REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 890/19

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED.

DATE: **29 MAY 2023**

SIGNATURE: **MPIENAAR**

In the matter between:

DIEPE ALINA LEOTLELA **PLAINTIFF**

and

ROAD ACCIDENT FUND **DEFENDANT**

JUDGMENT

PIENAAR (AJ)

INTRODUCTION

[1] This matter, set down for default judgment before me on 24 March 2023, is a claim against the Road Accident Fund. Notice of set down was served on the Defendant on 9 March 2023.

[2] The Defendant entered an appearance to defend and filed a plea, but at some

stage the attorneys of record for the defendant withdrew and no attorneys were appointed. On 27 July 2022 before Honourable Judge Phooko (AJ) the defendant's plea was struck out.

[3] For sake of completeness the following documents is uploaded onto Caselines as exhibits for the trial, namely:

3.1 Plaintiff's merits bundle as Exhibit A - Caselines 004 Merits

3.2 Plaintiff's hospital records as Exhibit B - Caselines 004 Merits

3.3 Plaintiff's quantum bundle as Exhibit C - Caselines 005 Expert notices

[4] There is no Confirmatory affidavit for Mr Gerald Lemmer the Plaintiff's Accident Reconstruction expert.

[5] The Plaintiff, a 58-year-old-female (currently), instituted a claim for loss of support in her personal capacity and representative capacities against the Road Accident Fund.

[6] Both the issue of merits and quantum remains in dispute. This judgment will only deal with the issue of merits.

PLAINTIFF'S CLAIM

[7] The Plaintiff alleged in the Particulars of claim that the collision occurred as follows:

"On or about the 28th March 2915, the deceased breadwinner Tshediso John Leotlela while a driver of a motor cycle B[...] at N12 East before Kraft Road Off-ramp had an accident, he collided with a tractor truck, a Mercedes Benz with registration number C[...]P, driven by one Mandlenkosi Shadrack Ndlovu (hereinafter referred as Insured Driver)"

[8] The Accident Report (AR) contained relevant details of the driver of the Insured vehicle such as, his address, identity numbers, telephone number, his vehicles make (white mercedes benz) and registration numbers (C[...]P). The AR also contained the names and identity number of the deceased. Additionally, the AR provided by the police official at the scene of the collision as well as a description of how the accident occurred, which was obtained from the driver of the motor vehicle. According to the Accident report description, the insured driver afforded the following explanation of how the accident occurred "Driver alleges that he was driving on the slow lane and saw motor cycle changing lanes before colliding with the trailer of his vehicle". No allegations by the Driver of the motor cycle because of his injuries. Only some information is legible on the Accident Report.
The Accident report is not legible everywhere.

[9] The version by the Insured Driver, which is confirmed under oath by SAPS officers is as follows: "The driver alleges I heard a sound and I looked on the re-view, I saw a motorbike traveling at lane No 03. It was on a high speed.

I saw the motor bike turning to the left towards my truck and bumped the trailer at the counter back".

NEGLIGENCE OF THE INSURED DRIVER

[10] The Plaintiff alleged in the particulars of claim that the collision was caused as a result of the sole negligence of the insured driver in one or more of the following respects:

10.1 He drove the motor vehicle without proper lookout

10.2 He drove straddling the lanes

10.3 He failed to have due regard to the rights of the other road users

10.4 He drove at a slower speed that was unnecessary under the circumstances

10.5 He failed to take evasive action or to keep the vehicle under proper control at a stage when he could and should have done so;

10.6 He failed to avoid an accident when by exercise of reasonable care he could and should have done so.

LAW

[11] It is our law that in each case in which negligence is alleged against the motorist such negligence must be decided on the facts of that particular case. It other words, the Court is enjoined to examine the facts of that particular case. This is better illustrated in Rondalia Assurance Corporation of SA Limited v Mtkombeni 1979 (3) SA 967 (A) at 972B-D:

"Moreover, one does not draw inferences of negligence on a piecemeal approach. One must consider the totality of the facts and then decide whether the driver has exercised the standard of conduct which the law requires. The standard of care so required is that which a reasonable man would exercise in the circumstances and that degree of care will vary according to the circumstances. In all cases the question is whether the driver should reasonably in all the circumstances have foreseen the possibility of a collision."

[12] A driver will be negligent if the unreasonable conduct is generally foreseeable and he/she does not take reasonable preventative action to avoid a collision.

[13] Negligence has to be proven on a balance of probabilities.

[14] In Ntsala and others v Mutual and Federal Insurance Co Ltd 1996 (2) SA 184 (T) the court held that where it must be remembered that with a sudden confrontation of danger a driver only has a split second or a second to consider the pros and cons before he acts and surely cannot be blamed for exercising the option which resulted in a collision.

[15] Was the insured driver negligent in the manner he reacted to what was unfolding behind him? According to him the motor cycle was traveling at a high speed. He saw it on his rear-view mirror. Confronted with this motor bike driver that is driving at a high speed, and the Insured driver which is driving with a truck and a trailor. He cannot just swerved within a second, it would have been suicidal for him to have swerved to the left as there would have been nowhere to avoid the collision.

[16] Any reasonable driver faced with similar circumstances would have responded no differently from the Insured Driver. According to the Insured Driver he was driving in the slow lane. There is not enough evidence before Court, of how much space there is on the side of the road.

[17] Even if I assume that the Insured Driver was wrong in the action that he took, Nasal says that a driver who finds himself in a situation of imminent danger, not of his own doing, and reacts thereto and possibly takes the wrong option, it cannot be said that he is negligent unless it can be shown that no reasonable man would so have acted.

[18] There was no sufficient evidence regarding the negligent driving of the Insured Driver. The Plaintiff has failed to prove negligence on the part of the Insured Driver, and therefore liability of the Defendant has not been proved or established at all.

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

19.1 Absolution from the instance is ordered.

19.2 Leave is granted for the Plaintiff to proceed on his claim on the same papers duly amplified should he be so inclined.

19.3 No order as to costs.

MPIENAAR

ACTING JUDGE OF THE HIGH COURT

This judgment was handed down electronically by circulation to the parties and/or parties representatives by email. The date and time for hand down is deemed to be 29 May 2023.

APPEARANCES

Counsel for the Applicant : Adv M Snyman SC
msnyman@snymanfamilie.co.za
Adv DeWet Keet

Instructed by : M J Mashao Attorneys
mpananajoshmashao@gmail.com

Counsel for the Respondent : No appearance

Instructed by : Road Accident Fund
Link no: 3771689

Date of hearing : 24 March 2023
Date of Judgment: 29 May 2023

[1] Caselines : Section 011: Notice of set down, bundle 10

[2] Caselines : Section 014 Draft Order, bundle 8

[3] Rondalia Assurance Corporation of SA Limited v Mtkombeni 1979 (3) SA 967 (A) at972B-D

[4] Ntsala and others v Mutual and Federal Insurance Co Ltd 1996 (2) SA 184