashinini’s version, he pulled the truck off the road with the right portion of the last trailer being 50 cm on the “emergency lane”.

[16] I, based on the said evidence, even though not corroborated by sketch plan, infer that the place of impact

is in the “emergency lane” as both parties placed the truck within the said lane or portion thereof.

[17] The principle quoted by Mr Lombard as set out in AA Onderlinqe case, state that it must “appear from the evidence that the reasonable, careful driver in the circumstances would be aware of the possibility that danger could suddenly loom before him within the range of his vision which could require him to stop his vehicle within the range of his vision...”. The Plaintiff, who drove his motor vehicle at a speed which, in my view, given the circumstances, did not make it impossible for him to stop his motor vehicle within the range of his vision

[18] As the Plaintiff “observed a stationary truck” some 30 metres ahead of him, he, in my view, should have, as a reasonable careful driver driving on the wet surface due to rainy weather, been aware of the possibility that danger could loom with the truck being stationary within “emergency lane.” I, in my view, find the Plaintiff to have failed to exercise care expected of him as a 12 year old experienced reasonable careful driver. I fail to comprehend as to how his motor vehicle aquaplaned if his tyres were “fairly new”. There is no evidence advanced to proof the cause of his motor vehicle to “aquaplane”. On Mr Mshinini’s version, who had just “pulled off” the road due to the “airlock” problem. He sent his assistant to check if the hazards are flickering at the back of the “last trailer” of the truck. In applying the principle on negligence on the part of the driver, it must appear from the evidence that a reasonable, careful truck driver in the circumstances should have foreseen the possibility that danger could ensue due to the encroachment of the truck into the tar road by the said 50 cm on the wet road caused by the drizzling rain.

[19] Accepting this unchallenged portion of his testimony, I am of the view that Mr Mashinini did what a reasonable truck driver would do in the circumstances save to mention that he should have “instructed” Vuyo to remain at the back of the trailer and to waive or alert the other road users following them or the oncoming traffic. He, in my view , contributed to a lesser extend as opposed to the Plaintiff.

[20] It is trite that cost follow the event. The Plaintiff, even though succeeding by a lesser percentage, has substantially succeeded with his claim and thus entitled to his costs.

[21] I, as a result thereof, make the following order:

1. The Defendant is ordered to pay 20% of the plaintiff’s proven or agreed damages with costs.
2. The determination of quantum is postponed sine die.

A.M.L. PHATUDI

JUDGE OF THE NORTH GAUTENG HIGH COURT

Heard on: 15 June 2010

For the Plaintiff: Adv Lombard

Instructed by Plaintiff: MACROBERT INC

For the Defendant: Adv Botha

Instructed by Defendant: BRUGMANS INC

Date of Judgment: 20 April 2010