

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

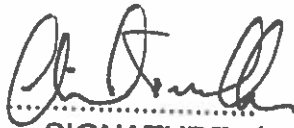
CASE NO: A444/2017

In the matter between:

J DE WET TRUTER

Appellant

and

(1)	<u>REPORTABLE:</u>	<u>YES / NO</u>
(2)	<u>OF INTEREST TO OTHER JUDGES:</u>	<u>YES / NO</u>
27/01/19..... DATE		 SIGNATURE

ROAD ACCIDENT FUND

Respondent

JUDGMENT

Tuchten J:

- 1 This is an appeal from a decision of Sardiwalla AJ dismissing the appellant's claim for damages for bodily injuries which he brought against the respondent. Leave was granted by the learned judge in the court below.
- 2 The issues of what are colloquially called merits were separated at the commencement of the trial. The issue was therefore confined to the question of negligence.

The evidence showed that on 20 July 2013, during the afternoon, the plaintiff was riding a motorcycle on a gravel road in a forestry plantation in the lowveld. At the same time, the insured driver was driving a truck in the opposite direction along the same road. The two vehicles did not collide but when the plaintiff's version was that when he approached the truck, he realised that unless he took evasive action there would be a collision because the truck was in his path. The plaintiff veered to his right but the motorcycle began to slide and the plaintiff was flung from the motorcycle and landed beneath the wheels of the truck.

- 4 The insured driver's version, on the other hand, was that when he, the insured driver, observed the motorcycle for the first time the plaintiff was doing a wheelie, ie causing the motorcycle to rear up on its rear wheel and that the plaintiff lost control when the motorcycle was close to the truck causing the plaintiff to fall off the motorcycle and slide under the truck, as a result of which the plaintiff sustained serious injuries.

5 The plaintiff called a reconstruction expert who gave his opinion as to the cause of the collision. The plaintiff and the insured driver both testified. There were no other witnesses.

6 The learned judge below was impressed by the evidence of the insured driver and preferred his evidence to that of the plaintiff and the expert. But the learned judge did not, in my view, give sufficient weight to the statement which the insured driver gave to the police after the incident in the forest, which as in certain material respects contradicted the evidence of the insured driver given in court. In particular, the insured driver testified that the plaintiff was one of a group of drivers who were racing each other. There was no suggestion of that in the police statement and if the group had been racing each other, members of the group would not have performed wheelies as that would have slowed them down.

7 I do not think that one need consider the evidence of the expert in any detail. The evidence showed that the road was wide enough for the two vehicles to pass each other and there was, as the learned judge below found, adequate visibility for the two drivers to observe the other prior to the incident under consideration.

8 In these circumstances, the most probable conclusion is that the two drivers were both lulled into a false sense of security by the isolation of the forest road and did not take note of each other until it was too late to warn the other, slow down or take evasive action. In my view the two drivers were equally negligent.

9 It follows, therefore that the appeal must succeed and the defendant must be held liable for 50% of the plaintiff's proven or agreed damages.

10 I make the following order;

1 The appeal succeeds with costs. The order of the court below is set aside and replaced with the following:

1.1 The defendant is held liable to compensate the plaintiff for 50% of his proven or agreed damages.

1.2 The defendant must pay the plaintiff's costs of suit in the action.



NB Tuchten
Judge of the High Court
20 January 2020

I agree.



MJ Teffo
Judge of the High Court
January 2020

I agree.



B Neukircher
Judge of the High Court
January 2020