

**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE LOCAL DIVISION, PORT ELIZABETH)**

Case No: 2637/2018

Date heard: 4 December 2019

Date delivered: 12 December 2019

NOT REPORTABLE

In the matter between:

JIMMY PERCY DE BRUIN

Plaintiff

And

ROAD ACCIDENT FUND

Defendant

JUDGMENT

Goosen J:

[1] On 4 December 2015, at approximately 16h00, a collision occurred at the intersection of Juta and Schadie Roads, Ferguson, Port Elizabeth, between a motorcycle driven by the plaintiff and an Isuzu pickup driven by André Robert (the insured driver). As a result of the collision the plaintiff suffered certain bodily injuries. The plaintiff instituted a claim against the defendant and, in July 2018, instituted the present action.

[2] The defendant has conceded that the insured driver was negligent. It, however, contends that the plaintiff was contributorily negligent. The parties reached agreement in relation to the quantum of all heads of damages claimed by the plaintiff, including that in respect of future medical expenses which are to be covered by an undertaking furnished in terms of s 17(4) of the **Road Accident Fund Act**¹. Accordingly, the only issue to be decided is whether the plaintiff was in any degree negligent and if so to effect an apportionment in accordance therewith.

[3] The defendant commenced adducing evidence and called the insured driver. Mr Robert explained that on the afternoon in question he had travelled to a supplier of equipment which he required on a building site. The supplier's store is located in Schadie Road. After collecting the equipment he intended to return to the building site. It was approximately 16h00.

[4] Juta Road runs in an east-west direction from Kempston Road which is a major thoroughfare. Juta Road is a through road. There are several minor roads that lead onto or away from Juta Road. Schadie Road is one such road. The intersection

¹ Act No 56 of 1996

of Schadie Road and Juta Road is regulated by a stop sign. Schadie Road is oriented north-south.

[5] During an inspection *in loco* conducted at the conclusion of Mr Robert's evidence-in-chief, the following observations were recorded. Juta Road is approximately 8 metres wide. It has a broken line barrier line at the centre of the trafficable surface demarcating one lane of travel in both directions. Juta Road curves gently to the right in an easterly direction from the intersection with Schadie Road (i.e. in the direction of Kempston Road). It proceeds straight in a westerly direction before following a gentle curve in the opposite direction from that on the Kempston Road side.

[6] The painted stop line on the road surface of Schadie Road is situated approximately 2 metres away from the lane in Juta Road. There are buildings situated on the eastern corner at Schadie Road. From a position approximately 1 metre behind the stop line in Schadie Road (in what would be the position of the driver of a vehicle stopped at the stop line) the roadway in Juta is visible for approximately 90 metres before it curves out of sight. In the other direction there is an unobstructed view for a considerable distance. It was recorded that from the position at the edge of the lane in Juta Road the view towards Kempston Road is unobstructed for a distance well in excess of 100 metres.

[7] It is common cause that weather conditions on the day in question were clear and that visibility was good.

[8] Mr Robert stated that he brought his vehicle to a stop at the intersection. He looked to his left and right along Juta Road. He did so twice. Since he did not observe any traffic in Juta Road he commenced executing a turn to his right into Juta Road. He stopped again approximately 2 metres beyond the stop line. He then drove his vehicle into Juta Road so as to execute the turn. All the while he was looking to his right. When his vehicle was midway into the lane in Juta Road he saw the plaintiff's motorcycle approaching. It was then about 30 to 35 metres away. It was travelling at a high speed. He immediately reacted and applied the brake of his vehicle bringing it to an immediate stop. The plaintiff's motorcycle collided with his vehicle on the front of the right fender. The plaintiff was flung over the hood of his vehicle and landed on the road surface beyond the vehicle.

[9] He said he immediately got out of the vehicle to go to the assistance of the plaintiff. He noted that there was still space between the front of his vehicle and the centre line in Juta Road. He spoke to the plaintiff who was seated on the roadside kerb. According to Robert the plaintiff asked him not to call the police because he was not in possession of a licence permitting him to drive the motorcycle. Robert did not call the police. The plaintiff was transported from the scene by ambulance to the Livingstone Hospital.

[10] The accident scene, according to the evidence, was cleared by Precision Towing, a vehicle recovery firm owned and operated by Robert's son.

[11] When asked to explain what had caused the collision Robert stated that, in his view, the excessive speed with which the plaintiff drove his motorcycle was the principal cause. He stated that since he had immediately brought his vehicle to a halt when he observed the motorcycle there was sufficient lateral space available to the motorcycle to avoid the collision. He also said that the lane in the opposite direction was clear and therefore that the plaintiff could have swerved to avoid the collision.

[12] In cross-examination Robert was presented with an Official Accident Report (OAR) which had been completed at Kabega Park Police Station on 6 December 2015.

[13] He stated that he does not recall having gone to the police station to report the collision. He conceded, however, with reference to the details recorded in the form as relate to him, that it is probable that he had reported the collision. The OAR form contains important details which are likely only to have been available to him. This includes his driving licence number and type. It also contains reference to "*pot plants*" in relation to possible contributory factors. Significantly, Robert had referred to "*pot plants*" as possibly playing a role in his not having seen the plaintiff's vehicle. The reference to this in the OAR strongly suggests that he was the person who had reported the collision to the police. Equally significant is a description of the accident set out by him in the OAR. It states:

"Vehicle A turned right and didn't see Vehicle B when he hit Vehicle B."

[14] It was suggested by Mr Nepgen, for the plaintiff, that this description of the collision accords with the facts. The plaintiff testified that on the afternoon of 4 December 2015 he had left work at approximately 4 p.m. He had driven along Kempston Road and, after stopping at the traffic light controlled intersection with Juta Road, he proceeded along Juta Road. The distance from Kempston Road to Schadie Road is approximately 300 metres. He was travelling between 40 and 50 km/h by the time he got to a point in Juta Road when he could see the insured driver's vehicle. At that stage, he was approximately 90 metres away.

[15] He said he saw the Isuzu pickup stopped at the stop sign. He noted that the vehicle pulled off and that it got to the edge of the lane in Juta Road. He slowed down slightly and moved towards the centre line. By the time the pickup stopped moving again, he was about 30 metres away. He kept a lookout but expected the pickup to remain where it was until he passed.

[16] As he neared the vehicle it moved towards the centre line. He described this as "*closing the gap*" that was available to him. He had only a split second to react and could not avoid the collision. His motorcycle struck the right front fender of the pickup and he was flung across the bonnet. He said his helmet struck the windshield and he landed on his feet facing back towards the vehicle before landing heavily on his back. He was able to pick himself up and went to sit on the kerb. Some members of the public came to his assistance. His mother was then called to the scene and he was later taken to the hospital by ambulance.

[17] He denied that he had told the insured driver, who spoke to him, not to call the police. He admitted, however, that at the time he had been driving without a licence. He conceded that the police did not attend the scene. His motorcycle was removed from the scene by Precision Towing. He subsequently had contact with the owner of the business who offered to repair his motorcycle without charge. He denied that he was travelling at high speed at the time of the collision.

[18] As has already been indicated the defendant accepted that the insured driver was negligent. What is to be determined is whether the plaintiff was negligent in some or other respect.

[19] The ground of alleged negligence relied on by the defendant was that the plaintiff drove the motorcycle at an excessive speed. Mr Robert stated that he did not know how fast it was, it could be 100, 120 or even 140 km/h. As far as he was concerned it was this excessive speed which accounted for the fact that he only saw the plaintiff when he was 30 to 35 metres away. The further ground of negligence was that the plaintiff had not avoided the collision when he could have done so apparently by veering across the centre line or even passing between the pickup and the centre line.

[20] The insured driver was not, in my view, an impressive witness. Contrary to the assertion, by Mr Paterson for the defendant, that he was a disinterested and objective or independent witness, it was apparent that Mr Robert was firmly of the view that he was in no way negligent. On his version, he had kept a careful lookout and immediately he became aware of the speeding motorcycle had instantaneously brought his vehicle to a stop. His assertion that he had looked to his right at all times

when executing the turn simply cannot explain why he only saw the motorcycle when it was 30 metres away. He had, on the objective facts, 90 metres of unobstructed view. From a position beyond the stop line, from which he commenced his turn (when he claimed it was safe to do so), his unobstructed view would have been well in excess of 100 metres.

[21] In my view, the probabilities point to the fact that the failure to see the motorcycle arose because he did not keep observation to his right while executing the turn. The suggestion that this was “*caused*” by the speed at which the motorcycle was travelling also does not accord with the probabilities. Even if the motorcycle was travelling at a speed in excess of the 60 km/h speed limit (say 100 km/h) then from when he first was able to see the motorcycle (at 90 metres) he would have had 3 seconds to react. It was his evidence though that he only started to execute the turn into the intersection once he had seen (from the position beyond the stop line) that it was safe to do so. If this is so then on his own version he would have seen the motorcycle when it was further away.

[22] The suggestion that the plaintiff was driving the motorcycle at high speed is, in my view, an *ex post facto* attempt to justify his own lack of proper observation. During cross-examination, Mr Robert said that he knew the motorcycle was speeding because the rider had “*leaned into the corner*”. This was not his evidence in chief. This evidence, in my view, constituted an exaggeration which, rather than assist the defendant’s case, undermines it further. If indeed Robert saw the motorcycle at the corner (it is, in fact, a gentle curve) then on the objective evidence the motorcycle was almost 90 metres away and not 30 to 35 metres as suggested by Robert.

[23] In contrast, the plaintiff was a good witness. His description accords in large measure with the movement ascribed to the pickup by the insured driver. He responded to the presence of the pickup. He slowed. He kept a vigilant lookout. When the pickup edged forward he changed his line of travel to be able to give it a wide enough berth.

[24] Mr Paterson sought to make much of the fact that it was pleaded that the insured driver had failed to stop whereas the evidence was that he had. The difference is more apparent than real. The plaintiff stated that the insured driver had stopped, then moved into the intersection and again stopped, and only then proceeded. In essence, the insured driver had failed to remain under the regulation of the stop sign and proceeded into the intersection into the path of travel of the plaintiff.

[25] It was suggested by Mr Paterson that the plaintiff ought to have done more to avoid the collision by either passing across the centre line or by bringing his motorcycle to a halt. The plaintiff's answer was that it was too late to do anything when the insured driver moved into his path of travel.

[26] It should be borne in mind that the intersection of Juta Road and Schadie Road is regulated by a stop sign in Schadie Road. Vehicles travelling along Juta enjoy right of way. Vehicles entering Juta are only entitled to do so when it is safe to do so having regard to the presence of vehicles in Juta Road. A driver in a vehicle travelling along Juta Road is under no obligation to adjust his conduct in anticipation that the driver of the other vehicle may act unreasonably and cross his path of travel.

[27] As was stated in ***Sierborger v South African Railways and Harbours***²:

"To return therefore to the enquiry as to whether, if du Preez had seen the signal, any action was at that stage required of him, the answer seems to be 'none other than to continue to keep a look-out'. There was no obligation upon him to stop or even slow down because of having seen the signal. In parenthesis, it need scarcely be remarked, that du Preez's statement in evidence that had he seen appellant's signal he would have stopped, even supposing it to be true, cannot burden him with an obligation not imposed by law. The heavy flow of urban traffic would be seriously interfered with if, on each occasion when a signal is exhibited by a motorist intending to turn across the line of traffic, such traffic were required to come to a stop or slow down. Such signal is of course a notification to following and oncoming traffic that the driver intends to turn across the line of traffic, but equally implicit in it is that he intends to do so at an opportune moment and in a reasonable manner. It is also, more particularly, a signal to following traffic that the driver in question intends to move over towards the middle of the road preparatory to choosing the opportune moment to cross over on to that half of the road being used by traffic coming in the opposite direction. A driver of a vehicle proceeding in this latter direction does not, with reference to a vehicle whose driver has signalled an intention to turn across his path and who is directing his vehicle towards the middle of the road preparatory to doing so, incur an obligation to stop or slow down. Certainly he must keep such vehicle under observation and as soon as it is clear that, despite the inopportuneness of the moment, it

² 1961 (1) SA 498 (A) at 504H-505C

intends to cross in front of him, he must take all reasonable steps that may be necessary to avoid colliding with it.”

[28] Although in this case the activation of a signal light is not relevant, the presence of the insured driver’s vehicle at the intersection indicated an intention to enter the intersection. The plaintiff, having taken note of this, properly kept the insured driver’s vehicle under observation. He also adjusted his speed and moved towards the centre line. In my view, he acted prudently and reasonably. He was entitled to assume that the insured driver would remain stationary until he had driven past. As it turned out the insured driver did not and he drove his vehicle into the path of the plaintiff’s motorcycle at a stage when the plaintiff could not avoid the collision.

[29] In the result, I find that the insured driver was solely negligent in causing the collision which occurred on 4 December 2015. As I indicated at the outset the parties had reached agreement on the quantum of the plaintiff’s claim and related ancillary orders.

[30] I, therefore, make the following order:

1. The defendant is ordered to pay the plaintiff the sum of R2 031 163.00 (Two Million and Thirty One Thousand One Hundred and Sixty Three Rand).
2. The defendant is ordered to pay the aforesaid sum within 90 days from the date of this order.

3. Interest is to accrue on the capital sum outstanding at 10.00% per annum from 14 days after date of this order, to date of final payment.
 4. The defendant is ordered to provide the plaintiff with an Undertaking in terms of Section 17(4)(a) of the Road Accident Fund Act, No. 56 of 1996, to pay 100% of the costs of future accommodation of the plaintiff in a hospital or nursing home, or treatment of, or rendering of a service, or the supply of goods to the Plaintiff arising from the injuries sustained in the collision on 4 December 2015 at Juta Road, North End, Port Elizabeth, forming the plaintiff's cause of action.
 5. The defendant is ordered to pay the plaintiff's costs of suit on the party and party scale as taxed or agreed, such costs to include:
 - 5.1 the reasonable costs of an inspection *in loco* attended by the plaintiff's counsel, attorney and the plaintiff;
 - 5.2 the reasonable costs of photographs;
 - 5.3 the reasonable qualifying expenses, if any, of all experts in respect of whom the plaintiff has given notice in terms of Rule of Court 36(9)(a) and (b).
 6.
 - 6.1 The defendant is ordered to pay the taxed or agreed costs within 90 days from date of allocatur;
 - 6.2 Interest on the aforesaid costs is to accrue at the prevailing legal rate at the time from 14 days after date of allocatur, to date of final payment.
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G. G. GOOSEN

JUDGE OF THE HIGH COURT

Appearances:

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