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**IN THE HIGH COURT OF SOUTH AFRICA GAUTENG
LOCAL DIVISION, JOHANNESBURG**

- (1) NOT REPORTABLE
- (2) NOT OF INTEREST TO OTHER JUDGES
- (3) REVISED.

CASE NO: 64522/2016

6/2/2018

In the matter between:

VAN DER WALT, L

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGEMENT

SENYATSI AJ

INTRODUCTION

1. This is a claim for damages arising out of a collision between the car driven by the Plaintiff and a truck insured by the Defendant.
2. At the hearing of evidence, the parties agreed to have the quantum of damages postponed sine die. It was further agreed by the parties' Counsels that the evidence to be adduced would pertain to the merits

only. Accordingly, the judgment deals with the merits of the claim.

FACTS

3. The Plaintiff, Mrs Van der Walt was travelling from Rustenburg on 30 September 2015 on the N4 high way. She was heading westwards and it was at 7pm when she left her home to visit her mother's friend out of Rustenburg.
4. The Plaintiff was driving a Toyota Yaris black in colour with registration [...] and was alone. She had switched on her headlights, as it was dark. The traffic on the N4 high was not congested.
5. As she was driving between Rustenburg and Swasttruggens at 120km per hour, she noted that there were two oncoming cars from the opposite direction. She could see that one of those cars was a truck.
6. As she approached to pass the truck, she collided with the rear right wheel of the trailer of the truck. She lost consciousness and was in comma for five days in hospital.
7. The police took a statement about the collision from her seven months after the collision. In her statement to the police, she averred that the truck caused the collision by creating the wind that caused her car to loose control.
8. In her evidence in chief, the Plaintiff stated that the truck and the car from the opposite side drove too close to the yellow line. This yellow line is the one depicting the edge of the road and can serve as an emergency lane. The line is on the extreme side of both lanes of the road.
9. The Plaintiff stated furthermore that she could not remember how the collision took place as the collision happened so quickly.
10. She could not explain the material contradiction in her evidence in chief when she failed to mention that the collision took place because of the wind created by the truck with registration number [...] driven by Mr T P Tshabalala.
11. The Plaintiff did not call any witness to corporate her evidence and she closed her case after giving evidence.

12. Mr Masombuka on behalf of the Defendant argued that absolution from the instance had to be granted, as no court applying its mind reasonably to the evidence would find that the prima facie case had been made and may find for the Plaintiff.
13. Judgment was reserved.

ISSUE FOR DETERMINATION

14. The issue for determination is whether the application for absolution from the instance should be favourably considered given the evidence adduced thus far by the Plaintiff.

LEGAL PRINCIPLES

15. The test for absolution from the instance at the end of the Plaintiff's case is well established in our law. In *Gordon Lloyd Page & Associates v Rivera and Another*,¹ the Supreme Court of Appeal stated as follows in dealing with the test:

"The test for absolution to be applied by trial Court at the end of a Plaintiff's case was formulated in Claude Neon Lights (SA) Ltd v Daniel 1976 (4) SA 403 at 409G-H in these terms:-

If absolution from the instance is sought at the end of the Plaintiff's case, the test to be applied is not whether the evidence led by the Plaintiff establishes what would finally be required or to be established, but whether there is evidence upon which a Court, applying its mind reasonably to such evidence, could or might (not should nor ought to) find for the Plaintiff...

This implies that a Plaintiff has to make a prima facie case - in the sense that there is evidence relating to all elements of the claim to survive

¹ 2001 (1) SA 88 (SCA) AT 92E-93A

absolution because without such evidence no court could find for the Plaintiff... As far as inferences from the evidence are concerned, the inference relied upon by the Plaintiff must be reasonable one, not the only reasonable one... Having said this, absolution at the end of a Plaintiff's case, in the ordinary course of events, will nevertheless be granted sparingly but when the occasion arises a Court should order it in the interest of justice".

16. Should the court at the end of the evidence adduced by the Plaintiff be certain whether the Plaintiff's evidence has satisfied the test whether at the end of the Plaintiff's evidence, apply its mind reasonably to the evidence that it can find in favour of the Plaintiff, the application for absolution ought to be refused.²

17. I have been referred to *Jadezweni v Santam Insurance Co. Ltd and Another*³ where the Court said the following:-

"...if either of the vehicles was to cross the centre line at the time of the collision the inference would be that the driver of the vehicle was negligent."

18. In applying the above principles to the instate case, I am not persuaded that upon applying my mind reasonably to the facts, I am satisfied that I can find for the Plaintiff. The Plaintiff has two versions on how the collision took place. Firstly in the statement to the police that the truck blew wind causing her loss of control of her car, which resulted in the collision. Secondly, she does not remember how the collision took place as it happened too quickly.
19. She stated furthermore that prior to the collision the truck coming from the opposite direction was driving close to the yellow line. It was not clear whether she referred to the yellow line of the opposite lane, which is the truck's lane or the lane she was travelling in. She stated that she does not

² See *Build-A-Brick BK en 'n Ander v Eskom* 1996(1) SA 115 (O) at 123A-E

remember what happened thereafter as she collided with the rear right wheel of the trailer of the truck. It is difficult to even apply the principles in *Jadezweni v Santam* as the point of impact has not been established through her own evidence and no inference can therefore be made.

20. Mr Masombuka questioned her about the contradiction of her evidence and the statement given to the police that her car was blown off by wind created by the truck, which caused her to lose control and collide with the truck. As stated, she failed to provide an answer to this contradiction.
21. The diagram and the sketch handed in Court were not helpful either. They were not drawn to scale and not even drawn at the time of the collision. We do not know which of the two drivers crossed the centre line and encroached on the other's lane.
22. No expert evidence was adduced on to how the collision possibly took place. The *Jadezweni v Santam Insurance Co. Ltd* principles on presumption of negligence if the collision was as a result of either of the drivers crossing the centre line will not find application in the instant matter. No evidence was adduced stating that the truck had crossed the centre line.
23. Following the application of the principles to the instant matter, I hold the view that the application for absolution must succeed.

ORDER

24. In the result the following order is made:-

- a) Application for absolution from the instant is granted with costs.

M L SENYATSI AJ

ACTING JUDGE OF THE HIGH COURT

OF SOUTH AFRICA

³ 1980 (4) SA 310(C)

**GAUTENG
PRETORIA**

On behalf of the Plaintiff :

**MR L VAN DER WALT
INSTRUCTED BY
ADAMS & ADAMS ATTORNEYS,
PRETORIA**

On behalf of the Plaintiff

**MR A MASOMBUKA
INSTRUCTED BY
ADAMS & ADAMS ATTORNEYS,
PRETORIA**