



OFFICE OF THE CHIEF JUSTICE
REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

CASE NO: ~~94315/2012~~

31/7/15
73992/13

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES/NO.

(2) OF INTEREST TO OTHER JUDGES: YES/NO.

(3) REVISED.

31/7/2015

DATE

SIGNATURE

IN THE MATTER BETWEEN

J DU PLESSIS

Plaintiff

and

THE ROAD ACCIDENT FUND

Defendant

JUDGMENT

LEGODI J

[1] Before me is an action against the Road Accident Fund. I have been called upon to determine whether the Fund is liable to compensate the plaintiff as a result of a collision which occurred on the evening of the 18 April 2012 at or about 21h00 on the N1

Highway towards the North near the Stormvoel off-ramp from which the plaintiff suffered serious injuries. The plaintiff has no recollection of the events and only one witness testified on behalf of the plaintiff.

[2] Mr Riaz Chaboo was on the evening in question, driving on the N1 road towards the North and before Stormvoel turn-off, a collision occurred between the plaintiff's vehicle, a Toyota Fortuner and a truck the particulars of which are registration number ND 700572.

[3] Three lanes were in use at that time. The fourth lane (fast lane) was under construction. Mr Chaboo was driving on the slow lane. In the middle lane, it was the plaintiff's vehicle and on the third lane (then fast lane) was another motorist going to the same direction. The witness (Mr Chaboo) was a bit behind the two vehicles. All of a certain, he saw a smoke on the direction of the plaintiff's vehicle and he concluded that an accident had occurred, initially he thought that the plaintiff's vehicle had overturned.

[4] The plaintiff's vehicle came to a stand-still on the left off the Highway and he also stopped on the left side, off the road. He was surprised to see a truck on the centre lane, which he did not see before. He even asked the other motorist where the truck came from.

[5] It became clear that the plaintiff's vehicle hit the truck from behind. That in short was the evidence on behalf of the plaintiff. The defendant closed its case without leading any evidence.

[6] The issue at hand is whether the plaintiff established on the balance of probabilities that the insured driver, that is, the driver of the truck was in any way negligent. There was no evidence that the truck was stationery on the road. In fact, the evidence was that after the impact, the truck proceeded on its lane and as a result the witness Mr Chaboo requested the other motorist to bring back the driver of the truck to the scene.

[7] The truck driver was obviously not aware that he was hit from behind. When he was brought back to the scene, and saw the plaintiff's vehicle, he uttered words to this effect "Tjoo!!"

[8] Hitting another car from behind, without any explanation, establishes negligence and in the present case, the driver of the truck cannot be blamed for having been negligent.

[9] In the particulars of claim, the grounds of negligence are pleaded as follows:

- “5.1 He/she failed to keep a proper lookout;*
- 5.2 He/she failed to exercise proper or effective control over the vehicle that he/she was driving;*
- 5.3 He/she knowingly drove a motor vehicle that was not roadworthy;*
- 5.4 He/she failed to avoid the collision, when, by the exercise of reasonable care, he/she could and should have done so”*

[10] None of these grounds were established through the evidence of Mr Chaboo. In the pre-trial minutes, the plaintiff's version and of relevance, is stated as follows:

“The plaintiff collided with a truck in front of him who had no lights or reflective signs on it”. This is not what Mr Chaboo said. Further in the pre-trial minutes the version is stated as follows:

“The eye witness states that the truck was not visible to any driver on the road, and that the plaintiff would not have been in a position to see that there was a truck travelling at a slow speed or stationery in the plaintiff's lane of travel, and thus would not have been in a position to avoid it”

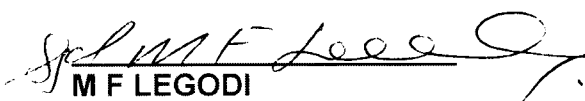
[11] Mr Chaboo can only speak for himself and not for the plaintiff or the other motorist. Therefore the statement that *“the truck was not visible to any drivers on the road”* can only apply to him and it would be understandable why he would not have seen the truck. All the motorists, including the truck driver were in front of him, although not on the same lane. The TOYOTA Fortuner was apparently behind the truck. A Fortuner is not a small car. It is not clear how low the towing vehicle is, which the witness was driving.

[12] With all of the above, it cannot reasonably be inferred that the fact that he did not see the truck was because it had no lights or reflective lights on. It cannot be inferred

that the truck was not visible to other drivers and that the other drivers would not have been in a position to see that there was a truck travelling at a slow speed or was stationary in the lane of the plaintiff. The witness saw the truck immediately upon collision. If the truck had no lights or reflectors on, he would have said so, but he did not.

[13] It could well be that the plaintiff just did not keep a proper look out. In fact, on the facts of the case, that would be a reasonable inference to make. I am however mindful of the fact that the other motorist, who was apparently parallel to the plaintiff's vehicle was not called as a witness. Apparently, this other motorist explained to Mr Chaboo what had happened. Without the evidence of the said motorist, this court is in the dark as to what actually happened. There is just no evidence establishing any negligence on the part of the driver of the truck. For this, absolution will be appropriate.

[14] I therefore find that the plaintiff has not discharged the onus and consequently an absolution from the instance with costs is hereby granted.


M F LEGODI
JUDGE OF THE HIGH COURT

HEARD ON: 30 July 2015

JUDGMENT HANDED DOWN: 31 July 2015

FOR THE PLAINTIFF: **ADV L. EAST**

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