

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Case No. : 3563/09

In the matter between:-

D J G ENSLIN

Plaintiff

versus

ROAD ACCIDENT FUND

Defendant

HEARD ON:

25 January 2011

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DELIVERED ON:

10 February 2011

MOCUMIE, J

[1] The plaintiff is Mr. Daniel Jacobus Enslin, a 77 year old man who resides in Meyerton and worked for Lindsay Saker Company (Ltd) during the year 2006 and the driver of the motor vehicle with registration number ABL269GP.

[2] The defendant is the Road Accident Fund ("RAF") a juristic person established in terms of section 52(1) of the Road Accident Fund Act No. 56 of 1996 with its principal office situated at Sanlam Centre, Cnr of Pretorius- and Andries

Streets, Pretoria, Gauteng.

- [3] At the commencement of the trial the plaintiff applied for a separation of issues in terms of Rule 33(4) of the Superior Court Rules. The defendant opposed the application. As the defendant could show no inconvenience it would suffer in the event that a separation of issues was granted, I made an order for a separation of the issues on the basis that this Court will deal with the merits for the days the case has been set down for adjudication and the determination of the quantum at a later stage.
- [4] During the night of 8 September 2006, along the N1 High Way near Rooiwal between Kroonstad and Koppies, a collision occurred between an Audi driven by Mr Daniel Jacobus Enslin ("Enslin") and a Scania truck/tractor and tanker combination driven by the insured driver Mr C.W Clark ("Clark").
- [5] It is common cause between the parties that the N1 is a tarred road stretching from south to north and north to south with

single lanes in each direction and a barrier line in the middle. It is also common cause that the said road was dry, flat and unobstructed by natural obstructions and that the area at that time of the night was dark.

- [6] Enslin testified that on the day of the collision he was driving an Audi A3 from Bellville in the Western Cape enroute to Meyerton which is south to north on the N1. He was working for Lindsay Saker Company then and had been sent to exchange a car for another in Bellville. The Audi that he was driving was still new. When they left Bellville he checked the headlights and these were working. As a company policy he was accompanied by a second driver. They left Bellville around 13h00. At Ventersburg (Free State) less than 100 kilometres from where the collision occurred, they stopped to have something to eat and drink. What is referred to as a “convenience break.”

- [7] Whilst driving along the road the head lights of the Audi were on and he wore his safety belt. There were several vehicles on the road concerned approaching from the opposite direction

and those he had to overtake as the traffic was a bit congested on that Friday as it is usually on Fridays on the N1. At some point he followed a truck for some time as he could not overtake it safely due to the reasonably high volume of traffic at that time. He maintained a constant following distance of one car's length behind the truck.

[8] Whilst in his lane and waiting for a safe opportunity to overtake the truck in front of him, he suddenly noticed reflecting lights of a truck in the rear view mirror of his car. This truck there and there collided with him from the rear. He suffered a concussion and only remembered being removed from the scene by an ambulance to Parys Hospital. He sustained injuries as a result of the collision.

[9] He testified further that the Monday after the Friday on which the collision occurred he went to inspect the Audi. He found that the Audi was damaged on its rear end as depicted on a photo forming part of exhibit C, C36. Exhibit C was handed in per agreement between the parties. The photo depicts that the

impact was on the full rear of the vehicle with more damage to the left causing the roof to collapse.

[10] During cross-examination he stuck to his version; did not contradict himself and was consistent. He denied that because of the long trip from Bellville he was tired at the time of the collision as it was suggested to him. He denied that his vehicle spun across the middle or centre line and landed in front of the truck causing the truck to collide with it.

[11] Clark testified and gave a completely different version to that of the plaintiff. He testified that he was travelling on the same road as the plaintiff but from the opposite direction.i.e north to south from VanderBijlpark enroute to Port Elizabeth. As he neared the part of the N1 under discussion he routinely reduced speed to engage a conversion in the road by removing his foot from the accelerator. Although there was traffic on the road, he noticed the plaintiff's vehicle approaching him from the front. Just a few metres from him, whilst in its lane, he noticed that something in regard to the Audi was wrong and it started to spin

in its lane and then cut across its lane; over the traffic island into his lane.

[12] He testified further that upon realising that a collision is going to occur he attempted an emergency stop but the Audi spun right in front of him and he hit it with his right front part of the truck on its left side. The Audi landed on the western side of the road right across the truck and his truck on the eastern side of the road on his lane.

[13] During cross-examination the following emerged:

13.1 The Police Accident Report, exhibit C-4-9 was completed after the police interviewed him the following day. His version according to the accident report differs from his evidence-in-chief in material respects on the following:

13.2.1 He indicated on the accident report under “*Vehicle Manoeuvre/what driver was doing*” that the Audi as travelling on a straight line not spinning or at least swerving immediately prior to the collision.

13.2.2 He indicated on the report that he struck the Audi on its

full rear end with his right front side yet in his evidence-in-chief he said he hit the Audi with his right front part on its left rear side.

13.2.3 The report did not reflect a traffic island or that a traffic island was covered in rumble strips as he testified in his evidence-in-chief. Neither was this put to Enslin who said the road had a centreline.

13.2.4 He testified that the Audi landed next to the truck or as he later said in the truck's vicinity after the collision and the point of impact was 14 metres away contrary to the position he indicated to the police. He then shifted between 40 and 60 metres and then vaguely in the vicinity.

13.2.5 He was at pains to explain why the truck was on the eastern Engen 1 Stop garage situated 35 kilometres north of the point of impact and 10 kilometres south of the Kroon-Vaal toll Plaza in stead of facing the direction he was going to originally, Kroonstad.

13.2.6 For the first time during cross-examination he mentioned that the bulbar of the truck was dismantled as a result of

the collision which was never put to Enslin.

13.2.7 He could not explain what cause of action he took as soon as he could see that there was something wrong with the Audi as he put it except having reduced speed out of routine when he entered that part of the road.

[14] I could not find any of the witnesses to be outright unreliable in their testimony despite the contradictions and improbabilities highlighted in Clark's evidence. Consequently there are two conflicting and irreconcilable versions before me.

[15] The proper approach to the resolution of factual disputes in a civil case, is to be found in **National Employers' General Insurance Co Ltd v Jagers** 1984 (4) SA 437 (E) at 440 D – H where Eksteen AJP stated:

"It seems to me, with respect, that in any civil case, as in any criminal case, the *onus* can ordinarily only be discharged by adducing credible evidence to support the case of the party on whom the *onus* rests. that his version is true and accurate and

therefore acceptable.....”

See also **Stellenbosch Farmers' Winery Group Ltd and Another v Martell et cie and Others** 2003 (1) SA 11 (SCA) paras [5] – [7] at 14 – 15; **Dreyer and Another NNO v AXZS Industries (Pty) Ltd** 2006 (5) SA 548 (SCA).

[16] In my view the plaintiff was a more reliable and credible witness. His evidence was simple and not riddled with any improbabilities. He stuck to his version despite the rigorous cross-examination he was subjected to by Advocate de Kock. On the other hand Clark's version was riddled with improbabilities to the extent that it differed from that of the plaintiff. It left many questions unanswered. For instance if the plaintiff spun on the wrong side of the road, how could other vehicles, which he said were on the same road following the plaintiff, not have been involved in one way or another in the collision; how could he not have avoided the collision when there was no vehicle next to him to enable him to swerve to the extreme left side of the road which has grass only on the sides

without slopes or hills as depicted in the accident report? How could the Audi have been struck fully on its rear end if it was spinning?

[17] Clark's evidence does not even tally with what he related to the police on the first opportunity he got to relay his version to them when he was presumably in his sound and sober sense in the morning after the collision. His evidence is made more improbable by the lack of corroboratory documents which would have shown the damage on the truck and what preventative measures he took to avoid the collision as according to him this would have been recorded by his company's Satellites.

[18] In my view what Clark tried to describe to this Court is inherently improbable. On a conspectus of all the evidence, Clark's version is farfetched and does not tally with the collision as depicted on the sketch plan and related by Enslin.

[19] In assessing the probabilities comprehensively and in retrospect the conclusion seem inescapable that of the two

versions before this Court as to how the collision occurred, the plaintiff's is more probable. That being so the plaintiff has succeeded in discharging the onus on it. It follows further that the claim must succeed. I accordingly find that the collision was due to the negligence of Mr. Clark in the respects set out above and that the defendant is accordingly liable to the plaintiff in the amounts of damages as may be proved at a later stage.

[20] In the circumstances I make the following order:

ORDER:

1. The collision was due to the negligence of the insured driver, Mr. Clark and the defendant is therefore liable to the plaintiff for the proved damages.
2. Plaintiff is entitled to its costs of this trial.

B.C. MOCUMIE, J

On behalf of the plaintiff:

Mr. P. Uys
Instructed by: Hill, McHardy

& Herbst Ing

BLOEMFONTEIN

On behalf of the defendant:

Adv. D. De Kock

Instructed by: A.P Ledwaba Inc.

BLOEMFONTEIN

BCM/sp