

REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

CASE NO: 18357/13

DATE: 22 JUNE 2015

In the matter between:

THANTSA, BASIL MABUELA and

ROAD ACCIDENT FUND

J U D G M E N T

KUBUSHI, J

INTRODUCTION

[1] The plaintiffs claim is that on the 14 November 2012 at approximately 19h00 and at the R55 off ramp along the N14 highway, he sustained injuries arising out of the driving of a motor vehicle bearing registration letter and numbers unknown to him and the driver he could not identify, and a motor cycle bearing registration number and letters [V.....] of which he was the driver.

SEPARATION OF ISSUES

[2] At the commencement of the trial, and on application by the plaintiff, which application was not objected to, an order was granted in terms of uniform rule 33 (4), separating the issues of liability from those of quantum of damages. In terms of the separation order, the only issue for determination in this trial is that of liability and the issue of quantum

was postponed sine die.

THE EVIDENCE

[3] The evidence was brief and straightforward. The plaintiff was the only witness in the trial. The defendant closed its case without leading any evidence.

[4] The plaintiff's evidence is that: on 14 November 2012 he was driving his motor cycle with registration number [V.....], from East to West along the N14 highway. He was travelling from work on his way home. His home is in Thatchfield. From the N14 highway, in order for him to get to Thatchfield he has to exit the N14 highway at the R55 off ramp.

[5] His further evidence is that, the N14 highway has two lanes going from East to West, that is, in the direction he was travelling. However, at the R55 off ramp, the two lanes divide into four lanes. Two lanes to the right travel towards the R55 Pretoria West and the other two lanes to the left go towards Thatchfield. At the top of the road, the road to the R55 Pretoria West and the road to Thatchfield are separated by an island. The island is flat on the road and is painted black and gold in a triangle formation.

[6] When he was about to exit the N14, he was travelling behind a white Volkswagen Coif motor vehicle (the Golf). The Golf was travelling at a distance of two motor vehicles in front of him. Both the plaintiff and the Golf exited the highway at the R55 off ramp. The Golf chose the route going towards the R55 West and the plaintiff chose the one going towards Thatchfield. As they were moving towards the island they were parallel to each other. The plaintiff was in the second left lane and the Golf was travelling in the first right lane next to the plaintiffs motor cycle.

[7] Without any indication from the Golf, it swerved to the left and moved into the lane of travel of the plaintiff. The front passenger door of the Golf hit the plaintiff on the right knee and its left side mirror hit the motor cycle's handle bars. The plaintiff lost control of the motor cycle. The motor cycle rolled over and the plaintiff fell off the motor cycle and landed on the

first left lane and the motor cycle proceeded to move further and stopped in the left lane up the road. At the time of the collision there was another motor vehicle travelling behind him but on the first left lane. The motor vehicle managed to stop without hitting him. The driver of that motor vehicle assisted him out of the road.

[8] According to the plaintiff, he did not have enough time to react to the sudden movement of the Golf because it happened too suddenly. He only saw the motor vehicle moving to his side of the road and there was not much he could do before the Golf collided with him. He did not even have the time to think of what to do. The Golf moved from its lane of travel into the lane of travel of the plaintiff without indicating its intention to do so. It also moved into the plaintiffs lane when it was not supposed to do so because there is a solid line between its lane of travel and that of the plaintiff; it also went over the island in order to get to the lane of travel of the plaintiff. The plaintiff suffered serious injuries and spent a few days in hospital. The bones of his wrist were broken into six pieces, he fractured his ribs and his right shoulder and right knee were also injured.

[9] He was certain the motor vehicle that collided with him was a white Golf with an ND registration number. He did not see the full registration number. The occupant of the Golf was a single gentleman. He did not see the Golf after the collision because it did not stop after hitting him. He did not remember the speed at which he was travelling at the time the collision occurred but intimated that he must have reduced speed because he had only entered the off ramp and where the collision occurred there is a bend in the road - the bend is a long curve that goes into another road.

[10] At the time of the collision, the plaintiff had been driving a motor cycle for over seven to eight years. The motor cycle was his regular mode of transport. He had been travelling along that route, that is, the N14 highway and exiting at the R55 off ramp since 2007. He knew that road very well. He was also clothed in the correct gear.

[11] After being discharged from hospital he reported the matter at the Oliewenhuis police station. He went to the scene of the collision with two police officers who took measurements. He went back to the police station to complete the report. He was not able to write then but a police officer completed the police report for him - he only attached his signature. He was sent a case number by short message service (sms) which he read out in court as 142/12/2012. He did not follow up on the case because he thought the police would give him information whenever it is available. He does not know what eventually happened to the case. Almost three months after the collision he went with his attorney to the Rose bank police station and deposited to another affidavit pertaining to the collision.

[12] Under cross examination he was made aware that, in the affidavit he deposited to in Rosebank police station, he did not mention that the Golf had an ND registration number and he responded by saying that it maybe because it did not come up. He was also made aware that the defendant and the court were not provided with copies of the accident report from the Oliewenhuis police station.

ARGUMENT

Plaintiff

[13] The submission by the plaintiffs counsel is that the uncontested evidence of the plaintiff proves that there was another driver. The evidence also shows that there was nothing he could have done to avoid the collision. According to the plaintiffs counsel, the insured driver was reckless in crossing the island without indicating.

[14] The test for negligence is whether he should have foreseen that the Golf will change its direction and should have taken steps to avoid the collision. There is no evidence that the plaintiff should have foreseen that the Golf would change its direction in an abrupt movement. If the collision was not foreseeable the plaintiff must succeed 100% for damages, he argued.

[15] Counsel submitted further that if I find against the plaintiff in that he could have taken

steps to prevent the collision, the contention is that he did what any reasonable person could have done. He tried to swerve left but there was no time. There is no evidence to suggest the contrary, it was not even put to the plaintiff that he could have avoided the collision. He said it is impossible on a motor cycle to have avoided the collision.

[16] The onus is on the defendant to prove contributory negligence. The defendant failed dismally to prove it. There was no suggestion of contributory negligence. The defendant must therefore be found 100% liable for the proven or agreed damages resulting from the collision that occurred on 14 November 2012 together with the costs pertaining to the liability until the date of judgment, so the argument went.

Defendant

[17] The submission by the defendant's counsel is that although the defendant received the plaintiffs claim and investigated its integrity, it did not receive the accident report nor was the report discovered. There is therefore no basis for the claim. It is also clear that due to time lapse there seems to be no follow up by the plaintiff or the plaintiffs attorneys and there is no evidence from the plaintiffs attorneys of record about what happened to the report. This gives doubt as to whether a collision happened. The plaintiff cannot recall the speed at which he was travelling and had no time to avoid the collision. The plaintiff is a single witness whose evidence must be approached with caution, so it was argued

[18] A further contention is that the defendant must not be held liable. Alternatively a risk contingency of 50% must be applied giving the circumstances of how the collision occurred.

ANALYSIS OF EVIDENCE

[19] At the commencement of the trial, the defendant's counsel put it on record that even though the defendant had in its plea admitted the collision, his instruction was not to admit that the plaintiff collided with the unknown person.

[20] The plaintiffs counsel submitted that since there was no formal amendment to the plea,

the matter will be argued at the end of trial. The contention being that the plaintiff will in any event prove the collision in his evidence.

[21] The first issue which requires determination is whether a collision as described by the plaintiff occurred. Put differently, the question is whether the plaintiff sustained the injuries as a result of a collision which was caused by the identified motor vehicle.

[22] From the evidence it appears that it is common cause that on 14 November 2012 the plaintiff was involved in a motor cycle collision which resulted in him sustaining serious injuries. The plaintiffs contention is that the said collision was caused solely by the negligence of an unidentified motor vehicle which collided into him and caused him to fall off his motor cycle and injure himself. The defendant on the other hand contents that the plaintiff failed to prove the collision mainly because, other than what the plaintiff said is what happened, there is no other proof that the collision actually occurred.

[23] It is indeed so that the plaintiff, in order to succeed in his claim, must show and prove that a collision with the alleged unidentified motor vehicle occurred. Section 17 (1) (b) of the Road Accident Fund 56 of 1996, provides that:

“(1) The fund or an agent shall -

(a)

(a) subject to any regulation made under section 26, in the case of a claim for compensation under this section arising from the driving of a motor vehicle where the identity of neither the owner nor the driver thereof has been established, 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 or the death of or any bodily injury to any other person, 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."

[24] As already stated, the plaintiff is the only witness in the trial. His evidence is therefore unchallenged. The defendant's argument is that as a single witness his evidence must be approached with caution.

[25] The court in *S v Sau/s* 'when analysing the evidence of a single witness held that there is no rule of thumb in which to deal with the evidence of a single witness. A court is expected to consider the merits and demerits of the evidence before it, and on the totality of such evidence to determine whether the truth has indeed been told. Although the principle was enunciated in a criminal case I am of the view that the principle finds application in a civil case as well.

[26] On evaluation of the evidence before me, I found the plaintiff to be an impressive witness. He was honest and related his story as he recalled the incident Where he did not know the answer to a question put to him, he simply indicated that he does not know and did not exaggerate. He did not contradict himself when giving evidence either in his evidence in chief or under cross examination. In my view he simply told the truth.

[27] His uncontested evidence is that when he was discharged from the hospital he went to report the collision at the Oliewenhuis police station and was given a case number which he read out in court. There is no evidence to the contrary as to whether he went to the police station or that the police provided him with a case number. It was not even suggested to him under cross examination that he might be lying when he says he reported the collision to the police or that he was provided with a case number or that the case number he read out in court was fabricated. The submission by the defendant's counsel that there should have been evidence by the plaintiffs attorneys as to what happened to the police report is not correct, in my view. Much as I agree that the availability of the police report would have served as corroboration that the collision did actually happen, however, absent any evidence to the contrary, the unchallenged evidence of the plaintiff provides proof that there was a collision as

he describes it. Even after careful scrutiny of his evidence, I could find no well-founded suggestion that the plaintiff was engaged in a fraudulent claim.

NEGLIGENCE

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

[29] It is also expected that he should prove that there was contact between the unidentified motor vehicle and him. See s 17 (1) (b) above.

[30] To my mind, on the evidence before me, the plaintiff has succeeded in proving on a balance of probabilities that the collision was caused by the sole negligence of the driver of the unidentified motor vehicle and that there was contact between the unidentified motor vehicle and him. His evidence as to how the collision occurred is clear, credible and remains uncontested

[31] The defendant did not prove contributory negligence on the part of the plaintiff, neither was it argued on its behalf that the plaintiff contributed to the collision. Consequently, the defendant must be held 100% liable for the plaintiffs proven or agreed damages.

¹ See Loras v RAF 2012 (1) SA 610 (6NP).

HEARD ON THE

i 15 JUNE 2015

DATE OF JUDGMENT

i 22 JUNE 2015

PLAINTIFF COUNSEL**

i ADV. P j VAN DER BERG

PLAINTIFF*! ATTORNEY

i DE BROGLIO INC

DEFENDANT*! COUNSEL

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DEFENDANT*! ATTORNEY

» SEKATI MONYANE INC.

[32] I, therefore, make the following order:

1. The defendant is liable in full for the plaintiffs proven or agreed damages consequent upon the injuries the plaintiff sustained during the collision on 14 November 2012.
2. The defendant is ordered to pay the costs of the trial on the merits.
3. The determination of the plaintiffs quantum of damages is postponed sine die.

E. M. KUBUSHI JUDGE OF THE

APPEARANCES

¹ 1981 (3) SA172 (A) at 180E - F