IN THE HIGH COURT OF SOUTH AFRICA

FREE STATE DIVISION, BLOEMFONTEIN

Case No: 1114/2020

In the matter between:

MOTUS GROUP LTD t/a JAGUAR LAND ROVER BLOEMFONTEIN **PLAINTIFF**

and

DAVID MALAN LERATO MODISE **DEFENDANT**

BEFORE: CHESIWE J

HEARD ON: 26 NOVEMBER 2021

DELIVERED ON: 25 FEBRUARY 2022

---

[1] Plaintiff instituted an action for damages amounting to R1 039 130, 60 to its vehicle as a consequence of a collision that occurred on 11 June 2019 on the N8 between Ladybrand and Thaba Nchu. The collision was between Plaintiff's Range Rover Velar vehicle and Defendant's Volkswagen Polo Vivo vehicle with registration number [……]. The matter is defended.

[2] The issues in dispute are as follows: *Locus Standi* of the Plaintiff; the cause of the negligence; whether there was contributory negligence on the part of the Plaintiff, quantum and apportionment of damages.

[3] Plaintiff called three witnesses, this being Mr Wally Reynold, Mr Faezel Brown (the driver), Mr Hein Viljoen (the principal dealer) and Mr Carel Gerber (expert witness).

[4] Defendant called two witnesses, Mr Modise (the Defendant and driver of the Black Volkswagen Polo Vivo) and Mr Michael Faltermeier (the expert witness).

PLAINTIFF’S CASE

[5] Plaintiff called its first witness, Mr Walter Reynold, who is employed as a Sales Manager for Land Rover and Jaguar Motor Vehicles.

[6] He testified that the Plaintiff was previously called Auto Niche, operating under the Imperial Group. Imperial Group was separated into Logistics Retail and Car Rental. The car rental is now called the Motus Group Limited, trading as Motus Bloemfontein.

[7] Mr Reynolds explained the procedure of acquiring a new vehicle. He stated that if the client is looking for a vehicle he’d check on the system if there is stock available. In this case, the client was looking for a Range Rover Velar. The client was given a quotation to which an offer to purchase was signed on 4 May 2021. Pursuant to that, the Lesotho Standard Bank requested an invoice and gave a guarantee after all the paperwork was completed. The vehicle was on its way to being delivered to the buyer. However, due to the collision, the vehicle was not delivered to the client.

[8] Under cross-examination, Mr Reynolds explained that the vehicle was purchased from Jaguar South Africa. He had no personal knowledge of the contract agreement between Wesbank, Auto Niche Motus and Jaguar South Africa. He explained that the floor plan of the dealership allowed the vehicle to be bought from Jaguar South Africa, then Wesbank pays Jaguar South Africa on receipt of the invoice that Wesbank would have received from Motus Group. However, he was not involved in the payment of the vehicle.

[9] Mr Reynolds explained that when the vehicle is paid for by Wesbank, it is delivered to Motus Group which then registers the vehicle in the company's name, that is Motus Group.

[10] Mr Faezel Brown, the driver of the Plaintiff (Motus Group) testified that he has been working for the Plaintiff since 2019. On 11 June 2019, he was requested by Mr Reynolds to take the Range Rover Velar and drive it to Ladybrand, whereupon it would be dropped off at MacClearing Agency. He did as was requested and then left the dealership. He stopped at a petrol station to fill up the vehicle and left Bloemfontein using the N8 route. He drove past Thaba Nchu, driving at a speed of 80km per hour. He mentioned he knew the road well as he frequented it and was aware of the speed limit and the curves on the road.

[11] Mr Brown stated that as he approached the intersection on the N8 on the left side of the road, there is a road sign directing to Tweespruit and on the right side of the road, the road sign directs to Hobhouse. The rest of the road signs were clearly marked up to the Tweespruit intersection. He noticed for the first time a Black Volkswagen Polo Vivo vehicle of the Defendant about 100 meters

approaching from Tweespruit heading towards the stop sign at the intersection. Mr Brown said the second time he noticed the Volkswagen Polo Vivo, it was about 5 metres from the stop sign. As he uses that road frequently, he knew that the direction from which the Volkswagen Polo Vivo was coming, had road markings and road signs bearing a stop and therefore assumed that the driver of the Volkswagen Polo Vivo would stop. Mr Brown further testified that the next thing he realised there was an impact between the Land Rover Velar that he was driving and the Volkswagen Polo which was being driven by the Defendant. The Land Rover Velar took a knock at the back on the left-hand side, rolled towards the right-hand side of the road and landed in the bushes. Mr Brown testified that he noticed the Defendant getting out of the vehicle approaching the Land Rover Velar to check upon him.

[12] Under cross-examination, Mr Brown explained that from Bloemfontein, he was travelling at a speed of 120 kilometres per hour. After passing Thaba Nchu, he travelled at a speed of 110 kilometres per hour and the road permitted for travelling limit at 100 kilometres per hour. He said at the intersection, the road was clear and so were the markings on the road. He confirmed that he saw the black Volkswagen Polo Vivo approaching the intersection from Tweespruit, but thought it would stop as mandated by the road signs and markings. He did, however, concede that had he been travelling at a slower speed, it may have given him a better chance to react.

[13] Mr Hennie Viljoen the dealership principal, testified that the company previously was known as Imperial Group trading as Imperial Auto Niche. In November 2018, the name was changed to

Motus Group Limited. As a staff member, he was informed via email about the name change.

[14] Mr Carel Gerber, Plaintiff's expert witness testified that on 21 June 2019, he inspected the Range Rover Velar and compiled a full report. He mentioned that the damage to the vehicle was mostly structural and was economically not repairable. He explained that the repairs would amount to R992 931-00, which amount excluded unforeseen damages and labour. He mentioned that the vehicle could not be salvaged due to the none demands of the parts as it was a brand new vehicle. However, under code 3A of selling car parts, it sold for R61250-00 (as code 3A parts could only be sold by dealerships), but he was not involved in the salvage of the vehicle.

[15] Under cross-examination, Mr Gerber was asked about the correct value of trade of the vehicle. He explained that the vehicle had no trade-in value as it was a new vehicle. Instead, he used the purchase price of the vehicle. Mr Gerber further explained that the vehicle was insured for the retail value and Hollard Insurance paid the insured amount. He explained that to determine the market value, he will have to inspect the vehicle, add the accessories and the market value will equal the retail value. He confirmed that because it was a new vehicle the value remained the same until the vehicle was delivered. That was Plaintiff's case.

DEFENDANT'S CASE

[16] Defendant (Mr Modise) testified that on the 11th of June 2019, he received a phone call that he had to drive from Bloemfontein to Tweespruit to remand a case at the Tweespruit Magistrate Court. He knew the road very well as he had driven on the N8 route about

four times. On the day in question, he finished at court earlier and went to spend time with his son. He would thereafter drive back to Bloemfontein. He said as he drove towards the Tweespruit intersection, the condition of the road and the weather did not impede his driving. He recalls driving at a speed of 100 kilometres per hour, but could not recall the speed limit on the specific road.

[17] The Defendant stated that he was absent-minded as he had a lot on his mind. When he regained his awareness of the road, he noticed he was about one (1) metre near the stop sign at the intersection of the N8. He attempted to slam on the breaks, but it was already too late as he had by then collided into the Range Rover Velar.

[18] He conceded that he was not in a good state of mind as he had on the night before argued with his girlfriend. He was unable to stop on time as he was travelling at 100 kilometres per hour. He did however attempt to break when he noticed the stop sign. The Defendant further conceded that the stop sign was clearly marked and visible.

[19] Under cross-examination, the Defendant confirmed that he knew that road well and that at the intersection where he was going to turn right towards Thaba Nchu, had a visible stop sign. He agreed that he failed to apply the car breaks on time. He further agreed that there was no stop sign nor a yield sign for Mr Brown and that Mr Brown had right of way.

[20] Mr Michael Faltermeier testified as an expert witness for the Defendant. He testified that Mr Brown shortly before impact, travelled at a speed of one hundred and forty-five (145) kilometres per hour. He said at the moment of impact, Mr Brown was travelling

at a speed of one hundred and twenty-seven (127) kilometres per hour. Mr Faltermeier confirmed that all data was obtained from the vehicle and the map overlay from google earth. That was the Defendant's case.

[21] Both Counsel submitted written heads of argument. Oral arguments were presented on the virtual platform on the 26th of November 2021.

[22] Counsel on behalf of Plaintiff submitted that the Defendant conceded that he did not keep a proper lookout at the intersection; he drove too fast under the circumstances and that negligence was on the part of Defendant. Counsel further submitted that road users can expect other road users to act reasonably, but Defendant's unreasonable conduct was unforeseeable.

[23] With regards to *locus standi*, Counsel submitted that Plaintiff had proven ownership of the vehicle, as it was confirmed by Mr Reynolds, the Branch Manager. Surrounding facts to determine ownership of the vehicle in respect of the damages, Counsel submitted that the expert witness was unwavering in his evidence and that the actual damage of the Plaintiff exceeded the amount claimed.

[24] Adv. Louw in oral argument submitted that Mr Reynolds and the dealership did not have any evidence as to how the vehicle was purchased from Jaguar South Africa nor any knowledge of any contractual agreement between Jaguar South Africa, Wesbank and Motus Group Limited. He further argued that neither is there such a contract before the court. Counsel went further to say the registration certificate did not prove ownership of the vehicle.

Counsel submitted that both Mr Brown and the Defendant conceded that they were driving fast. He submitted that the Defendant was entitled to assume that Plaintiff's driver, Mr Brown, would slow down when he was about to drive pass the intersection. Counsel did however concede that due to the contributory negligence of Mr Brown, apportionment of damages should be 60/40.

LOCUS STANDI

[25] The general requirements for *locus standi* are that the Plaintiff must have an adequate interest in the subject matter of the litigation, that the interests must not be too remote, that the interests must be actual, that it must not be abstract and must be current interests. (De van Loggenber and E Bertelsmann Erasmus: Superior Court Practice 2nd ed. Vol 1 at D1-186)

[26] In **Mars Incorporated v Candy World (Pty) Ltd** [1], the court said the following:

> "In accordance with the general rule that it is for the party instituting proceedings to allege and prove that he has *locus standi*, the onus of establishing that issue rests upon the applicant."

[27] In **Dalrymple & others v Colonial Treasurer** **[2]**, Innes CJ said the following:

> "The general rule of our law is that no man can sue in respect of wrongful act, unless it constitutes a breach of a duty owed to him by the wrongdoer, or unless it causes him some damage in law."

[28] The plaintiff in the amended particulars of claim stated in paragraph 3 as follows:

---

[1] (265/89) [1990] ZASCA 149; 1991 (1) SA 567 AD

[2] Dalrymple & others v Colonial Treasurer 1910 TS 372 at 379

> "At all relevant times hereto the Plaintiff was the owner of a brand new 2019 Range Rover ("the Range Rover") alternatively the bona fide possessor thereof the risk thereupon having passed to the Plaintiff."

[29] The Hollard Insurance document on page 6 of the amended particulars of claim described the vehicle as insured by Imperial Bloemfontein which was the previous name of the company before it changed to Motus Group. The vehicle is further described as a Range Rover Velar/R-Dynamic with VIN Number: [….] in the Hollard Insurance Audatex System. The certificate of registration of the vehicle under the owner of the vehicle is stated as "vehicle identification: [.…], name: Auto Niche.

[30] It would therefore not make logical sense for Hollard Insurance, to insure a vehicle that belonged to another entity or person. As an insurance company it has to verify that the vehicle it is about to insure belonged to the correct entity and the correct details are therefore provided correctly for the purposes of the vehicle insurance.

[31] Mr Reynolds in his testimony explained the process of acquiring a new vehicle. He testified that the dealer has 15 million with Nedbank. On purchasing a vehicle from Jaguar South Africa, Wesbank pays the purchase price and the vehicle remains in their stock. The issue of a contract between Jaguar South Africa, Wesbank and Motus Group, Mr Reynolds explained that he was not part of that agreement, but was able to explain to this court how the vehicle was acquired by the Plaintiff. Mr Reynolds stated that he is more involved in the process of acquiring new vehicles and maintaining the floorplan stock. The issue of the contract between the parties is neither here nor there. Plaintiff's evidence has clearly

shown that there is an interest to litigate and the interest is actual and current.

[32] In my view, with the evidence before me on *locus standi*, I am satisfied that Plaintiff has proven *locus standi* to the extent that Plaintiff concluded a purchase contract with the buyer of the Range Rover, a certain Ms Sekhesha. If the Plaintiff had no *locus standi*, it would be in no position to sell the vehicle. Indeed, ownership of the vehicle would have passed to the purchaser, had the vehicle been delivered to the purchaser, but it was still on route to be delivered. Thus ownership and risk still rested with the Plaintiff, and the Plaintiff therefore remained responsible for the Range Rover Velar vehicle.

CONTRIBUTORY NEGLIGENCE

[33] It is trite that the Plaintiff bears the onus of proving negligence on the part of the Defendant on a balance of probabilities. The parties are in dispute as to who was the negligent party that caused the accident. Plaintiff contends that the Defendant was negligent by not stopping at the stop sign as expected and as a reasonable road user. Counsel for Defendant contends that Plaintiff's driver was negligent as he drove above the required speed limit and has therefore contributed to the collision.

[34] The defendant in oral evidence conceded that he was driving at 100km per hour when he noticed the stop sign for the first time. He did not notice the plaintiff's vehicle before the stop sign and by the time he applied the brakes it was too late. Defendant further conceded that had he been driving at a slower speed, kept a proper lookout, stopped at the stop sign, he would have avoided the

accident. Defendant acknowledges that on the day of the collision, he was distracted as he was in a quarrel with his girlfriend the night before.

[35] Defendant came forth as a truthful witness. He was honest to mention that he drove the N8 route more than four (4) times and knew there was a stop sign at the Tweespruit intersection. Out of his honesty, he conceded that the Range Rover driver, that is Mr. Brown, did have right of way. The defendant was not evasive in any of his answers. He took accountability in conceding that he did not stop at the stop sign. The court applauds him for that, as taking accountability and responsibility for one's action is in most instances not an easy thing to do, especially in respect of a motor vehicle accident, to the extent that he went to check on Mr Brown after the accident.

[36] On the other hand, Mr Brown conceded to knowing the N8 route very well and knew the exact spots where traffic officers would be stationed. He would increase and reduce the speed accordingly. He further conceded that he saw the Black Volkswagen Polo some distance away from the intersection and at that stage, he assumed that the driver of this vehicle would stop at the intersection. However, by conceding that had he driven at a slower speed, he would have possibly evaded the collision, is duly noted.

[37] Mr Faltermeier in oral evidence and his reports explained that the data obtained from the Range Rover Velar indicated that the driver (Mr Brown) was driving a speed of 147 kilometres per hour before the point of impact. At impact, Mr Brown was travelling at a speed of 127 kilometres per hour. Mr Faltermeier concluded that the speed

at which Mr Brown was travelling, was unable to take evasive action and could not have avoided the conclusion.

[38] Liability depends on the conduct of the reasonable person. The test for negligence was clearly stated in **Kruger v Coetzee.**[3]

[39] In **Beswick v Crews** [4] the court said:

> "The law does not require of any driver that he should be exhibit perfect nerve and presence of mind enabling him to do the best thing possible. It does not expect men to be more than ordinary men."

[40] Indeed, the Defendant acknowledged that he was absent-minded on the day in question. He was involved in an argument with his girlfriend. Driving a motor vehicle in his state of mind, the Defendant did not take the necessary reasonable care. Driving a vehicle on a busy road, does need extra care and mind alertness. Due to that lack of alertness, the Defendant failed to swerve away to avoid the collision, as well as being too slow to hit the vehicle breaks on time. The duty to keep a proper lookout rested more on the Defendant as it is expected of him, as a road user, to stop as directed before joining a national road/route and to take extra caution before exiting and joining any road.

[41] In **Maxanti v Protea Assurance Co LTD** [5] the Appellate Division (as it then was) with approval from other authorities, held that: "Persons entering a national road from an ordinary road should take care and see that the national road is clear before entering it."

[3] 1966 (2) SA 428 (A) at 430 E-G.
[4] 1965 (2) SA 690 (A)
[5] 1979 (3) SA 73 (A)

[42] In **Protea Assurance Company Ltd v LTA Building (SWA) LTD and another**,[6] the court said the following: "A motorist proceeding on a through road is generally entitled to rely on the protection of stop signs controlling entry from access roads. While it is true that a driver in a through road does not have an absolute right of precedence and is not relived from the duty of keeping a general look-out, he is not under a duty to keep the cross road under the same careful observation which would be required if it was not a stop street."

[43] A driver travelling on a road with an intersection road compared to a driver driving along a straight road without an intersection has a greater duty of care when entering the main road from the side road, s the main road is usually a busy road and carries greater volumes of traffic.[7]

[44] In **Cooper v Armstrong,**[8] Van Der Merwe J (as he then was) in considering negligence of a driver, said the following:

> "I do not suggest that he had the right to rely blindly and stubbornly on the fact that he entered the intersection first and proceeded to cross without regard to other vehicles moving in the neighbourhood, but I do maintain that until the contrary appears, he is entitled to assume that the other person using the street will not conduct themselves with suicidal abandon."

[45] The Defendant was clear in his evidence that he misjudged the metres towards the stop sign at the intersection. He was absent-minded due to the quarrel he had with his girlfriend. He conceded that he was negligent in not stopping at the intersection and ended up colliding with the Range Rover Velar. Both parties confirmed

---

[6] 1988 (1) SA 303 AD.

[7] See the Law of Collision in South Africa – HB Klopper, 7th edition, and Marie and Trade Insurance Co. Ltd v Bijasi 1981 (1) SA 918 (A).

[8] 1939 OPD 140 at 46

that the road signs at the intersection are clearly marked, including the stop sign at the intersection. Mr Brown correctly assumed that Defendant would stop and as a reasonable driver using the national road, the Defendant is expected to comply with the rules and signs of the road.

[46] Mr Brown indeed had right of way. He had no reason to doubt that a car approaching from the left side-road facing a stop sign at an intersection would not stop. Mr Brown was entitled to assume that the Defendant would obey the road statutory regulations. In my view, the Defendant indeed was negligent and had the most duty of care. Thus, the Plaintiff has discharged the onus resting on it to prove on the balance of probabilities that the Defendant was negligent

[47] Though Mr Brown conceded to have been driving at a speed more than the required limit which is 100 kilometres per hour, he had no impediments or road signs prompting him to stop nor gave a right of way to vehicles on either the left or right of the intersection. The negligence in this regard is more on the part of Defendant. Taking into consideration that a motorist is expected to obey traffic signs when travelling on a national road, it is to be an assumption that vehicles entering on either side of this road would stop and not disturb the flow of traffic that is on the national road.[9]

[48] Mr Brown had no duty compelling him to keep a lookout for the Defendant's vehicle, except if it was obvious to him that the

[9] See Epol (Pty) Ltd v Bezuidenhout 1980 (3) SA 624 (T)

Defendant is going to fail to obey the traffic regulations that compels one to stop. There was no such evidence that it was obvious the Defendant will not stop at the intersection, as the Defendant had stated that he was indeed absent-minded.

[49] A driver will be negligent if the unreasonable conduct is generally foreseeable and he does not take reasonable preventative action to avoid a collision. (See the Law of Collision in South Africa, 7th ed. at 72)

DAMAGES

[50] The plaintiff in respect of damages presented evidence of the expert witness, Mr Carels Gerber and the Defendant did not present any expert evidence in respect of the quantification of the Plaintiff's damages. The expert's evidence is that the damages to the vehicle could not be repaired to its pre-collision condition. Indeed, the vehicle was still new. The expert explained that the damages suffered by Plaintiff were R1 114 978-00 and if the salvage amount of R61 250-00 is deducted, the total damages amounts to R1 053 728-00.

[51] Despite the damages suffered by the Plaintiff, the Plaintiff accepted a lower amount which was R1 060 380-00 which is less than the actual loss suffered.

[52] The expert witness was honest in the calculations of the damages suffered by the Plaintiff. He gave the court a detailed explanation of the market value pre-collision and could not use post-collision value as the vehicle was new. The court has no reason to doubt his

expertise in respect of the calculations towards the damages suffered by Plaintiff.

[53] In **Enslin v Meyer** [10], the court said:

> "Now not only is the question of proving the amount of damages, but in proving every other fact, it has been held, rightly I think, that there must insist on a mathematical demonstration of every fact (my emphasis). It is sufficient to prove a high degree of probability in order to justify a Court giving judgment… It is necessary for the Court to assess the amount and make the best use of the evidence before it. There are cases where the assessment by the Court is very little more than an estimate, but even so, if it is certain that pecuniary damages has been suffered, the Court is bound to award damages."

[54] In my view, the damages as calculated by the expert, are fair and reasonable. The Defendant did not present any evidence to counter the evidence as presented by Mr Gerber. I have no other option, but to accept the evidence as presented by Mr Gerber.

[55] Counsel for the Defendant submitted that the court is to consider apportionment of damages. Having found that the Plaintiff's driver was not negligent, I see no reason to apply apportionment of damages. As in my view, negligence was on the part of the Defendant.

[56] Accordingly, the following order is made:

1. Payment of the sum of R1 039 130-60;
2. Interests a *tempore morae* thereon at the prescribed rate of 10% per annum from date of service of summons to date of payment;
3. Costs of suit.

---

[10] 1060 (4) SA 520 (T) at 523H

CHESIWE, J

On behalf of Plaintiff: Adv. R van der Merwe

Instructed by: McIntyre van der Post

BLOEMFONTEIN

On behalf of Respondents: Adv. M Louw

Instructed by: HJ Badenhorst & Associates Inc.

BLOEMFONTEIN