



IN THE NORTH GAUTENG HIGH COURT, PRETORIA
(REPUBLIC OF SOUTH AFRICA)

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES / NO.

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

(3) REVISED.

1 March 2013

DATE

DS Liezel

SIGNATURE

Case Number: 20979/12

Date Heard: 31 January 2013

Date of Judgment: 01 March 2013

In the matter between:

KLEYNHANS LIEZEL

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

JUDGEMENT

MOLEFE, AJ

1. The plaintiff Mrs Liezel Kleynhans, is an adult female accountant, residing at 15 Brain Street, Randfontein, Gauteng Province. The defendant is the Road Accident Fund (RAF) a statutory body established in terms of the Road Accident Fund Act 56 of 1996 ("the Act") at 38 Ida Street, Menlopark, Pretoria.
2. This is an action for payment of compensation for damages suffered by plaintiff as a result of bodily injuries caused by a collision that occurred on the afternoon of 23 June 2011 along the Ventersdorp Road in Randfontein. Per agreement between the parties the merits were separated from the quantum which would be adjudicated upon at a later stage. This agreement was made on order of Court.
3. The defendant in its plea on merits denied that the collision took place; alternatively, in the event that the court found that the collision took place, denied any negligence on the part of the insured driver and that the sole cause of the collision was the negligent driving of the plaintiff.
4. The plaintiff testified and called one witness, the plaintiff's husband, Mr Johan Kleynhans.

The plaintiff testified that on 23 June 2011, she was driving from work in Magaliesburg to her home in Randfontein. She was travelling with two co-workers. When she came to a four-way intersection stop, at

Brandvlei/Randfontein, she stopped and observed all directions. She did not see any vehicle approaching at the intersection, so she proceeded to cross the intersection towards Randfontein. Whilst she was inside the intersection she heard a screeching sound of brakes being applied, and was hit by the insured vehicle which came from her right side and failed to stop at the intersection. She was hit on the right side, on the driver's door.

5. The plaintiff testified that she knew the road very well as she used the road on a daily basis to travel to and from home to work. The speed limit in the area is 60 km per hour as there are two schools in the vicinity of the intersection. The plaintiff could do nothing to avoid the accident as there was not time to react to the insured driver's vehicle.
6. The plaintiff sustained serious injuries to her ribs and was transported to Milpark Hospital in an aircraft where she was admitted. She did not know where her vehicle landed after the collision or the damages to her vehicle until she was shown the photographs depicting the scene of the accident by her husband whilst recovering in hospital.
7. Mr Johan Kleynhans testified on behalf of the plaintiff. He testified that he was called to the scene of the accident to sign a consent for his wife to be airlifted to the hospital. The police showed him the point of impact and where the plaintiff's vehicle landed after the impact of the collision. The vehicle landed approximately 30 meters away from the point of impact, in

the bushes on the left side of the road. The plaintiff's vehicle was extensively damaged on the right driver's door and was towed away from the scene of the accident.

8. The defendant's only witness was the insured driver. She testified that on the day in question she was driving a Corsa bakkie bearing registration number VVK 360 GP on her way from Mafikeng to Springs. She was travelling with her child and a male person who asked for a lift in Lichtenburg.

She approached the Ventersdorp/Magaliesburg/Randfontein/Brandvlei intersection four-way stop. She stopped at the stop sign, observed and as there were no cars, she proceeded to cross the intersection. Whilst crossing the intersection she engaged her car into second gear. Suddenly she saw the plaintiff's vehicle in front of her. She applied brakes in an attempt to avoid colliding with the plaintiff's vehicle but failed. She was familiar with the road as she used it once a month.

She was aware that the speed limit at the area is 60km per hour. She testified that prior to approaching the intersection she was travelling at 80km per hour, then 60km per hour and 40km per hour when she stopped at the intersection. She testified that when she crossed the intersection she was travelling between 10-20km per hour. After the collision she was unconscious and was taken to hospital.

9. It is common cause between the parties that the accident occurred on 23 June 2011 between the vehicles SYX398GJP, a white Ford Bantam bakkie driven by the plaintiff and VVK360GP, a Corsa Utility bakkie driven by the insured driver. The collision occurred at the intersection of Randfontein/Magaliesburg/Ventersdorp road. The insured driver's vehicle collided with the right driver's door of the plaintiff's vehicle.
10. It is further an undisputed fact that the damages caused to the vehicle driven by the plaintiff were extensive. The plaintiff suffered injuries which were very severe; she had *inter alia* ten fractured ribs.
11. The issues which must be determined by the Court are the following:
 - a) whether the insured driver was negligent;
 - b) whether the plaintiff was negligent;
 - c) the apportionment of negligence, if applicable.
12. Both the plaintiff and the insured driver conceded that they did not see any vehicle when they stopped at the intersection. Both parties did not call any of the passengers who were travelling with them to corroborate their versions. No expert evidence was led which could have assisted in determining exactly how the collision occurred.
13. The version of the two witnesses are irreconcilable in material respects regarding how the collision occurred and are mutually destructive.

14. The success of the plaintiff's case is predicated upon a finding that the insured driver failed to stop at the intersection in order to prove any negligence on the part of the insured driver.
15. The insured driver's testimony that she applied brakes when she saw the plaintiff's vehicle in front of her vehicle, is corroborated by the plaintiff's evidence that she heard screeching of brakes before the accident.
16. During cross-examination, the insured driver's credibility was questionable when she testified that prior to her stopping at the stop sign at the intersection, she was traveling at 80km per hour. With further probing she said 60km per hour and then 40 km per hour.

She also testified that when she took off from the stop sign, proceeding to the intersection, she was driving at a speed of about 10 to 20 km per hour although she had already put her car gear into gear number 2.

17. The insured driver made two statements on how the accident occurred; one statement was made to the assessor and the other one was made to the South African Police Service. Both statement were admitted in court as evidence as exhibit "A" and "B" respectively. When she was being cross-examined on the statement she made to the South African Police Service (exhibit "B") she advised that the statement was never read back to her and that the police officer who was assisting her was rushing her and was impatient with her to sign the statement.

18. in the exhibit "B" statement the insured driver testified *inter alia* that she did not know the road well. She stopped at the stop sign but in the middle of the road as the road was confusing to her. Then a motor vehicle came and collided with her car.
19. The plaintiff's counsel decided not to cross-examine her on the exhibit "B" as she alleged that the statement was not read back to her prior to her signing it.

Regrettably the police officer who prepared the statement (exhibit "B") was not called as a witness. This would have been useful in determining the probabilities.

20. The technique generally adopted by the courts in resolving factual disputes when dealing with two irreconcilable versions is set out in **SWF Group Limited and Another vs Martell ET CIE and Others**,¹ wherein the following relevant applicable principles are stated:

20.1 Findings must be made on:

20.1.1 the credibility of the various factual witnesses which depends on a court's impression about the veracity of the witnesses;

20.1.2 their reliability;

¹ 2003(1) SA 11 SCA at paragraph (5)

20.1.3 the probabilities.

20.2 *In regarding to the credibility of a witness, a number of factor must be taken into consideration\;*

- (i) the witness condour and demeanor in the witness box;*
- (ii) his latent and blatant lies;*
- (iii) internal contradictions in his evidence;*
- (iv) external contradictions with what was pleaded or put on his behalf, or with the established facts or with his own extra curial statements or actions;*
- (v) the probability or improbability of particular aspects of his version; and*
- (vi) the caliber and cogency of his performance compared to that of other witnesses testifying about the same incident or event.*

20.3 *A witness' reliability will depend in addition to the aforesaid factors mentioned above and on:*

- (i) the opportunity he had to experience the event in question;*
- (ii) the quality, integrity and independence of his recall of the event.*

- 20.4 *Having regard to the probabilities, this necessitates an analysis and evaluation on the probability or improbability of each party's version on each of the disputed issues.*
- 20.5 *In light of its assessment of the factors in 20.2 and 20.4 above, a court should then, as a final step, determine whether the party burdened with the onus of proof, has succeeded in discharging it.*
- 20.6 *When a court's credibility findings compel it in one direction and its evaluation of the general probabilities compels it in another direction, the more convincing the former, the less convincing will be the latter. But when all factors are equipoised probabilities will prevail.*
21. The opinions tendered by both the plaintiff and the insured driver are by and large irrelevant and do not assist in determining the probabilities.
22. The test propounded by Wessels JA in **National Employers' Mutual General Insurance Association v Gany**² is to the effect that "*where there are two stories mutually distractive, before the onus is discharged, the court must be satisfied upon adequate grounds that the story of the litigant upon whom the onus rest is true and the other false*"
23. In a civil case, the onus is obviously not as heavy as it is in a criminal case, but nevertheless, where the onus rest on the plaintiff as in the

² 1931 AD 187 at 199