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

CASE NO: 15181/2012

REPORTABLE: NO

OF INTEREST OTHER JUDGES: NO

DATE: 28/3/2017

In the matter between:

TSHEDIMO LUDWICK MARUPENG

PLAINTIFF

And

ROAD ACCIDENT FUND

DEFENDANT

Heard: 12 October 2016

Delivered: 28 March 2017

JUDGMENT

Molahlehi J

Introduction

[1] This is an action proceedings in terms of which the plaintiff claims damages arising from the accident which took place on the 2 May 2010 between his car, a Peugeot with the registration number: [N...] and the red Toyota, registration number [T...].

[2] The matter concerns the merit only, the parties having agreed and it being so ordered

that the issue of quantum would be dealt with later depending the outcome these proceedings.

[3] The plaintiff claims damages arising from the body injuries he suffered as result of the accident allegedly caused by the negligent driving of the insured driver.

[4] The defendant on the other hand disputed the allegation and claims that the plaintiff is the sole cause of the accident. In the alternative the defendant contends that the plaintiffs negligent driving of his motor car contributed to the accident.

[5] The plaintiff testified on his behalf and was the only witness in that regard.

In brief his testimony is that on the day of the accident he drove with his friend to a petrol garage to draw money from the auto bank machine. He stopped at same point next to the palisade fence and was intending to take a walk across to the garage. His friend advised him that the road was full of mud. They then decided to drive towards the high way apparently in order to approach the garage from a different direction.

[6] As they were driving on the speed not exceeding 60km per hour there suddenly came a red Toyota driven by the insured driver. The plaintiff testify that prior to the impact all what he heard was his friend saying "what is this person is doing."

[7] The plaintiff lost consciousness due to the injuries he suffered is a result of the accident. He was hospitalised for three months. His friend who was a passenger in the car passed away.

[8] The plaintiff denied during cross examination that he was charged with culpable homicide arising from the accident. He, however, conceded that the police did take a statement from him after the accident. He also testified that at the time of making the statement to the police he was still not well, and could not remember most of what happened on the day in question. He began to regain his memory towards the late 2011, beginning of 2012.

[9] It was put to him that he was the cause of the accident in that he bumped on a taxi

Quantum Toyota first and therefore the red Toyota.

[10] The case of the defendant is based on the testimony of the accident reconstruction expert who was the only witness to testify for the defendant. Its case is based on the inference mainly drawn from the photos taken by the police which state that the accident occurred on the lane on which the Toyota was travelling in.

[11] Mr. Grobblers, the defendant's expert witness, testified based on the report he compiled on the 25 August 2013. His report is based on the documents which were submitted to him. He was not present at the time the accident occurred. He only visited the scene of the accident two years after the accident. He went there alone. In the summary of his report he state the following:

"a) The Quantum was travelling towards Thembisa (northbound) and the red Toyota was travelling some distance behind it in the same direction.

b) The Peugeot was travelling towards Kempton Park (southbound) drifted/moved/swerved into the lane of the Quantum and collided with its (the Quantum's) right rear side.

c) The Peugeot continued further into this lane and collided with the right front to right offset front impact with the with the red Toyota, in the lane of travel of the red Toyota. The red Toyota was impacted off the road on its correct side as a result of tis collision of the road to rest in its correct lane.

d) Sometime after the vehicles had come to rest, the white Toyota, travelling towards Kempton Park, collided into the right side of the Peugeot where it had come to rest."

[12] The conclusion to drawn from the above is that Mr Grobblers's version has no factual basis as what he said I is not supported by admissible evidence. The hearsay evidence he relied in drawing his report was not corroborated by any other reliable evidence.

[13] In light of the above I am of the opinion that the version of the defendant stands to be

rejected. The version of the plaintiff on the other hand was clear and consistent. I see no reason why such version should not be accepted being true.

[14]The probabilities accordingly favours the finding that the insured driver was the cause of the accident. As concerning the issue of contributory negligence the defendant presented no evidence in that regard. I see no reason in the circumstances why costs should not follow the results.

Order

[15] In the premises the following order is made:

15.1 The judgment is entered in favour of the plaintiff

15.2 The matter is postponed sine die for the determination of the quantum.

15.3 The defendant is to pay the costs of the plaintiff.

E Molahlehi

Judge of the South Gauteng

High Court

APPEARANCES:

APPLICANT: Phukubye Attorneys

RESPONDENT: Tsebane Molaba Inc