

NOT REPORTABLE



IN THE HIGH COURT OF SOUTH AFRICA

(EASTERN CAPE LOCAL DIVISION, PORT ELIZABETH)

Case

No:

2639/2019

In the matter between:

STUART RYAN HUCKLE

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

Govindjee AJ:

Background

[1] The plaintiff was involved in a motor vehicle collision on 9 September 2016 near the intersection of Cape Road and Boshoff Street, Port Elizabeth ('the collision'). As a result, he suffered injuries which he alleges were caused by the sole

negligence of the driver ('the insured driver') of a vehicle ('the insured vehicle') that is, in effect, insured by the defendant.¹

[2] It is alleged that the insured driver was negligent in one or more of the following respects:

- a. Failure to keep a proper lookout;
- b. Failure to have any or adequate due and proper regard to the presence of other vehicular traffic travelling on the said road where the collision occurred;
- c. Failure to have and keep the insured vehicle under any, adequate or proper control; and/or
- d. Failure to have any or adequate due and proper regard to the safety of other road users.

[3] In particular, it is suggested that the insured driver suddenly, and without warning or indication, brought the vehicle he was driving to a standstill in the path of travel of the plaintiff's vehicle at a time when it was dangerous to do so. The pleadings also claim, *inter alia*, that the insured driver failed to take reasonable precautionary measures to ensure that there were no mechanical and/or other defects to the insured vehicle and to maintain the vehicle in a roadworthy condition.

[4] The alleged negligence of the insured driver is the only issue in dispute on the merits. In the event of a finding that both drivers were negligent, their respective

¹ Section 21(1) of the Road Accident Fund Act, 1996 (Act 56 of 1996).

degrees of culpability requires consideration. In terms of its amended plea, the defendant pleads, in particular, that:

- a. The insured driver's motor vehicle was off the road and not in motion;
- b. The insured driver had a triangle sign in place seven metres behind his motor vehicle and the hazard lights of his vehicle were switched on;
- c. The plaintiff was driving at an excessive speed, was not wearing a safety belt and failed to apply his brakes timeously.

[5] The issues of merits (liability) and quantum of the plaintiff's action were separated by agreement in terms of Rule 33(4) of the Uniform Rules of Court at the commencement of the trial. The defendant admitted, during the course of a further pre-trial conference, the correctness of the contents of the accident report, which was admitted in evidence without formal proof thereof.

The evidence

[6] The plaintiff testified that he was driving his vehicle alone and proceeding to his girlfriend's house on the day of the accident. Cape Road, at the point in question, has three lanes facing the direction of Makro and the plaintiff was driving in the middle lane, and wearing his safety belt.² It was approximately 16h00, and close to peak hour in terms of traffic. It was also cloudy and overcast.

[7] The plaintiff had been travelling on the N2 highway driving at approximately 120km/h. He egressed the N2 and reduced his speed to approximately 80km/h as

² Photographs taken at the scene by Mr S Tembani were admitted into evidence and were referred to by both the plaintiff and insured driver during their testimonies.

the speed limit on Cape Road further down the road was 70km/h. He noticed the insured vehicle (a green Opel Kadet), which was approximately ten to fifteen metres in front of him, and travelling in the same lane and direction, prior to the collision.

[8] The plaintiff testified that the insured driver had appeared to slam his brakes in order to come to a dead stop. No warning or hazards were displayed by the insured driver at the time. The plaintiff tried to swerve around him to the left, and applied brakes himself. He nevertheless collided with the rear back left side of that vehicle with the right front side part of his own vehicle. The plaintiff admitted that he might have been able to avoid the collision had he swerved further to the left. He was, however, unable to swerve much further because of the presence of vehicles in the left-hand lane, and there were also other vehicles in the right-hand turning lane at that point in time.

[9] The plaintiff was knocked unconscious and could not talk to the police that afternoon. He woke up in hospital and was released a few hours later that day. On his version, the insured driver later visited him to explain that the collision had been caused by the insured vehicle's clutch cable snapping, causing the sudden stop. The plaintiff denied that the insured vehicle was off-road and stationary at the time of the collision, or that the insured driver had displayed a triangle sign or turned on his hazard lights. Under cross-examination, the plaintiff denied offering to pay for the damages caused to the insured vehicle.

[10] The insured driver, Mr Baatjie, had a notably different recollection of events. He had been driving in the middle lane. His clutch had failed while he was driving,

causing him to veer to the right and stop his vehicle outside the right-hand turning lane, with two wheels outside the road surface and on the pavement. He could not have stopped on the left-hand side of the road because of the vehicles already driving in that lane. He had placed his triangle behind the vehicle and turned his hazard lights on. The collision occurred five to ten minutes later and could have been avoided as the insured vehicle was at least partly outside the road surface area at the time.

[11] Mr Baatjie had called the police after the accident. He also testified that the plaintiff had in fact admitted his wrongdoing and paid him in part for the damages caused to his vehicle, without completing the full payment. No details were provided as to the amount that had been paid or was allegedly outstanding.

Analysis

[12] As Mr Paterson suggested, the court is tasked with resolving two largely irreconcilable versions of events. The accepted technique used to resolve this has been explained in ***SFW Group Ltd & another v Martell et Cie & others*** as follows:³

‘To come to a conclusion on the disputed issues a court must make findings on (a) the credibility of the various factual witnesses; (b) their reliability; and (c) the probabilities. As to (a), the court’s finding on the credibility of a particular witness will depend on its impression about the veracity of the witness. That in turn will depend on a variety of subsidiary factors, not necessarily in order of importance, such as (i) the witness’ candour and demeanour in the witness-box, (ii) his bias, latent and blatant,

³ 2003 (1) SA 11 (SCA).

(iii) internal contradictions in his evidence, (iv) external contradictions with what was pleaded or put on his behalf, or with established facts or with his own extracurial statements or actions, (v) the probability or improbability of particular aspects of his version, (vi) the calibre and cogency of his performance compared to that of other witnesses testifying about the same incident or events...As to (c), this necessitates an analysis and evaluation of the probability or improbability of each party's version on each of the disputed issues. In the light of its assessment of (a), (b) and (c) the court will then, as a final step, determine whether the party burdened with the onus of proof has succeeded in discharging it.'

[13] Considered in this light, the evidence demonstrates that the plaintiff's version of events must be accepted in most material respects and that the balance of probabilities favour the discharge of the plaintiff's onus to demonstrate the insured driver's negligence. Given the contents of the accident report, in particular, the insured driver's recollection appears to be mistaken in significant aspects. That report accords more closely with the plaintiff's version. The accident sketch, for example, shows the plaintiff's vehicle in the middle lane and the insured vehicle in between the middle and right-turning lanes, travelling in the same direction. The brief description of the accident also accords with the plaintiff's version and there is no reference whatsoever to the insured vehicle having been partially off-road, or that hazard lights were on or the triangle sign visibly displayed. The colour photographs of the scene also demonstrate a raised kerb, and no explanation was offered as to how the insured vehicle had been able to mount that kerb, with a snapped clutch cable, so that the vehicle remained parallel to the road surface, despite having veered to the right quite sharply from the middle lane. Mr Baatjie could also not

explain why his version of the plaintiff having made part-payment to him was not put to the plaintiff during his cross-examination.

[14] Mr Baatjie's version is improbable in the extreme. On a survey of all the evidence, there is no explanation why the plaintiff would have left the middle lane, when he was travelling in the direction of Makro, so that he would have collided with the insured vehicle on the extreme right-hand side of the road surface, and with that vehicle standing partly in the right-hand turning lane. How the insured driver would have been able to veer from the middle lane to the extreme right-hand side of the road when cars were in all probability waiting to turn right at that time of the day also remained unexplained. Most importantly, and despite Mr Baatjies having been the only person to speak to the police who compiled the accident report, no plausible explanation was offered for the clear difference between that recording and the version offered by Mr Baatjies. That report makes no reference to the insured vehicle having been on the road shoulder or in an off-road parking space. The report suggests that the insured driver's vehicle was travelling straight, and at least close to the middle lane, which accords more closely with the plaintiff's version.

[15] It must be accepted, on the totality of available evidence, that the insured driver's explanation that his vehicle malfunctioned as a result of a clutch problem in fact occurred, but that the subsequent collision occurred close to the middle lane of Cape Road, and not on the extreme right of the part of the road turning into Boshoff Street. That was certainly a key factor resulting in the collision, whether or not the insured vehicle's brake lights were visible when that vehicle sharply reduced speed as a result of a mechanical fault.

[16] Given the accepted circumstances, the plaintiff is also at least equally to blame. The collision could possibly have been avoided had the plaintiff travelled at a slower speed and / or have maintained a more appropriate following distance for vehicles travelling at approximately 80 km/h.⁴ Considering the plaintiff's contributory negligence, the defendant is declared liable for fifty (50) percent of such damages suffered by the plaintiff, as may be proved or agreed. The plaintiff is also entitled to the party and party costs of the merits of this action.

Order

[17] In the result, I make the following order:

1. The defendant is declared liable for fifty (50) percent of such damages suffered by the plaintiff in consequence of the motor vehicle collision on 9 September 2016, as may be proved or agreed.
2. The defendant is ordered to pay the plaintiff's taxed or agreed party and party costs of the merits of the action, such costs to include the costs of the photographs of the scene of the collision (Exhibit A1-5).
3. The defendant is to pay interest on the plaintiff's costs at the prescribed legal rate per annum from 14 (fourteen) days after taxation or agreement to date of payment.
4. The issue of the quantum of the plaintiff's claim is postponed *sine die*.

⁴ I pause to note that it is an acknowledged fact that a witness' recollection and estimate of speed is often inaccurate: *Erasmus v Road Accident Fund and another* (unreported ECLD case no. 698/2007) at paras 3, 6.

A. GOVINDJEE
ACTING JUDGE OF THE HIGH COURT

Appearances:

Obo the plaintiff: *Adv N. Paterson*

Instructed by: *John B. Scott Attorneys*

Obo the defendant: *Adv P.P Boloyi*

Instructed by: *Thipa Attorneys Inc*

Heard: *10 May 2021*

Date: *27 May 2021*