



IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN

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

Case number: 509/2017

In the matter between:

N.M. MRAWUZELI

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

HEARD ON: 13 SEPTEMBER 2017

JUDGMENT BY: CHESIWE, AJ

DELIVERED ON: 21 SEPTEMBER 2017

- [1] The plaintiff has instituted action against the defendant for damages arising from injuries she sustained in a motor vehicle accident which occurred on 1 January 2016, at approximately 21:00 on a Friday.
- [2] The driver of the insured vehicle with registration number [B...] was a Mr Sekwena.
- [3] The plaintiff was a pedestrian at the time of the collision when the insured driver collided with the plaintiff.
- [4] At the commencement of the trial, and by agreement between the parties it was agreed that the merits and quantum were to be separated. Therefore the only issue to be determined is that of liability.
- [5] The evidence was brief and straightforward. The plaintiff was the only witness at the trial and the defendant closed its case without leading any evidence.
- [6] The plaintiff, a 37 year old female working at a crèche, testified that on the 1 January 2016 , which was on a Friday at about 21:00, she was about to cross the road in Seiso Street. She looked right and left and then again looked right and left again before attempting to cross the road. She had two plastic bags which she was carrying and had put these bags down to rest. As she was about to pick up these plastic bags in order to cross the road, she heard people screaming, she could not move as she was suddenly hit by the car. She remembers that when she regained consciousness at the hospital it was on a Sunday.

- [7] She further testified that she could not have ran away or avoided the accident as she was still standing on the pavement when the vehicle hit her. She was admitted at Pelonomi Hospital for a week.
- [8] After her discharge, she went to the SAPS at Mangaung and there she was informed that there were no records of her accident. She then went to Park Road SAPS, where she was escorted back to Mangaung SAPS and her records of the accident were found.
- [9] She said she was told by a police officer at Mangaung Police Station, a Mr Molawa, as to what happened on the day of the accident and that the insured driver was under the influence of alcohol. However, Mr Molawa did not come back to her in order to finalise the information he gave her about the insured driver.
- [10] The defendant did not cross-examine the plaintiff. The plaintiff closed its case.
- [11] The defendant did not call witnesses and closed its case.
- [12] The plaintiff's version was not tested. The closing arguments from of the plaintiff were basically that: the plaintiff was a pedestrian and sustained injuries and the insured driver was under the influence of alcohol. The plaintiff submitted that the plaintiff be awarded 100% for the proven damages.
- [13] The defendant did not make any closing arguments.

[14] It is trite law that the onus is on the plaintiff to prove on the balance of probabilities that the injuries were caused as a result of the negligent driving of the insured motor vehicle.¹

[15] The plaintiff has to show and prove that there was contact between the insured driver's motor vehicle and herself. Indeed section 17(1)(b) of the Road Accident Fund Act 56 of 1996 (Act) provides that:

“17(1) The Fund or an agent shall-

- (a) subject to this Act, in the case of a claim for compensation under this section arising from the driving of a motor vehicle where the identity of the owner or the driver thereof has been established;
- (b) ...

be obliged to compensate any person (the third party) for any loss or damage which the third party has suffered as a result of any bodily injury to himself or herself...caused by or arising from the driving of a motor vehicle by any person at any place within the Republic, if the injury or death is due to the negligence or other wrongful act of the driver or of the owner of the motor vehicle or of his or her employee in the performance of the employee's duties as employee...”

[16] Thus the defendant is responsible to deal with all claims resulting from injuries sustained as a result of the negligent and unlawful driving of a motor vehicle. In this instance it was alleged that the insured driver was drunk, however, no evidence was lead to that effect.

¹*Laas v Road Accident Fund* 2012 (1) SA 610 (GNP)

[17] In **Engelbrecht v Road Accident Fund and Another**² Kondile, AJ stated that:

“The applicant's current claim has been created by a statute, namely, the Road Accident Fund Act. The Act can be employed by anyone who is injured in consequence of the negligent driving of a vehicle in a hit-and-run situation to claim compensation for any loss sustained. The Act is the latest statute in a long line of national legislation beginning with the Motor Vehicle Insurance Act 29 of 1942. The stated primary concern of the Legislature in enacting these statutes is, and has always been, 'to give the greatest possible protection . . . to persons who have suffered loss through a negligent or unlawful act on the part of the driver or owner of a motor vehicle’”³

[18] In the present matter, the credible evidence of the plaintiff was uncontested. The plaintiff gave a detailed description of the incident. She explained to the court in detail and showed on the photos marked 1, 2 and 3 where she was standing and in which direction the vehicle came from when it hit her on the pavement. The evidence was further corroborated by the police accident report which stated that:

“Vehicle A was travelling straight on Seiso Road when it hit the pedestrian that was walking on the side of the road”.

[19] The plaintiff was the only witness in the trial. It was not suggested or put to her by the defendant that the accident as described by her did not occur. Neither was it put to her that the insured driver was not negligent. The plaintiff was a pedestrian after careful scrutiny

² *Engelbrecht v Road Accident Fund and Another* 2007 (6) SA 96 (CC)

³ *Ibid* para [23]. See also *Aetna Insurance Co v Minister of Justice* 1960 (3) SA 273 (A) at 285E – F and *Mbele v Road Accident Fund* 2017 (2) SA 34 (SCA)

of the plaintiff's evidence I could find no well-founded suggestion that the plaintiff was negligent or engaged in a fraudulent claim.

- [20] In determining the causal nexus between the negligent driving of the insured driver and the injuries sustained by the plaintiff these being:

Fractured pelvis, lacerations on left side of face, loss of 2 front lower teeth, chipped 2 front teeth.

- [21] In **Miller v Road Accident Fund**⁴ Van Oosten J, formulated the inquiry determining the *causal nexus* between the negligent driving of the driver of the insured vehicle and the injuries sustained by the plaintiff as follows:

"Two distinct enquiries arise, which were formulated by Corbett CJ in *International Shipping Co (Pty) Ltd v Bentley* 1990 (1) SA 680 (A) at 700E–I as follows:

"The first is a factual one and relates to the question as to whether defendant's causation'. The enquiry as to factual causation is generally conducted by applying the so-called 'but-for' test, which is designed to determine whether a postulated cause can be identified as a *causa sine qua non* of the loss in question...The second enquiry then arises viz whether the wrongful act is linked sufficiently closely or directly to the loss for legal liability to ensue or whether, as it is said, the loss is too remote. This is basically a juridical problem in the solution of which considerations of policy may play a part. This is sometimes called 'legal causation'.⁵

- [22] I therefore conclude that the plaintiff ought to succeed to recover her full proven damages against the defendant.

⁴ *Miller v RAF* [1999] 4 All SA 560 (W)

⁵ *Ibid* at 565

ORDER

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

1. The defendant shall be 100% liable for the plaintiffs proven or agreed damages, consequent upon the injuries sustained during the accident on 1 January 2016.
2. The defendant shall pay the costs of the trial on merits.
3. The defendant pays the costs of the translator.
4. The determination of the plaintiff's quantum on damages is postponed to the pre-trial date of 26 January 2018.
5. The draft order marked "X" as amended and initialled by me is made an order of court.

CHESIWE, AJ

On behalf of plaintiff:
Instructed by:

Du Plooy Attorneys
VZLR Incorporated
Pretoria

On behalf of defendant:
Instructed by:

Maduba Attorneys
Maduba Attorneys
Bloemfontein