

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Case No.: 6114/2010

In the matter between:

TLHALEFO VINCENT LEHLEHLA

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

HEARD ON:

31 JULY 2012

JUDGMENT:

LEKALE, J

DELIVERED ON:

10 AUGUST 2012

[1] The plaintiff issued summons against the defendant following a motor vehicle accident which occurred along the road between Welkom and Theunissen in the Free State Province on 22 July 2008.

[2] At the commencement of the trial, the plaintiff secured an order separating merits from quantum in terms of Rule 33(4) of Uniform Rules of Court. This judgment, therefore, is limited to

the determination of defendant's liability to compensate the plaintiff. It is common cause between the parties that the plaintiff complied with the provisions of section 24 of the Road Accident Fund, Act No 56 of 1996 (the Act). The sole issue for determination is, therefore, whether or not the driver of the truck insured by the defendant was negligent as to the cause of the accident.

- [3] Two witnesses testified in support of the plaintiff's case while the defendant closed its case without tendering any evidence.
- [4] The facts are, in the main, a matter of common cause between the parties insofar as the defendant did not dispute the same in evidence.
- [5] The road in question is a straight, tarred, dual road with a fair amount of inclines. The speed limit is 100 km/h and there are no potholes on the road.
- [6] **Mr Aaron Ndlovu (Ndlovu)** testified that on the morning in

question he boarded the ill-fated bus, in which the plaintiff was also a commuter, at around 4h20 on his way to work. It was dark and the bus was filled to capacity. He occupied the front seat in the bus and he could see the road ahead. As the bus was travelling in the direction of Theunissen he saw the lights of another bus coming in the opposite direction. The driver of the doomed bus, thereupon, dipped the lights of the bus and continued driving at about 90 km/h. He only became aware of the insured truck when the bus was about 20 metres from it. The said truck was stationary in the road and obstructed the lane in which the bus was travelling with its right wheels occupying the better part of the lane in question. A danger triangle was about two metres from the truck. The truck loomed up suddenly and the bus driver tried to overtake it. The bus which was coming in the opposite direction was, however, already in the process of passing the truck. The driver of the bus, thereupon, swerved sharply to the right and ploughed into the field. The bus eventually hit a rock and overturned. He and other passengers got out of the bus and approached the truck. They found the driver of the truck asleep and they woke him up.

They demanded to know from him whether or not he was aware of what he had caused by not putting on the lights. The truck driver, thereupon, switched on the emergency lights of the truck. The bus driver was not negligent and could not have avoided the accident in any manner whatsoever, because everything happened suddenly without warning.

[7] The plaintiff could not take the matter any further save for corroborating the evidence of Ndlovu with regard to the nature of the road in question and the fact that it was still dark when the accident occurred. He was at the back of the bus and could not and did not see anything about the accident.

[8] Mr Pohl, for the plaintiff, submits that the plaintiff only has to prove the proverbial one percent negligence on the part of the driver of the insured truck in order to saddle the defendant with liability for 100% of his proved or agreed damages. He contends, further, that the truck driver failed to do the simplest thing in circumstances where his truck was stationary in order to warn oncoming motorists. According to him, all that the truck

driver had to do, was to put on the emergency lights so as to warn oncoming traffic. The limitation clause is not applicable in the present matter, because the plaintiff is relying on the negligence of the truck driver as opposed to the negligence of the driver of the bus in which he was a passenger.

- [9] Mr Zondi, on behalf of the defendant, submits that the Act as it stood before its amendment with effect from 1 August 2008 was applicable when the accident occurred. He maintains that section 18 of the Act, as it then stood, limits the plaintiff's claim to R25 000,00 because he failed to establish at least one percent negligence on the part of the bus driver. In his view the Constitutional Court's decision in **MVUMVU AND OTHERS v MINISTER FOR TRANSPORT AND ANOTHER** 2011 (2) SA 473 (CC) is applicable.

- [10] In law a motorist is required to take reasonable precautions against harm being caused to another if the likelihood of such harm would have been foreseen by the reasonable, prudent driver. (See **MANDERSON v CENTURY INSURANCE CO**

LTD 1951 (1) SA 533 (A) at 544 A.)

- [11] The question for determination of liability *in casu* is whether the *diligens paterfamilias*, in the position of the driver of the truck, would have regarded the possibility of a car coming from behind not being able to pass the truck safely and on short notice without colliding with oncoming traffic as sufficiently real and immediate to require him to take preventive precautions.
- (Compare **A A MUTUAL INSURANCE ASSOCIATION LTD v MANJANI** 1982 (1) SA 790 (A) at 796 F.)

- [12] In the event of such a possibility having been sufficiently real for the reasonable man, in the position of the truck driver, then there was a duty on the said driver to take reasonable steps to guard against or avoid such an eventuality.

- [13] Failure on the part of a motorist, whose conduct is in question, to take such necessary and reasonable precautions to prevent the harm from eventuating results in such a driver being saddled with liability *vis-à-vis* the victim. (See **KRUGER v**

COETZEE 1966 (2) SA 428 (A) at 430 E – F.)

[14] In the present matter it is clear, from available evidence, that a reasonable man, in the position of the truck driver, would have realised that:

14.1 the truck was partially obstructing the road for traffic flowing from behind and, thereby, posing a danger thereto;

14.2 it was dark and, for a motorist approaching the truck from behind to be able to see the truck timeously, it was necessary to put on the emergency lights of the truck and/or its head lights as well as to place a reflector triangle as far enough from the truck as to give such a motorist sufficient warning before he could reach the truck;

14.3 traffic coming from behind could collide either with the truck or oncoming traffic unless it was sufficiently and timeously warned about the danger posed by the truck.

[15] As correctly submitted by Mr Pohl, the accident herein could

have been easily avoided had the driver of the insured truck taken steps to warn other road users about the danger posed to them. (Compare AA ONDERLINGE ASSURANSIE

ASSOSIASIE VAN SA v VAN RENSBURG EN 'N ANDER

1978 (4) SA 771 (A) at 779 D – E.)

[16] It is correct, as retorted by Mr Pohl, that the decision in MVUMVU AND OTHERS v MINISTER FOR TRANSPORT AND ANOTHER, *supra*, is irrelevant to the matter on hand, because the claim is not against the driver of the bus in which the plaintiff was a passenger.

[17] All that the plaintiff had to establish against the driver of the insured truck, was the proverbial one percent negligence in order to be entitled to 100% of his damages as Mr Pohl correctly contends. In failing to take the reasonable measures contended for by Mr Pohl, the truck driver was negligent as to the cause of the accident.

ORDER

[18] In the result the following order is hereby made:

18.1 The defendant is liable to the plaintiff for all the damages which the plaintiff may prove with regard to the accident in question;

18.2 Defendant shall pay the costs attendant on the adjudication of the issue involved herein.

L. J. LEKALE, J

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