



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

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

Case number: A204/2014

In the matter between:

HENDRIK JOHANNES POTGIETER

Appellant

and

ANNA SUSANNA LINGENFELDER

Respondent

CORAM: RAMPAL, J *et* DAFFUE, J

JUDGMENT BY: DAFFUE, J

HEARD ON: 17 OCTOBER 2016

DELIVERED ON: 24 NOVEMBER 2016

I INTRODUCTION

- [1] A motor vehicle collision on 28 May 2010 between a truck and trailer and a light motor vehicle (“LDV”) on the N1, south of

Bloemfontein near the Tierpoort dam exit led to the litigation in *casu*. This is an appeal against the judgment of the magistrate's court, Bloemfontein finding that defendant was solely responsible for the collision.

II THE PARTIES

[2] Appellant is Mr H J Potgieter, the unsuccessful defendant in the court *a quo*.

[3] Respondent is Ms A S Lingenfelder, the successful plaintiff in the court *a quo*.

[4] I shall refer to the parties as in the court *a quo* in order to avoid confusion.

III ORDER OF THE COURT A QUO

[5] The merits and *quantum* were separated and after hearing evidence on the merits, the court *a quo* made the following finding:

“Na oorweging van die getuienis, bevind die hof dat die botsing waaroor dit in die onderhawige saak gehandel het, veroorsaak is deur die uitsluitlike nalatigheid van die verweerder. Die teeneis word afgewys. Uitgestel *sine die* vir beregting van quantum en koste.”

Hereafter the parties settled the *quantum* of plaintiff's claim in the amount of R45 200,00 together with interest thereon whereupon the court *a quo* made an appropriate order and also held

defendant liable for payment of plaintiff's taxed or agreed party and party costs. This order was made on 19 May 2014.

IV **BRIEF SUMMARY OF THE EVIDENCE**

- [6] The evidence tendered will be discussed in more detail *infra* when I evaluate the court *a quo*'s reasons and submissions by the parties. However a brief summary of the evidence is required to put the reader in the picture.
- [7] The driver of the plaintiff's truck was Mr L Stander ("Stander"). He was at all relevant times followed by Mr Dennis le Roux ("Le Roux") who was also driving a truck. They were travelling southwards on the N1 towards the Eastern Cape after off-loading freight at Fouriesburg in the Eastern Free State. (The reference to Fauresmith in certain places of the record and in the evidence of Stander is objectively speaking incorrect. It is common cause that plaintiff resided in the district of Fouriesburg and the goods transported had been off-loaded on her farm.
- [8] Shortly after sunset a collision occurred on the N1 just before the Tierpoort dam off-ramp for vehicles coming from Bloemfontein. The headlamps of the vehicles were switched on. Neither of the two trucks driven by Stander and Le Roux respectively was at any relevant stage in its incorrect side of the road. Defendant's LDV, approaching from the front and thus moving in a northern direction towards Bloemfontein, veered to its right-hand-side, crossed the white centre lines demarcating the middle of the road and initially came in collision with plaintiff's truck whereupon it

spun out of control, hitting plaintiff's trailer and thereafter Le Roux's truck. The LDV came to a standstill across the yellow line on its incorrect side of the road. There is no conclusive proof of an exact area of collision, not even to speak of a point of collision, based on any real evidence and the court *a quo* had to rely on the *viva voce* evidence of the eyewitnesses in respect of the movement of the vehicles and the removal of debris from the road afterwards.

[9] According to Stander the point of collision was close to the yellow line on his correct side of the road, whilst Le Roux was uncertain in this regard as he did not have a clear view to the front of plaintiff's truck. However, he was adamant that the collision occurred in Stander's correct side of the road and thus to the left of the white centre lines as they were travelling. Defendant, on the other hand, has no memory of what happened and was of no assistance. His son, Mr Potgieter Jnr, ("Potgieter Jnr") visited the scene afterwards and based on his observations tried to persuade the court that the impact and/or point of collision was in defendant's correct side of the road.

[10] The court *a quo* was satisfied that the various witnesses could be regarded as credible and honest and Le Roux in particular made a good impression on her. In fact, Le Roux's evidence was regarded to be beyond reproach by Mr Schuurman who appeared for defendant in the court *a quo* and Mr Snellenburg who appeared in the appeal on behalf of defendant before us. They accepted that he was a good and credible witness.

V GROUND OF APPEAL

[11] Defendant relies on not less than seventeen grounds of appeal. It is not my intention to quote these, but I shall do my best to summarise the essential grounds of appeal. According to defendant the court *a quo* erred in the following respects:

- 11.1 In finding that the collision occurred in the eastern side of the road, i.e. in Stander and Le Roux's correct side of the road, or stated otherwise, in the lane for traffic from Bloemfontein to Cape Town, whilst it should have found that the collision occurred in defendant's lane, i.e. in the lane of traffic travelling from south to north.
- 11.2 In not considering material contradictions in the versions of Stander and Le Roux and in finding that Stander was a credible witness notwithstanding the fact that he was contradicted by Le Roux; that Stander's version was improbable and overall not credible.
- 11.3 In not making a negative deduction insofar as plaintiff failed to call the passengers in her truck.
- 11.4 In finding that Potgieter Jnr tried to reconstruct the collision, and in doing so failed to take photographs of the spiral oil spillage allegedly starting on defendant's correct side of the road and continuing to the position where defendant's LDV came to a standstill.
- 11.5 In concluding that the position of the LDV after the collision is reconcilable with the version of Stander and Le Roux that the collision occurred in Stander's correct lane of traffic.

- 11.6 To find that Potgieter Jnr's version as to the point of collision was improbable.
- 11.7 To place too much emphasis on the damages caused to the right-hand-side of the two trucks in reasoning where the collision occurred, especially bearing in mind that Le Roux testified that the LDV was spinning out of control in his direction.

VI APPLICABLE LEGAL PRINCIPLES

- [12] It is an established principle that where an appeal is lodged against a trial court's findings of fact the court of appeal must take into account that that court was in a more favourable position than itself to form a judgment. Even when inferences from proven facts are in issue the court *a quo* may also be in a more favourable position than the court of appeal because it is better able to judge what is probable or improbable in the light of its observations of witnesses who have appeared before it. Therefore if there are no misdirections on fact a court of appeal assumes that the court *a quo*'s findings are correct and will accept these findings unless it is convinced that these are wrong. See **R v Dhlumayo and Another** 1948 (2) SA 677 (AD) at 705 to 706. Therefore in order to interfere with the court *a quo*'s judgment it has to be established that there were misdirections of fact, either where reasons on their face are unsatisfactory or where the record shows them to be such. See also **S v Monyane and Others** 2008 (1) SACR 543 (SCA) at para [15] where the SCA stated that it is only in exceptional cases

that it would be entitled to interfere with the trial court's evaluation of oral evidence.

- [13] I accept that the advantages which a trial court enjoys should not be over-emphasised "lest the appellant's right to appeal becomes illusory", as mentioned in **President of the Republic of South Africa and Others v South African Rugby Football Union and Others** 2000 (1) SA 1 (CC) at para [79] and the CC continued to state that the truthfulness or untruthfulness of a witness can rarely be determined by considering demeanour alone without regard to other factors including, especially, the probabilities.
- [14] Stander was criticised for making contradictory and improbable estimates. This is not an unusual feature when the evidence of eyewitnesses is considered. In motor vehicle collision cases the respective drivers and eyewitness are without exception requested to estimate aspects such as speed, duration and distance. It is obviously necessary to obtain clarification from witnesses, but there can be no doubt that it is notoriously difficult for anyone to make accurate estimates in the proverbial split second and/or in the agony of the moment. See **Olivier v Rondalia Versekeringsmaatskappy Van SA Bpk** 1979 (3) SA 20 (AD) at 26-27 and **Rodrigues v SA Mutual and General Insurance** 1981 (2) SA 274 (AD) at 279 and 280. A strictly mathematical approach, although undoubtedly very useful as a check, can rarely be applied as an absolute test in collision cases since any mathematical calculation depends on exact positions and speeds whereas in truth these are merely estimates almost invariably made under circumstances wholly unfavourable to

accuracy. See Van der Westhuizen v SA Liberal Insurance Co 1949 (3) SA 160 (C) at 168 quoted with approval in Diale v Commercial Union Assurance Co of SA Ltd 1975 (4) SA 572 (AD) at 577A.

- [15] I wish to quote the following from Cooper, *Delictual Liability in Motor Law*, 1996 ed, vol 2 at 471, relying *inter alia* on President Insurance v Tshabalala 1981 (1) SA 1016 (A), Kapp v Protea Ass 1981 (3) SA 168 (A) and Marine & Trade Ins v Van der Schyff 1972 (1) SA 26 (A):

“In a civil case a court is obliged to determine all issues on a balance of probabilities. If on the totality of the facts, and after making due allowance for the risk of error, the court is satisfied on a balance of probabilities of the reliability of the estimates, there is no reason why it should not adopt a ‘mathematical’ approach, not merely as a ‘useful check’ but to determine the negligence issue. The many reported judgments in collision cases reflect the important role this line of reasoning plays in the determination of the negligence issue.”

- [16] It is necessary to mention aspects in respect of reaction time, taking into consideration the estimates provided by Stander in particular. Reaction time, that is the time that a driver takes to respond to any adversity, differs from person to person and

experts make provision for different reaction times when reconstructing collision scenes. Reaction time of the normal person ranges between 1 and 1.5 second. See Rodrigues *supra* at 279G where the reaction time was accepted as 1.5 second and Road Accident Fund v Grobler 2007 (6) SA 230 (SCA) where the expert allowed for reaction time of about 1 second. See footnote 1 on page 233 of the judgment.

- [17] The court *a quo* was in reality not confronted with two mutually destructive and incompatible versions as is generally the case in especially motor vehicle collisions, but in order to evaluate its reasons I shall take cognisance of the *dictum* of Cooper quoted *supra*, but also adopt the reasoning of Nienaber JA in SFW Group Ltd and Another v Martell Et Cie and Others 2003 (1) SA 11 (SCA). I quote from paragraphs 5 and 34:

“[5] The technique generally employed by courts in resolving factual disputes of this nature may conveniently be summarised as follows. To come to a conclusion on the disputed issues a court must make findings on (a) the credibility of the various factual witnesses; (b) their reliability; and (c) the probabilities. As to (a), the court's finding on the credibility of a particular witness will depend on its impression about the veracity of the witness. That in turn will depend on a variety of subsidiary factors, not necessarily in order of importance, such as (i) the witness' candour and demeanour in the witness-box, (ii) his bias, latent and blatant, (iii) internal contradictions in his evidence, (iv) external contradictions with what was pleaded or put on his behalf, or with established fact or with his own extracurial statements or actions, (v) the probability or

improbability of particular aspects of his version, (vi) the calibre and cogency of his performance compared to that of other witnesses testifying about the same incident or events. As to (b), a witness' reliability will depend, apart from the factors mentioned under (a)(ii), (iv) and (v) above, on (i) the opportunities he had to experience or observe the event in question and (ii) the quality, integrity and independence of his recall thereof. As to (c), this necessitates an analysis and evaluation of the probability or improbability of each party's version on each of the disputed issues. In the light of its assessment of (a), (b) and (c) the court will then, as a final step, determine whether the party burdened with the *onus* of proof has succeeded in discharging it. The hard case, which will doubtless be the rare one, occurs when a court's credibility findings compel it in one direction and its evaluation of the general probabilities in another. The more convincing the former, the less convincing will be the latter. But when all factors are equipoised probabilities prevail."

"[34] In assessing the probabilities, phase by phase as events unfolded, as well as comprehensively and in retrospect, the conclusion seems to me to be inescapable that of the two versions before Court as to what the parties agreed to, SFW's is the more probable. That being so, Seagrams has not succeeded in discharging the *onus* which it assumed for itself in suing for a declaratory order. It further follows that SFW's appeal must succeed."

[18] No expert witness testified *in casu*, but in light of certain deductions that were either made by Potgieter Jnr, or suggested by him should be made, I deem it apposite to mention the following. Experts are frequently called in to assist our courts, but courts are not bound by the opinion of an expert. An expert must

be called as a witness on matters calling for specialised knowledge. It is the duty of the expert to furnish the court with the necessary scientific criteria for testing the accuracy of the expert's conclusions so as to enable it to form an independent judgment by the application of these criteria to the facts proved in evidence. See **Coopers (South Africa) (Pty) Ltd v Deutsche Gesellschaft Für Schädlingsbekämpfung MBH** 1976 (3) SA 352 (A) at 370H – 372A. In the evaluation of the evidence of experts it is required to determine whether and to what extent their opinions advanced are founded on logical reasoning. See **Michael and another v Linksfield Park Clinic (Pty) Ltd and Another** 2001 (3) SA 1188 (SCA) at para [36].

- [19] In **Mapota v Santam Versekerings Maatskappy Bpk** 1977 (4) SA 515 (AD) at 527H Potgieter JA commented as follows:

“Dit is egter welbekend ... dat direkte geloofbare getuienis dikwels aanvaar kan word al sou daardie getuienis indruis teen waarskynlikhede wat voortspruit uit menslike ervaring of wetenskaplike menings. In die onderhawige geval sou, na my oordeel, die wetenskaplike mediese getuienis slegs die sterk en andersins aanvaarbare en gestaafde getuienis van appellant kan ontsenu indien daardie getuienis onteenseglik getoon het dat die redelike moontlikheid dat die ongeluk kon plaasgevind het soos deur appellant beskryf is, nie bestaan nie.”

- [20] In **Stacey v Kent** 1995 (3) SA 344 (ECD), the full bench of the Eastern Cape Division considered several *dicta* from a number of

judgments dealing with the manner in which expert evidence should be considered and concluded as follows at 350G-I:

“As pointed out in the authorities cited above, it is the duty of experts to furnish the Court with the necessary criteria for testing the accuracy of their conclusions, so as to enable the Court to form its own independent judgment by the application of those criteria to the facts proved in evidence. The mere pitting of one hypothesis against another does not constitute the discharge of the functions of an expert. The Court should also be on its guard against any tendency on the part of expert witnesses to be biased in favour of the side which calls them and an unwarranted readiness to elevate harmless or neutral facts to confirmation of preconceived theories or to dismiss facts supporting an opposing conclusion.”

- [21] Bearing in mind the quoted *dicta*, direct and credible evidence of what happened in a motor vehicle collision often carry greater weight than the opinion of an expert who had to reconstruct the event from his experience and scientific training. It is only where the direct evidence is so improbable that its reliability is impugned that an expert's opinion of what may have occurred should prevail. Having said this, in the final result a decision must be reached on the evidence as a whole. *In casu* the court *a quo* had to consider the evidence of a lay witness who was not qualified to give any opinion at all as to how the collision occurred.

VII EVALUATION OF THE COURT A QUO'S REASONS AND SUBMISSIONS BY THE PARTIES

[22] It must be mentioned at the onset that Stander testified two years and nine months and Le Roux and all other witnesses three and a half years after the collision. Clearly their memories, especially pertaining to details that cross-examiners often try to extract from witnesses, would have faded.

[23] As mentioned above everybody concerned, i.e. the presiding magistrate, Mr Schuurman, the attorney for defendant who cross-examined Le Roux, as well as Mr Snellenburg who appeared for defendant on appeal before us, were satisfied that Le Roux was a credible witness. Mr Schuurman called Le Roux “a very honest witness” and Mr Snellenburg agreed during oral argument that he was “not questionable”, that he made a “good overall impression” who gave “a fair indication of what happened.” That being the case, it should really be the end of the appeal. Although I agree that Le Roux was a credible and also reliable witness, I am also mindful of the fact that he was no doubt uncertain about some aspects as will be shown *infra*.

[24] Le Roux was adamant, notwithstanding the fact that he could not see exactly where and how the plaintiff's truck and the LDV collided with each other, that the plaintiff's truck was at all relevant times in its correct lane of travel. Mr Snellenburg tried to persuade us based on three passages in Le Roux's cross-examination that he made a material concession. The first passage read as follows: “Is it possible for you to inform the Court in

connection with the middle of the road where approximately was the impact between the two vehicles, how far was it from the solid middle, the solid line in the middle of the road? Would you say it was almost in the middle of the road or can you help us with that? I am not sure.” A bit further the following passage appears: “Now his version (Stander’s) is that prior to the impact stage he actually left, moved into the yellow area line on the left hand side of the road to avoid an accident from taking place and you say you disagree. That is not how it happened.....Basically sir all I can remember is the hopping, the hopping. From the hopping until where Mr Stander’s vehicle came to a standstill. That is all I, I can basically keep, remember. But before the hopping I cannot tell you yes he did veer off to the yellow line or he tried to swerve out. I, I will not be able to tell you that.” The third and more important passage relied on is the following: “Can you tell the Court in relation to the middle of the road where the impact between the two vehicles were (sic), the point of accident? Would you say it was very much in the middle of the road?.... Basically in the middle of the lane yes.

In the middle of?..... The lane.

The lane you were travelling in?.... Yes. Oh it is, it is it is actually difficult to say because of my following distance and the light, it was becoming dark so I would not be able to tell you it was in the middle of our lane or in the middle of the, the road on the white line or on the yellow side of the line or [indistinct].” (my underlining).

- [25] It must be remembered that the right front parts of plaintiff’s truck and the LDV were damaged as is apparent from the photographs and in particular the LDV that was not damaged from the middle to the left front. We are thus not dealing with a full frontal head-on collision. If Plaintiff’s truck was travelling less than a metre from the white centre lines, it would not be wrong to conclude that

impact occurred approximately in the middle of the road. However Le Roux was uncertain and rightly so. It could not have expected of him to indicate a point of collision as requested.

[26] The fact that Stander and Le Roux contradicted each other pertaining to the exact moment when plaintiff's truck started to move to the left and eventually entered the slipway to the Tierpoort dam and whether or not Stander applied the brakes of plaintiff's vehicle, must be seen in proper context. Le Roux stated that plaintiff's truck was at the moment of impact travelling normally in its lane whilst Stander testified that he had moved to the left and also applied brakes just prior to the collision. However the passages quoted indicate that Le Roux was uncertain of himself which is quite acceptable in the circumstances.

[27] According to the objective and common cause evidence Stander moved to his left and even exited the N1 by taking the slipway. Collisions do not occur in slow motion, but often in split-seconds. As mentioned *supra* it is extremely difficult for people to give exact accounts of what happened prior to and during a collision and in what sequence; also what measures, if any, were taken to avoid the collision. An armchair approach should be avoided in evaluating such evidence.

[28] One may even speculate that Le Roux, travelling right behind Stander, might have been mistaken (in fact, he conceded being uncertain as shown *supra*) and that plaintiff's truck started to move to the left prior to the collision, but it is also possible that

Stander was merely mistaken when he testified that he was so far to the left of the road at the point of impact as testified. Fact is that he at a stage moved to the left and also applied brakes to come to a standstill. Le Roux was also uncertain, contrary to Stander's version that he applied brakes before impact, as to whether Stander did so before impact. Speculation aside, the obvious contradictions between the two versions must be seen in proper context, but in any event does not assist defendant's case at all. The different versions are rather indicative of a lack of collusion. The court *a quo* received direct and credible evidence pertaining to the events leading to the collision and what actually happened. That evidence supported plaintiff's case 100%.

- [29] It is obvious that Stander has no idea of the duration of 2 or 3 minutes as testified in examination-in-chief or a minute or a minute and a half as suggested in cross-examination, being the time it took for the collision to happen since the LDV crossed the solid white lines. He tried to explain his difficulty by saying that the collision occurred more than two years earlier. A simple mathematical calculation would inform us that, at a combined speed of 120 km/h it would take about 1.5 second to travel the fifty metres estimated by him. This is a far cry from any of his estimates and if his estimate of the distance could be accepted which is doubtful in light of the moving vehicles, relative darkness and suddenness of the event, he would not have time to react based on the generally accepted reaction time referred to *supra*. However, it would be wrong to reject his whole version as untrue or improbable as he made an obvious innocent mistake about

duration and possibly even in respect of distance as is often found in similar cases.

[30] Mr Snellenburg submitted that a negative deduction should have been made in respect of plaintiff's failure to call anyone of the two passengers who were travelling in plaintiff's truck. In my view there was no compelling reason to make such a deduction. Le Roux's evidence, he being independent, was damning for defendant's case. Although he could not testify whether the headlamps of plaintiff's truck were in proper working condition, there is no reason not to accept Stander's version. Defendant could not really tell that the lights were on bright and the best he could do was to mention that he was blinded. This issue is to my mind in any event irrelevant, bearing in mind the aspects referred to *infra*.

[31] Mr Snellenburg submitted that the court *a quo* was guilty of applying double standards. Potgieter Jnr was blamed for not photographing the spiral oil spillage, but Stander escaped blame although he did not photograph the oil patch testified about. Fact is that Stander did not take any photographs at all while Potgieter Jnr tried to collect evidence that the plaintiff's truck was not roadworthy and also in respect of the damage caused to the vehicles. He took some twelve photos, but failed to take a photograph of the oil spillage which he believed was vital evidence. Counsel's submission is not acceptable.

[32] Defendant has no recollection of the collision. He cannot blame Stander for the collision even though he tried to persuade the

court *a quo* that the headlamps of plaintiff's vehicle were on bright and that he was blinded as a result. On his own version he reduced speed even more, bearing in mind that he was travelling at the very low speed of 40km/h when entering the N1 where the speed limit is 120 km/h and simultaneously moved to his left to avoid the so-called danger caused by bright headlamps of the truck. On his version there should have been a collision on the western side of the lane in which he was travelling, far across the white centre lines and clearly in Stander's incorrect lane. The court *a quo* could not make such a finding bearing in mind the direct credible evidence of Le Roux, substantially supported by Stander.

- [33] The aspect about the alleged blinding caused by bright headlamps is a non-starter, firstly because defendant was not blinded to such an extent that he moved into his incorrect side of the road and right in front of plaintiff's truck; secondly because it was never defendant's case on the pleadings that plaintiff's driver failed to switch the headlamps to dim at the appropriate time; and thirdly because defendant specifically relied on the headlamps being defective as one of the alleged causes of negligence, of which there is no acceptable evidence.

- [34] Potgieter Jnr arrived at the scene afterwards. It was dark by then. He made observations and even took photographs. He is not an expert in respect of motor vehicle collision reconstruction matters and any opinions that he might have submitted should and could have been regarded as inadmissible evidence. A matter that caused me concern when reading Mr Schuurman's cross-

examination of Stander is that it was put to him that according to his instructions the collision had occurred in defendant's lane of traffic; yet no evidence was tendered in support of this apparent unfounded statement. The closest defendant came to such evidence is the inadmissible version of his son. The spiral oil spillage allegedly starting on defendant's correct side of the road and continuing until the position of the stationary LDV could not take the matter any further even if his version in this regard could be regarded as reliable and credible. The first problem is that he failed to take photographs of the oil spillage although he was extremely keen to show that plaintiff's truck was not roadworthy, bearing in mind the photographs of the windscreen trying to show the absence of a valid licence and roadworthiness certificate. Secondly, and on acceptance that the oil spillage came from the LDV, there is absolutely no expert evidence as to how long it would take for oil to be deposited on the tarmac after a collision and damages of a similar nature caused to the LDV, and furthermore how far from the actual point of collision the oil would be spilled for the first time, bearing in mind that the LDV was spinning out of control as testified by Le Roux, an aspect correctly conceded by the lay witness, Potgieter Jnr. Finally, the version of Potgieter Jnr is contradicted by Stander who conceded that spiral oil spillage was found but only in his correct lane of travel. Potgieter Jnr was obviously not an independent witness and his suggestion in cross-examination that the point of impact was in defendant's correct lane is indicative of his bias towards his father.

- [35] Potgieter Jnr's excuse for not taking photographs of the oil spillage does not hold water. If he believed that the SAPS personnel would take all relevant photographs at the scene, as he wanted the court *a quo* to accept, there would be no reason to take a total number of twelve less significant photographs, but not a single one of a crucial piece of evidence such as fresh oil spillage on his father's correct side of the road. The omission was telling against his version.
- [36] There is no reason not to accept Stander's evidence pertaining to the correct working condition of the headlamps of plaintiff's truck. It is clear that defendant had to find an excuse for the collision and one such excuse might be that he was so blinded by the bright lights of the oncoming truck that he lost all sense of position and direction and that this caused him to veer into the incorrect side of the road, causing the collision. This would have been an issue for discussion amongst his family members and with Potgieter Jnr in particular, prompting him to testify as he did. In my view, even if it is found that the headlamps of the plaintiff's truck were on bright, this could not have contributed to the collision bearing in mind defendant's own evidence.
- [37] As mentioned the court *a quo* received one direct version only as to how the collision occurred. However I shall briefly consider the principles set out in **SFW** *supra*. The court *a quo* observed the witnesses and was satisfied with their inherent credibility. She was mindful of the differences in the versions of Stander and Le Roux, but stated quite logically that no two witnesses will provide exactly the same description of a collision which happens in a

split second. There is no reason to reject the evaluation. The court *a quo*'s criticism of Potgieter Jnr's failure to take photographs of the oil spillage, even the next day when he visited the scene again in broad day light with his mother, is understandable and cannot be regarded as an application of double standards. The observations of plaintiff's witnesses, notwithstanding differences as mentioned, are reliable and supported by the probabilities. Finally, the probabilities favour the plaintiff's version, bearing in mind the nature and extent of the damage to the vehicles – mainly the front right and right-hand-side – the spinning out of control of the LDV which also collided with plaintiff's trailer and Le Roux's vehicle, the position of the vehicles after the collision as well as the debris and other articles which came off the LDV. It is highly improbable that Stander could have veered across the white centre lines, causing a collision in defendant's correct lane and be able to return to the left in order to exit the N1 as he did. One would have expected the LDV to be pushed off the road to the western side in such a case without it colliding with Le Roux's truck, but quite the opposite transpired.

- [38] There is no merit in any of the grounds of appeal or in the submissions on behalf of defendant presented to us. Consequently I am satisfied that, in evaluating the evidence based on the principles set out in **SFW** *supra*, plaintiff's witnesses were reliable and credible and above all, the version put forward on behalf of plaintiff is far more probable than the version feebly put forward by defendant.

VIII CONCLUSION

[39] In conclusion I am satisfied that the court *a quo*'s judgment and reasons for the orders granted are beyond reproach and therefore the appeal falls to be dismissed.

IX ORDER

[40] The appeal is dismissed with costs.

J. P. DAFFUE, J

I concur.

M. H. RAMPAL, J

On behalf of appellant: Adv. N. Snellenburg
Instructed by:
Hill, McHardy & Herbst
BLOEMFONTEIN

On behalf of respondent: Adv. J. Johnson
Instructed by:
Honey Attorneys
BLOEMFONTEIN