



IN THE HIGH COURT OF SOUTH AFRICA

(NORTH GAUTENG HIGH COURT)

Case number: 30412/2010

Date: 15 September 2011

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES/NO	
(2) OF INTEREST TO OTHERS JUDGES: YES/NO	
(3) REVISED	
15/9/2011	<i>[Signature]</i>
DATE	SIGNATURE

In the matter between:

NOKO MARGRAITE HOPANE

Plaintiff

And

ROAD ACCIDENT FUND

Defendant

JUDGMENT

PRETORIUS J.

The plaintiff is claiming R500 000.00 in damages which he sustained during a collision on 7 December 2006. The merits and quantum were not separated at the start of the trial, but the court was requested by both counsel to proceed

on the merits of the action. The counsel for the defendant requested the court to separate the merits and the quantum of the action in terms of Rule 33(4) after argument and this application was granted.

Mr Hopane, the plaintiff, testified that on 7 December 2006 at 19h45 he was the driver of a four ton Tata Truck with registration number EBC5925L. He was driving from Dendron to Bochum on a tarred road where the speed limit was 80 kilometre per hour. He was accompanied by his father and mother who sat next to him in the passenger seat of the cab of the truck. His father sat in the middle and his mother next to the left hand passenger door. The truck was carrying a load of mealie meal

He was driving at 80km per hour and the truck's headlights were switched on as it was already dark. Whilst driving in this manner and at this speed a car overtook his truck. This car moved in front of him and immediately applied his brakes. This vehicle was only approximately 4 metre in front of him when the insured driver applied the car's brakes. The plaintiff applied the brakes and swerved to the right hand side to avoid a collision as he realised that a collision was inevitable in the circumstances.

The left side of the truck collided with the right back of the car. The plaintiff stopped in front of both the car and the Audi with which the insured driver had collided. He alighted and confronted the driver of the car, the insured driver, who informed him that there was an Audi in the road without any rear lights and that was the reason that he had to stop suddenly. The plaintiff could not

swerve to the left to avoid a collision as the road sloped to the left. The plaintiff's further evidence was that he had expected the car to proceed on its way on the open road and did not expect it to slam on brakes as soon as it had overtaken the plaintiff's truck. No questions were put to the plaintiff regarding the Audi vehicle without any lights and the court can only speculate as to why the plaintiff had not noticed the Audi prior to the insured driver overtaking him prior to the accident. The court can thus not make any finding regarding this.

At the time the insured driver's vehicle overtook the truck, he was still travelling at 80km per hour and therefore the insured driver must have been travelling at a higher speed.

Mr Hopane could not testify as to whether the insured driver's vehicle had collided with the Audi without lights as a result of his truck's collision with the insured driver's car or whether the insured driver's vehicle had already collided with the Audi when he collided with the insured driver's vehicle.

Mrs Hopane, the plaintiff's mother, was a passenger in the truck sitting in the passenger seat next to the left hand door. She corroborated the plaintiff's evidence in all material aspects. She has a driver's licence and confirmed that the speed that they were travelling at was between 70-80 kilometres per hour. She denied that the insured driver had been driving in front of their vehicle for 10 kilometres before the collision took place. She confirmed the plaintiff's version that the insured vehicle had just overtaken the truck when he

slammed on his brakes. Her estimate was that the car of the insured driver was 1.5 to 2 metre in front of the truck when he suddenly braked, whilst the plaintiff estimated the distance as approximately 4 metres.

Both the witnesses impressed the court as being honest witnesses who did not exacerbate the actions of any of the parties and conceded facts when necessary. The plaintiff had made a warning statement to the South Africa Police Service, but this statement was made in Pedi, written down in English and read back to the plaintiff in Pedi. The court takes cognisance of statements made in such a manner and the plaintiff explained that everything that had happened was not contained in the statement. The court takes into consideration that Mrs Hopane is the mother of the plaintiff, but cannot agree with counsel for the defence that it tainted her evidence in favour of the plaintiff.

An application for absolution of the instance was denied.

The defendant gave evidence that on 12 June 2007 he was driving his car from Dendron when he overtook the plaintiff's truck. He had travelled 5 kilometres after overtaking the plaintiff's truck when he saw a car in front of him without rear lights. He reduced speed waiting for a chance to overtake this car when he felt a vehicle colliding with him from the back and as a result he collided with the Audi without rear lights in front of him. At the time he overtook the plaintiff's vehicle he was driving at 100 kilometre per hour, but his speed was only 60 kilometre per hour when the collision took place. He

only slightly reduced speed when he saw the Audi in front of him.

According to him the plaintiff's vehicle was travelling at a high speed when it collided with his vehicle, although he could not explain why his vehicle was still in the left hand lane after the collision and not knocked off the road by the force of the collision if the plaintiff's vehicle was travelling at such a high speed. He had not seen the plaintiff's vehicle after overtaking it until after the collision had taken place. He could not explain why he had not seen the plaintiff's vehicle approaching in his rear view mirror as the plaintiff's vehicles' headlights were switched on. He contradicted his version as his counsel put to the plaintiff that he had driven for 10 kilometres before the collision took place. He could not remember if there was traffic approaching from the opposite direction and later averred that he thought there were cars approaching. According to him his car was 1 to 2 metre behind the Audi when the collision took place, although he had known that it was not a safe following distance, but was intending to overtake the Audi. He could not explain why his car was damaged in the middle front and the Audi in the middle at the back, although the plaintiff's car hit the insured driver's car on the right back and side. Although he conceded that a safe following distance was three car lengths he had travelled 1 tot 2 metre from the rear of the Audi for some distance.

In **Govan v Skidmore 1952 (1) SA 732 (NPD)** at 734 Selke J held:

*"For, in finding facts or making inferences in a civil case, it seems to me that one may, ..., by balancing probabilities **select a conclusion which seems to be the more natural, or plausible, conclusion from***

***amongst several conceivable ones, even though that conclusion
be not the only reasonable one.***” (Court’s emphasis)

In **AA Onderlinge Assuransie Bpk v de Beer 1982 (2) SA 603 (AD)** Viljoen

JA found in relation to the probabilities in deciding a case at p 614 H:

***“Dit is, na my oordeel, nie nodig dat 'n eiser wat hom op
omstandigheidsgetuienis in 'n siviele saak beroep, moet bewys
dat die afleiding wat hy die Hof vra om te maak die enigste
redelike afleiding moet wees nie. Hy sal die bewyslas wat op hom
rus kwyf indien hy die Hof kan oortuig dat die afleiding wat hy
voorstaan die mees voor-die-hand-liggende en aanvaarbare
afleiding is van 'n aantal moontlike afleidings.”*** (Court’s emphasis)

The insured driver’s own evidence was that he was not aware of the plaintiff’s vehicle behind him before the collision and could not explain why he did not see the lights of the plaintiff’s vehicle in his rear view mirror if the plaintiff had approached his vehicle from behind.

He further could not give any explanation as to why he was driving 1 – 2 metre behind the Audi, after overtaking the plaintiff’s truck at more than 80 km per hour. He wanted the court to believe that he was no longer in a rush as he was close to his home and content to drive behind the Audi at 40-60 km per hour, although he overtook the plaintiff’s truck which was driving at 80 km per hour.

I find this version of the insured driver as so improbable that it stands to be rejected. The version by the insured driver that was never canvassed with the plaintiff was that the plaintiff's truck's lights were on bright and that the insured driver had passed him and indicated to him that he must dim his lights was never canvassed with the plaintiff.

If all the evidence, probabilities and improbabilities are considered and weighed the court finds that the cause of the collision was that the insured driver overtook the truck and as soon as he had moved in front of the truck he saw the Audi without lights 1 to 2 metre in front of him and he slammed on his brakes thus causing the plaintiff to take evasive action. This manoeuvre by the plaintiff was however not enough to avoid the accident and the collision took place. It was reasonable of the plaintiff to expect that the insured vehicle would drive on after overtaking his truck and not expecting to slam on his brakes immediately.

Counsel for the defendant argued that paragraphs 6.3, 6.5 and 6.9 of the plaintiff's claim had not been proved by the evidence. The court finds that even if these averments are disregarded the plaintiff has proved the case on a balance of probabilities.

In the circumstances the court finds that the insured driver's actions were the sole cause of the collision and the defendant is liable for the plaintiff's damages.

It is ordered:

1. That the defendant is liable to compensate the plaintiff for 100%(one hundred percent) of his or proven or agreed damages suffered as a result of the collision;
2. That the defendant has to pay the plaintiff's party and party costs of the action on the High Court scale from 5 September 2011;
3. That the defendant has to pay interest on the costs *a tempore morae* at the rate of 15.5% per annum calculated from date of the taxing master's allocator, alternatively date of agreement in respect of costs, to date of payment;
4. The issue of the quantum of the plaintiff's damages is postponed *sine die*.



Judge Pretorius

Case number	: 30412/2010
Heard on	: 5 September 2011
For the Applicant / Plaintiff	: Adv Maphela
Instructed by	: RJ Ntimane Inc
For the Defendant	: Adv Schreuder
Instructed by	: Maponya Inc

Date of Judgment : 15 September 2011