IN THE HIGH COURT OF SOUTH AFRICA

(NORTH GAUTENG HIGH COURT, PRETORIA)

Case No.: 12297/09 and 25295/09

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED.

DATE:01/04/2011

In the matter between:

S SITHOLE Plaintiff

and

ROAD ACCIDENT FUND Defendant

AND

Y PHIRI Plaintiff

and

ROAD ACCIDENT FUND Defendant

JUDGMENT

MNGQIBISA-THUSI, J

[1] On 25 April 2008 and along the Ledig and Matooster Road, Rustenburg Road a motor vehicle bearing registration number D[...] and being driven by Sithole collided with a motor vehicle bearing registration number W[...] which was being driven by the insured driver, Mr Braadt. The plaintiff in the second matter was a passenger in the vehicle driven by Mr Sithole.

[2] Since the causes of action for both the plaintiffs arise from the same set of circumstances, as per agreement between the parties, the two claims were consolidated and dealt with as one.

[3] The first and second plaintiffs are claiming damages against the defendant as a result of injuries they allegedly sustained in a motor vehicle collision. Mr Sithole and Mr Phiri are alleging that the collision was caused as a result of the negligence of the insured driver.

[4] Mr Sithole is claiming a total amount of R1 500 000.00 as compensation made up as follows:

(a) Future medical expenses : R 300 000.00

(b) General damages in respect of pain and suffering loss of amenities of life, permanent disability and disfigurement : R 700 000.00

(c) Loss of earnings :R 5000 000.00

Total :R1 500 000.00

[5] Mr Phiri is claiming a total amount of R1 000 000.00 as compensation made up as follows:

(a) Future medical expenses :R 400 000.00

(b) General damages in respect of pain and suffering loss of amenities of life, permanent disability and disfigurement R 700 000.00

Total R1 000 000.00

[6] There was agreement between the parties that the merits be separated from the quantum which would be dealt with at a later stage. I made a ruling separating the merits from the quantum.

[7] The first plaintiff, Mr Sithole, was the first witness. He testified that at the time of the collision he was a taxi driver and was carrying passengers, including Mr Phiri, the second plaintiff, and was driving along the Ledig and Matooster Road, Rustenburg Road, travelling from west to east in the direction of Sun City. He was at the time travelling at a speed of between 70 and 75 km per hour and was driving behind a cash-in-transit vehicle driven by the insured driver. In front of the insured driver's vehicle was another vehicle, a Toyota Landcruiser (the Landcruiser). Along the way the insured driver tried to overtake the Landcruiser. When he was parallel to the Landcruiser, he saw an oncoming vehicle. He noticed that the insured driver's vehicle brake lights were on and the insured driver tried to squeeze his vehicle between the Landcruiser and the plaintiff's car. The insured driver collided with the first plaintiff's car. He further testified that at the time the insured vehicle was parallel to the Landcruiser, he had increased speed to about 4 paces and that by the time the insured driver squeezed through the space between his car and that of the Landcruiser, the distance between his vehicle and the Landcruiser had reduced to about two paces.

[8] The court sought clarification of this alleged distance between the two vehicles as the space was too small for a car. The first plaintiff could not offer any explanation. He demonstrated, using two cellphones that the damage on the insured vehicle was at the

right rear and on his vehicle on the driver's side. The demonstration indicated that the insured vehicle's front right side was on the correct lane and the back rear was still on the wrong lane. He further testified that in order to avoid the collision he had swerved to the left of the road.

[9] During cross-examination the first plaintiff confirmed that at the time of the collision he was driving on the left lane of the road. However, he could not explain why, if he was travelling on the correct lane, damage to the insured vehicle was at the rear back of the insured driver's vehicle, which according to his evidence in chief was on the incorrect lane at the time of the collision. The first plaintiff then changed his version and said that the damage on the insured vehicle was on the left rear part of the vehicle. Further under cross examination the first plaintiff conceded that in the light of the speed he was travelling at (approximately between 20 and 75 km per hour) when he saw the insured vehicle's brake lights, and the distance between his vehicle and the Landcruiser, he could easily have driven past the insured vehicle.

[10] The second plaintiff, Mr Phiri, the plaintiff in the second matter. His evidence did not add much to that of the plaintiff. He testified that he did not see how the collision occurred. He was only able to confirm the damage to the two vehicles involved in the collision. His evidence is in tine with the statement he made to the police on 29 April 2008. Mr Phiri made a contradictory statement on 10 October 2008 which was lodged with his claim with the Road Accident Fund in terms of section 19(f) of the **Road Accident Fund Act** 56 of 1996. In this statement Mr Phiri alleges that the insured driver was trying to overtake the Landcruiser which was in front of him. When he saw an oncoming car he returned to the correct lane. When confronted with this statement Mr Phiri denied it was his statement even though he testified that he had made a statement to the police after the accident, that the statement which was shown to him bore his name and his signature.

[11] The driver of the insured car, Mr Braadt, testified that on the day in question he was travelling along the Ledig and Matrooster Road on his way to Sun City. The first plaintiff

was driving behind a Landcruiser and Mr Sithole was behind him. As there was a lot of traffic on the road the Landcruiser had reduced speed and he accordingly also reduced his speed when he suddenly heard the first plaintiff's vehicle bumping into his rear.

He was pushed forward and ended up bumping into the Landcruiser's rear. He denied the first plaintiff's evidence that he was at the time of the collision trying to overtake the Landcruiser and that when he realised it was not safe to do so, returned to the correct lane causing the plaintiff to collide with him. Mr Braadt's testimony under cross examination remained consistent with his evidence in chief.

[12] The versions of the plaintiffs and the defendant are mutually destructive. In civil proceedings, where the onus rests on the plaintiff and there are two mutually destructive versions, for the plaintiff to succeed it has to satisfy the court on a preponderance of probabilities that its version is true and accurate and also acceptable and that the other version advanced by the defendant is therefore false or mistaken and falls to be rejected. National Employers Insurance Association v Gary 1931 AD 187.

[13] The first plaintiff's description of the collision is inherently improbable. According to the first plaintiff, Mr Sithole, the collision occurred as a result of the insured driver trying to return to the correct lane after attempting to overtake a car in front of him. His version that the insured driver had managed to cut in front of his vehicle and the Landcruiser, a distance of two paces in length, is improbable and unconvincing. His account as to how the collision occurred was not convincing. Not much weight can be put to the evidence given by Mr Phiri in view of the contradictory statements he made to the police and in his claim against the Road Accident Fund. Both plaintiffs were poor witnesses.

[14] On the other hand, the version of the insured driver, which is consistent with the accident report is that the three vehicles (i.e. the Landcruiser, the cash-in -transit van driven by the insured driver and the taxi driven by the plaintiff Mr Sithole) were travelling in the same direction towards Sun City when the taxi suddenly collided with the back of his vehicle is more probable. Taking into account the damage to the vehicles involved

and the accident report it is more probable that the three vehicles were travelling in a straight line. The insured driver was truthful and honest when giving evidence. Even when under cross examination, counsel for the plaintiff tried to make him concede to counsel's speculation and assumptions which were not supported by any objective facts, that he drove recklessly as he was carrying cash and was in a hurry to reach his destination. The insured driver was an impressive witness.

[15] Considering all the evidence before me, I am satisfied that the evidence of the insured driver was more probable than that of the first plaintiff. I therefore come to the conclusion that the plaintiffs have not proven their case on a balance of probabilities.

[16] Accordingly, I make the following order:

"The plaintiffs' claims are dismissed with costs.

NP MNGQIBISA-THUSI

Judge of the North Gauteng High Court