IN THE HIGH COURT OF SOUTH AFRICA

FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	**YES/NO**
Of Interest to other Judges:	**YES/NO**
Circulate to Magistrates:	**YES/NO**

Case No.: 128/2018

In the matter between:

WILLEM PIETER MARAIS Plaintiff

and

ROAD ACCIDENT FUND Defendant

HEARD ON: 29 & 30 JANUARY 2019 and 1 FEBRUARY 2019

JUDGMENT BY: MATHEBULA, J

DELIVERED ON: 25 APRIL 2019

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[1] In this matter the only issue to be adjudicated is the merits of the claim. The parties have agreed that quantum be separated (and dealt with at a later stage). This is an action pursuant to the provisions of the Road Accident Fund Act 56 of 1996 for damages in respect of personal injuries sustained by the plaintiff arising out of a motor collision.

[2] It is not disputed that the plaintiff and the insured driver one Bejile Benjamin Kondile were involved in a motor collision on the R702 road between Dewetsdorp and Bloemfontein. This occurred on the 7th August 2015 at approximately 14H00pm. The main point of contention is whether the insured driver had been negligent in causing the motor collision.

[3] The plaintiff testified on his behalf. The insured driver and his employer also testified on behalf of the defendant.

[4] The plaintiff testified inter alia that he was from Zastron via Dewetsdorp to Bloemfontein when he collided with a trailer attached to a bakkie. He had already passed a bypass when he saw a bakkie driving in the emergency lane going in his direction. The first time he noted it the distance between them was approximately 100 to 120 metres. It appeared to him that it was stationary. On closer inspection he observed that it was only driving slowly.

[5] He was about four metres away when the insured driver made a U-turn without any indication to other road users. The manoeuvre was so sudden that it gave him no opportunity to avoid the collision. He attempted to swerve to the left side and collided with the trailer on the right side. His motor vehicle was also damaged on the front right side. He stopped his motor vehicle on the point of impact while the insured driver stopped the bakkie in the emergency lane on the opposite direction. On alighting from his motor vehicle, the insured driver apologised for causing the collision. As a result he sustained neck and knee injuries and was hospitalised for few days.

[6] Under cross-examination, he denied that there were roadworks on the part of the road where the collision occurred. He was

adamant on this aspect. It was put to him that he ignored a "stop-and-go" sign and simply proceeded when it was inopportune to do so. His response was that there was none. He was shown the orange cone placed almost in the middle of the road as depicted on page 8 of Exhibit 1 that there were road works. He replied that this was placed there probably by the police on their arrival at the scene. There was none on the tarmac prior to the accident.

[7] In rebuttal the insured driver testified that he was employed by his nephew who was awarded a contract to patch the potholes. The first board he placed on the road was the one showing that there were roadworks in progress. In addition he put the "stop-and-go" sign controlled and changed by a person with a red flag on the lane from Zastron to Bloemfontein. It is the one that the plaintiff failed to adhere to. The result thereof was that the plaintiff collided with his trailer attached to his motor vehicle. He denied ever being in the emergency lane prior to the collision occurring although he agrees with the point of impact.

[8] Under cross-examination, he was confronted whether the version that the plaintiff drove through the "stop-and-go" operation was relayed to the police who attended the scene of accident on the day. His response was that he did inform them but the police did not speak to him but to the plaintiff. It was put to him that if there was a "stop-and-go" operation it must have been on the right side of the road. He agreed and expanded that the plaintiff returned to his proper lane after passing the checkpoint. He further denied ever apologizing to the plaintiff. He stated that he did not see the plaintiff's motor vehicle coming largely because he had closed the road. He not see it because he knew there were no motor vehicles. He confirmed that before the accident his motor vehicle

was stationary in the emergency lane. Although he made his observations prior to making a U-turn, he did not see the plaintiff coming from behind. In short, he was not responsible for causing the collision.

[9] The evidence of Thembekile Msadi is that he arrived on the scene after the collision had taken place. The police were already on the scene and the plaintiff as well as the insured driver were making statements to them. On arrival he did not realise whether the "stop-and-go" sign had been moved or not. He did not pay particular attention whether it was set up correctly or not.

[10] The matter was postponed to trace a person that the defendant intended calling as a witness. Unfortunately he was on leave at the time. Given these circumstances, the defendant closed its case. I am indebted to both counsel for filing heads of argument which were not only helpful in preparing this judgment but were detailed on the issue to be adjudicated.

[11] The common cause issue is that the motor vehicles collided on the left side on the Bloemfontein bound carriage way of the road. The insured driver was executing a U-turn. The point in dispute is that the plaintiff was the cause of the collision in that he negligently drove past the "stop-and-go" checkpoint when it was inopportune to do so. Thus he was the sole cause of the collision

[12] It has been agreed by the parties that the plaintiff bears the onus of proof and the duty to begin and adduce evidence in respect of the merits of his claim.

[13] The plaintiff gave his evidence in a vivid and clear manner as to how the events of that particular day unfolded. It is clear that the collision occurred on his correct side of the road. Equally so that the insured driver was executing a U-turn. The fact that the

insured driver was at some stage in the emergency lane is also common cause. This manoeuvre in the middle of the road placed a higher premium of keeping a proper lookout on the part of the insured driver to ensure that it was indeed safe to do so before doing it. The version as narrated by the plaintiff is more probable given the chronology of events surrounding the collision. The insured driver was driving a motor vehicle pulling a trailer cut across the road in the face of the oncoming traffic. In his quest to avoid the collision, the plaintiff missed the motor vehicle and collided with the rear right wheel of the trailer. I accept his version that his best was not good enough to completely avoid the collision given the sudden manner that a motor vehicle that appeared stationary at first sight suddenly made an unexpected U-turn. Moreso he was close to it.

[14] The insured driver did not create a good impression of himself as a witness particularly under cross-examination. He dismally failed to answer questions, was evasive and contradicted himself on several occasions. He was also quick to adjust his testimony where he could not provide adequate explanation. It was put to him that if there was a “stop-and-go” checkpoint, the collision should have occurred on the right side of the road. His response was that the plaintiff passed it on the right and then went back to the left side of the road. This was not his original testimony but the new version under cross-examination.

[15] The issue of the “stop-and-go” checkpoint appears to have surfaced for the first time during the trial. In the accident report, the collision is recorded as narrated by the plaintiff. Again the insured driver denied ever talking to the police on that day. His version is far-fetched. It boggles the mind then from whom did

they obtain his personal details if he did not talk to them. Further nothing about the "stop-and-go" checkpoint is recorded in the accident report. Even the witness Tolekile Msadu testified that he did not observe any "stop-and-go" checkpoint. This witness testified that on his arrival the plaintiff and the insured driver were making statements to the law enforcement officers who had attended the scene of collision.

[16] The insured driver also gave convoluted responses and made irrelevant statements to the questions that were posed to him. On occasions that he gave a plausible answer, it was extracted after intense cross-examination. He conceded that he did not keep a proper lookout because he had closed down one lane. Even if that was the case, it is gross negligence to enter the road without a proper lookout. He knew that this was a national road and it had some sizable volume of traffic between the towns of Dewetsdorp, Zastron and the regional city of Bloemfontein. Had he kept a proper lookout, he would have seen that the plaintiff has driven through the "stop-and-go" and taken precautionary measures to avoid any collision.

[17] The higher court has described a proper lookout as entailing a continuous scanning of the road ahead, from side to side, for obstructions or potential obstructions.[1] This will apply to any driver who attempt to or execute a U-turn on any road. It is patently clear that the insured driver did not keep a proper lookout on the day in question. He was not aware about what was happening around him. No evidence was led as to when last did he look in the direction of the "stop-and-go" checkpoint to ensure that the situation is still the same as at the time he set it up.

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[1] **Nogude v Union and South West Africa Insurance Co Ltd 1975 (3) SA 685 (A) at 688A**

[18] The alternative defence in this matter is that of contributory negligence. The submission is that in the event a finding is made in favour of the plaintiff, there must also be a finding that the plaintiff contributed to the occurrence of the collision by not exercising a proper lookout.

[19] This contention is not supported by evidence that was led in this matter. As stated in preceding paragraphs, the insured driver is solely to blame for the collision. He did not exercise the reasonable care and skill required of an experienced driver in his position. His actions amounted to gross negligence. The conclusion is that this argument has no merit and stand to be rejected.

[20] The plaintiff has established on a balance of probabilities that the insured driver negligently collided with his motor vehicle. This is supported by evidence led in this matter.

[21] According I make the following order:-

21.1. Judgement on the merits is entered in favour of the plaintiff with costs.

M. A. MATHEBULA, J

On behalf of the Plaintiff: Adv. K. F. Pieterse

Instructed by:	Honey Attorneys BLOEMFONTEIN
On behalf of the Defendant :	Adv. S. E. Motloung
Instructed by:	Maduba Attorneys BLOEMFONTEIN

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