

4/6/2010

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

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: YES/NO.
(2) OF INTEREST TO OTHER JUDGES: YES/NO.
(3) REVISED.
4.6.10
DATE SIGNATURE

NOT REPORTABLE
Case No: 53992/08

GREGORY RYAN BROWN Plaintiff

and

ROAD ACCIDENT FUND Defendant

JUDGMENT

SAPIRE, A J:

The Plaintiff was injured in a road accident. He is claiming damages from the Defendant which is the Road Accident Fund. The trial was set down for the 22nd April 2010. The parties agreed that only the issue of negligence would be decided at this stage.

The question of damages and the amount thereof was left in abeyance pending the decision on the question of negligence.

The Plaintiff alleged that on the 15th of February 2007 at approximately 18h00 a collision occurred at or near the intersection of Serena Road and Driefontein Road,

Croydon, between a Mercedes Benz Sedan, registration number CAT 137 GP driven by one A M Catarino and a motor cycle 125 with registration number TGZ 464 GP then being driven by the Plaintiff.

The Plaintiff further alleged that the sole cause of the collision was the negligence of Catarino, he being negligent in one or more or all of the following respects:

1. He failed to keep any or any proper lookout.
2. He failed to avoid a collision when by the exercise of reasonable care he could and should have done so.
3. He failed to exercise any or any proper control over the vehicle he was driving.
4. He failed to have adequate or any regard to the vehicle driven by the Plaintiff.
5. Without giving adequate warning of his intention to do so and/or on an inopportune moment he moved his vehicle out of his line of traffic and/or turned into the line of travel of the said motor cycle and a collision occurred.

The Plaintiff went on to allege the injuries sustained by him as a result of the collision in view of the agreement to deal only with the question of negligence at this stage. There is no need to deal more fully with Plaintiff's allegations in this connection.

The Defendant pleaded and denied that the collision was due to the negligent driving of Catarino and in amplification averred that the collision was due to the negligence of the driver of the motor cycle who of course is the Plaintiff.

The Plaintiff's alleged negligence is described in terms very similar to those alleged by the Plaintiff except for 4 above.

The Plaintiff testified in support of his claim and called his father as a supporting witness.

The scene of the accident was described and photographs were produced which assisted in obtaining a picture of the intersection at which the collision occurred. The photographs also showed the damage to the insured vehicle and the motor cycle on which the Plaintiff was travelling.

The intersection between Driefontein Road and Serena Road forms a T. The entrance to Serena Road from Driefontein Road and the exit there from into Driefontein Road are separated by a traffic island in the middle of the road so that the entrance and exit form a Y.

Plaintiff described how he was driving along Driefontein Road from a traffic light some short distance from the T junction towards the T junction. He says that there was heavy traffic on the opposite side of the road to that in which he was travelling. He used the word "traffic jam" in describing the prevailing conditions.

He related how the insured driver had been travelling the stream of traffic coming towards him on the other side of the road. The vehicle he said left the stream of traffic and made a U-turn coming across the side of the road on which he, the

Plaintiff, was travelling. According to him the vehicle somehow made a turn of 290° so that the car was facing Serena Road.

The Plaintiff stated that the vehicle then stopped and appeared to be waiting for an opportunity to enter Serena Road. The Plaintiff observing the vehicle stationary decided to drive past it, but was surprised by the vehicle proceeding across the road and apparently trying to enter Serena Road through the arm of the Y intended for traffic exiting Serena Road into Driefontein Road.

The Plaintiff says that he tried to beat the vehicle into Serena Road but the respective vehicles collided and he was thrown from the cycle and dragged for some 70 metres. This account is not foreshadowed by the allegations in the particulars of claim describing the negligence of the driver of the insured vehicle.

Catarino's version is completely different. He denies outright that he was travelling in the opposite direction to that of the Plaintiff and says that he was travelling in the same direction as the Plaintiff and on the same side of the road as the Plaintiff. He says that he wished to turn right into Serena Road and for this purpose had come to a stop opposite that arm of the Y intended for traffic entering Serena Road from the Driefontein Road. He said that as he made his turn the Plaintiff approached from behind and he was not aware of the Plaintiff until a collision took place. He says that he drove into Serena Road and drew up as soon as he could do so safely. He denies having travelled through the other arm of the Y or having dragged the Plaintiff under his vehicle.

These two mutually exclusive versions of the accident cannot both be true.

The evidence of Plaintiff's father, although supportive of what the Plaintiff says, does not assist in coming to a conclusion as to which of the two conflicting accounts of the collision can be accepted.

The insured driver gave his evidence haltingly but he was obviously troubled as English is not his first language. There was nothing in his demeanour which I find incompatible with the truth. The Plaintiff was far more confident in delivering his account. On the other hand the Plaintiff's account is replete with improbabilities.

There can be no good reason why the insured driver should have stopped opposite the wrong arm of the Y in preparation to enter Serena Road. It is hard to picture why the Plaintiff was not able to keep the vehicle in front of him under sufficiently close observation not to be surprised by a sudden attempt to enter Serena Road at an inopportune place and time.

Plaintiff's description of the movements of the insured vehicle as being a sudden emergence from its stream of traffic, to the opposite side of the road in the face of oncoming traffic, coming to a stop facing the entrance to Serena road, a turn of some 270 degrees from its original direction of travel, is so bizarre as to be less likely than the account on which the defendant relies.

The Plaintiff's account seems to be an attempt to reconstruct the events in such a way as to place the blame on the driver of the insured vehicle.

I find that I cannot accept the Plaintiff's account as being more likely than that of the insured driver. Accordingly I cannot find that on the balance of probabilities it was the negligence of the insured driver which caused the accident.

I rule therefore that the Plaintiff has not proved that the accident was due wholly or in part to any wrongful act of the insured driver.


S W SAPIRE
ACTING JUDGE

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