IN THE HIGH COURT OF SOUTH AFRICA

(NORTH GAUTENG HIGH COURT, PRETORIA)

27/05/2011

CASE NO: ~~34182/2010~~ 45006/08

In the matter between:

N.R. RATSHIBUVMO PLAINTIFF

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

24/05/17
DATE SIGNATURE

and

ROAD ACCIDENT FUND DEFENDANT

JUDGMENT

MAVUNDLA J;

[1] The plaintiff's claims against the defendant is for damages he suffered as the result of injures he sustained in a motor vehicle collision. At the commencement of the trial, by agreement in terms of rule 33(4) the issues of liability were separated from

quantum and the matter proceeded on the former and the latter issues were postponed sine die.

[2] It is common cause that on 29 October 2006 and at Umkhangele Street Mabopane, the plaintiff was the driver of motor vehicle with registration number FMJ 584 NW which collided there and then with motor vehicle with registration number RVG 642 GP, then and there driven by Mr. A T Maboya (the insured driver).

[3] The defendant is the Statutory body created in terms of Act 56 of 1996 and its liability arises by virtue of the said Act, for any bodily damages suffered as the result of injuries sustained in a motor vehicle collision caused by the negligence of an insured driver of a motor vehicle involved in an accident.

[4] According to the plaintiff the sole cause of the collision was the negligence of the insured driver Mr. Maboya, alternatively the driver of an unidentified motor vehicle. It is common cause that the plaintiff collided with the insured motor vehicle from behind.

There is an inference of negligence on his part. The onus rest on him to prove that he was not negligent and that the insured driver or the unknown motor vehicle was negligent and such negligence was the case of the collision[1].

[5] It is trite that the plaintiff must prove on a balance of probabilities that the collision was as the result of the negligence of the insured, or the unidentified driver or their joint negligence.

[6] The parties furnished me with various photographs that are supposed to show the scene of the accident. In my view, the photographs were not taken shortly after the accident, but much later. It is common cause that at the time of the accident, the were trenches dug just outside the road for purposes of laying underground cables. That being the position, the road at the time was not as wide as reflected by the photographs, but must have been narrow as the result of the mound of the soil from the dug trench. The insured driver conceded that his motor

[1] Coleman v Mabuza 1963 (2) SA 498 (TPD) at 500B-D.

vehicle was parked outside the street but with some of its wheels encroaching into the path of travel of the road. It can therefore be accepted that at the time of the accident, the path of travel on which the plaintiff was travelling had been to a certain extent impeded by the wheels of the insured motor vehicle that were partially on the path of travel of the plaintiff.

[7] Where an insured driver, such as the insured driver in *casu*, parks his motor vehicle along the road, in a manner such that part of his motor vehicle impedes the path of travel of other road users, should have foreseen that he has created a potential dangerous situation to other motorist and should have taken reasonable steps to warn other motorist of the danger presented by his motor vehicle.[2]

[8] The insured driver said that he had placed cones along the road to warn other road users of the presence of his motor vehicle. Placing cones, in my view was not enough. There was a duty on the part of the insured driver to ensure that there is a

[2] Vide Rondalia Versekeringskorporasie Van SA v Vermaak 1970 (2) SA 735 (AD).

reflective chevron on his motor vehicle sufficiently visible. He must not only stop at ensuring that there are visible reflective chevrons, but must also post a person to warn other road users to be aware of the presence of his motor vehicle. *In casu*, the insured driver did not post any person. He was aware of the constricted road because of the dug trenches. He also conceded that the road was not well illuminated by any street light, save an Apollo light. In my view, the negligence of the first insured driver stems from his failure to have posted a person to warn other motorist.[3]

[9] The version of the plaintiff is that as he was approaching where the insured motor vehicle was parked, his path of travel was suddenly encroached into by the insured unidentified motor vehicle that was travelling with its bright lights.

[10] The insured driver's version that the accident occurred at Winterveld must be rejected because he conceded that he does not recognise the place reflected in the photographs. I do

[3] Crawhall v Minister of Transport and Another 1963 (3) SA 614.

accept the version of the plaintiff that the accident happened in Mabopane. In this regard he is being corroborated by the Police Accident Report and Inspector Mogomotsi. I accept that the accident occurred along Umkhangele Street which is running straight. However, from the photos, there is a side street which joins into Umkhangele street. The plaintiff was travelling along Umkhangele street with the side street on his left. The unidentified motor vehicle suddenly entered into Umkhangele street, turned towards his direction with its head lights on bright very fast. He said that he was blinded by these lights and he swerved to his left to avert a collision with the unidentified motor vehicle and in the process collided with the insured motor vehicle.

[11] The plaintiff said that he did not see the unidentified motor vehicle before it entered into Umkhangele because his vision was obstructed by the first insured motor vehicle. I am unable to find that the version of the plaintiff is improbable. I find that the unidentified motor vehicle executed his left turn at an inopportune moment without stopping at the intersection. This

was a dangerous manoeuvre in the face of motor vehicle that had a right of way, such as that of the plaintiff. However, I am also of the view that the plaintiff was also negligent in that he was travelling rather very fast under the circumstances. The fact that the first insured driver said he did not see the unidentified motor vehicle, is understandable, because he was just before the accident engaged in his work. He only became aware of the collision at the sound of the impact. If the unidentified motor vehicle did not stop after the collision, certainly he would not have seen it.

[12] My finding is that the cause of the collision was the combination of the negligence of the first insured driver, who created a dangerous situation in the way he had parked his motor vehicle and failing to post a person to warn motorist to slow down as they approached the location where his motor vehicle was. Secondly the unidentified motor vehicle was negligent in the sudden manner it entered into Umkhangele Street turning towards the plaintiff's vehicle with its head lights on bright at an inopportune moment. The plaintiff was also contributory

negligent in that he drove too fast under the prevailing circumstances.

[13] I would therefore apportion the combined negligence of the first insured driver and the unidentified motor vehicle to 60% and the plaintiff 40%. I therefore find that the defendant is 60 % liable for proven damages of the plaintiff.

[14] In the result I make the following order:

1. That the defendant is liable to pay 60% of the plaintiff's proven damages arising from the collision;
2. That the defendant to pay the plaintiff's costs on party and party scale.

N.M. MAVUNDLA
JUDGE OF THE HIGH COURT

DATE OF JUDGMENT	:	**27/05/2011**
APPLICANT'S ATT	:	**SALOME LE ROUX ATTORNEYS**
APPLICANT'S ADV	:	**MR. B.P. GEACH, SC**
RESPONDENTS' ATT	:	**MAPONYA INCORPORATED**
RESPONDENTS' ADV	:	**MR. F. PAUER**