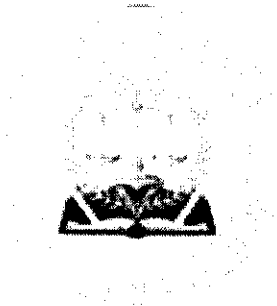


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 76180/2014

(1)	<u>REPORTABLE: YES / NO</u>
(2)	<u>OF INTEREST TO OTHER JUDGES: YES/NO</u>
(3)	<u>REVISED.</u>
<u>03/05/17</u> DATE	
 SIGNATURE	

3/5/2017

In the matter between:

J L STOLS

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

J U D G M E N T

TEFFO, J:

[1] The plaintiff sued the defendant for damages arising from a motor vehicle accident which occurred on 28 March 2013. At the time of the accident the plaintiff was the driver of a motor vehicle which overturned after he lost control of it. He alleges on paragraph 4 of the particulars of claim that

an identified motor vehicle driven by an identified driver ("*the insured vehicle*") caused an obstruction to the motor vehicle he was driving and this resulted in the motor vehicle he was driving leaving the road surface and overturning.

[2] I was only requested to determine the issue of liability in the matter.

[3] The following facts are common cause and not in dispute between the parties:

- 3.1 The collision occurred on 28 March 2013 at approximately 05h45 on the N12 highway between Delmas and Sundra.
- 3.2 The N12 highway between Delmas and Sundra consists of two lanes in either direction.
- 3.3 There were roadworks on the left lane of the motor vehicles which were travelling from Johannesburg to Delmas.
- 3.4 The speed limit on the N12 highway is 120 km/h and on the single lane where the plaintiff was travelling, it was 60 km/h because of the roadworks.
- 3.5 There is some wide grass in between the two roads opposite to each other.

[4] Only the plaintiff testified in support of his case and the defendant called one Mr Skhumbuzo Zulu as the only witness.

The evidence

[5] The evidence of the plaintiff was briefly as follows: On 28 March 2013 between 05h00 and 05h45 he was travelling from Johannesburg to Delmas on the N12 highway. There were road works on the left lane of the direction he was travelling. The tarred surface of the road on the left lane from the edge up to where the left lane meets with the right lane, was removed. When he approached the road works, he moved to the right and as he was approaching, he reduced the speed. His headlights were on dim. There was also oncoming traffic from the opposite direction. As he was approaching, connecting to a single lane because the left lane was closed, he then saw something on the road. A female passenger who was sitting next to him in the motor vehicle shouted his name out and as she was screaming, he switched the motor vehicle lights on bright. He immediately saw a chevron board right in front of him. As a result he swerved the motor vehicle from the right lane to the left lane. He tried to apply the brakes but the object was very close. He could no longer remember what happened thereafter.

[6] As he came closer he realised that the chevron board that he saw was a stationary trailer which was loaded with things. When he first saw it, he was at a distance of ± 30 metres away from it. There was no expectation that such an object could be on the road and there were no road signs that gave him a

warning that there was something ahead. He could not do anything to avoid the collision.

[7] Under cross-examination he testified that he cannot recall the speed he was driving before he reached the road works but he reduced his speed as he was approaching the road works. He disputed that he could have been travelling at an excessive speed when he approached the road works but could not explain why he said so. He admitted that when the passenger who was seated next to him in the motor vehicle shouted his name out, she was warning him that he should watch out as there was a trailer ahead. He also denied that a driver who was driving on the same road at a reasonable speed of ± 60 km/h on that day, could have been able to avoid the accident.

Evidence of the defendant

[8] Mr Skhumbuzo Zulu testified as follows: On 28 March 2013 in the early hours of the morning (not sure about the exact time), he was transporting workers and travelling on the N12 highway from Witbank to Johannesburg. He together with his crew were to reach the head office at Jetpark around 07h00. He had just passed Delmas and as he was approaching, he saw a motor vehicle rolling in front of the motor vehicle he was driving. At that time he was travelling in the opposite direction on the fast lane. He applied the brakes. He also realised that the motor vehicle had already ejected two of its occupants. As he was trying to avoid colliding with the people who were ejected from the rolling motor vehicle, the motor vehicle

he was driving was hit by the tyre that dislocated from the rolling motor vehicle. He got frightened and did not stop the motor vehicle he was driving. He reduced speed from 120 to 80 km/h, drove slowly until he reached the head office. He eventually reported the accident at Leandra police station.

[9] Under cross-examination he testified that apart from observing the rolling motor vehicle, he did not see anything in front or behind it.

Submissions by the parties

[10] Counsel for the plaintiff correctly conceded in my view that the plaintiff could have been contributory negligent. He correctly pointed out that the plaintiff could not explain certain things in his evidence, viz, he could not tell at what speed was he travelling when he approached the road marks and at the time of the collision. He submitted that it cannot be said that the plaintiff was in the wrong in that the trailer was stationary on the road and there were no signs that it was there. He further submitted that taking the evidence into account, there was a possibility that the trailer could cause an accident and it was a dangerous manoeuvre. He argued that as a result the plaintiff elected to swerve to the left and not to the right. He could not do anything taking into account the short space of time he had under the circumstances, he accordingly pointed out. He proposed a reduction of the plaintiff's damages to the extent of his contributory negligence by 20%.

[11] Counsel for the defendant submitted that the evidence of Mr Zulu did not challenge the evidence of the plaintiff. He argued that from the plaintiff's

evidence it is clear that he saw the object at a distance of ± 30 metres. The plaintiff should have foreseen that when he approached the road where road works were in progress at that time in the morning, he should not have driven at an excessive speed, so he argued. According to him the plaintiff should have taken precautionary measures to avoid the collision. He did not. He could not answer certain questions when he testified. He said he was not sure. At a distance of ± 30 metres the plaintiff was able to see the stationary trailer. He pointed out that the fact that the plaintiff lost control of the motor vehicle he was driving, is an indication that he was driving at an excessive speed. According to him it is highly improbable that the motor vehicle driven by the plaintiff was driven at 60 km/h at the time of the accident and that a reasonable driver should have reduced the speed of the motor vehicle under the circumstances. He proposed a reduction of the plaintiff's damages by 50%.

Assessment of evidence

[12] The plaintiff did not acquit himself well as a witness. He could not answer certain questions which were very crucial to his evidence. He was reticent, calculating and evasive. He could not tell at what speed he was driving when he approached the road works and also at the time of the accident. It is clear from the evidence that on the road where the road works started, the speed limit was 60 km/h. He testified that he reduced the speed as he was approaching the road works and moving to the right lane but surely given the impact of the collision resulting in him losing control of the motor

vehicle and it overturning, it is highly improbable that he had reduced his speed as he testified and/or that he drove at 60 km/h at the time. One could only surmise that the worst could have happened had the passenger not have warned him of the object that was ahead of them.

[13] Mr Zulu whom I regard as an independent witness made a good impression to the court. His evidence was clear and straight to the point. It was consistent, coherent and logical. He did not contradict himself. I accept his evidence as correct and credible. This evidence is important in that it gave the court a clear picture as to what could have happened that led to the accident and it also answered questions which the plaintiff himself could not answer. The following crucial information emerged from Mr Zulu's evidence: he saw the motor vehicle driven by the plaintiff rolling in front of the motor vehicle he was driving. As he was reducing his speed to avoid colliding with the rolling motor vehicle, he noticed that it had already ejected two of its occupants. He further testified that he avoided colliding with the passengers ejected from the rolling motor vehicle and in the process, he observed a dislocated tyre from the rolling motor vehicle.

[14] The plaintiff testified that he saw the trailer at a distance of ± 30 metres. There were road works on the road where he was travelling and the speed limit on that road was 60 km/h. The reflectors of the chevron and the signage of the speed limit are warnings on the road to any driver to slow down for whatever reason. In this instance he was alerted by a signage of a speed limit of 60 km/h, which was conspicuous enough, to slow down. His version

that he slowed down when he approached the road works and at the time of the collision is far-fetched taking into account that he failed to control the motor vehicle he was driving, he lost control of it as a result of which it overturned, the impact thereof resulting in the dislocation of one of the tyres and the ejection of two of its occupants. The dismemberment of the parts of the motor vehicle he was driving and the ejection of the occupants thereof attest to the speed and the impact with which the accident occurred. If indeed he had reduced his speed at the time as he testified or drove at a speed of 60 km/h when he approached the road works and saw the trailer at a distance of ± 30 metres, the damage thereof would have been minimal. It would have been far less than what it is and perhaps he would have been able to avoid the collision.

[15] In *Rondalia Assurance Corporation of SA Ltd v Mtkombeni* 1979 (3) SA 967 (A) the court held as follows:

"Where earlier cases lay down principles relating to the duties of a motorist entering a dust cloud, they are of assistance. However, each case in which it is said that a motorist is negligent must be decided on its own facts. Negligence can only be attributed by examining the facts of each case. Moreover the court does not draw inferences of negligence on a piecemeal approach. The court must consider the totality of the facts and then decide whether the driver has exercised the standard of conduct which the law requires. The standard of care so required is that which a reasonable man would exercise in the circumstances and that degree of care will vary according to circumstances. In all cases the question is whether the driver should reasonably in the circumstances have foreseen the possibility of a collision."

[16] *Boberg* correctly observes that the question of whether the reasonable person in the position of the wrongdoer would have acted differently in order to prevent damage may be answered in a meaningful way by reference to the consequence(s) that were indeed reasonably foreseeable (and not merely by reference to damage in general) as required by the abstract approach. It is only when these consequences of an act are considered that one can judiciously decide what steps or precautions, (if any), the reasonable person would have taken in order to guard against such consequences (*Boberg Delict* 276 ff 381-382 and *Neethling and Potgieter* 2001 THRHR 476).

[17] It is clear from the totality of the evidence that the plaintiff drove at an excessive speed when he approached the N12 road where there were road works. He admitted in his evidence that the speed limit on that road where there were road works was 60 km/h. A reasonable man in his position would have approached that road at a lesser speed limit and have foreseen that given the speed limit, the road works and the chevron signage at a distance of ± 30 km/h, driving at an excessive speed on that road would have resulted in a collision. He should have taken a proper lookout and kept proper control of the motor vehicle he was driving. His failure to do so and not being able to pull up within the range of his vision when he travelled on that road with the conditions thereof at the time, clearly shows that he was negligent (see *Manderson v Century Insurance Co Ltd* 1951 (1) SA 533 (AD)).

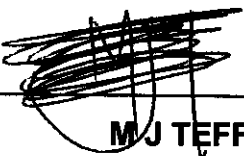
[18] In my view taking into account the totality of the evidence I do not agree that the plaintiff was 20% to blame for the collision as alluded to by his

counsel. I am inclined to accept the submission by counsel for the defendant that the plaintiff was 50% to blame for the collision for the reasons advanced above. I find that the plaintiff was indeed contributory negligent in causing the accident and consequently the damages he has suffered have to be apportioned and reduced in terms of the Apportionment of Damages Act to the extent of the degree at which he was contributory negligent.

[19] In the result I make the following order:

19.1 The defendant is liable to compensate 50% of the plaintiff's proven or agreed damages arising from an accident which occurred on 28 March 2013.

19.2 The defendant is further ordered to pay the costs of the action.



M J TEFFO
JUDGE OF THE HIGH COURT
(GAUTENG DIVISION, PRETORIA)

APPEARANCES

FOR THE PLAINTIFF

M D MATSETELA

INSTRUCTED BY

SAVAGE JOOSTE & ADAMS INC

FOR THE DEFENDANT

A VAN DER WESTHUIZEN

INSTRUCTED BY

DIALE MOGASHOA ATTORNEYS

DATE OF JUDGMENT

3 MAY 2017