

THE MOTOR VEHICLE ASSURANCE FUND

AND

ANNA MOKGATLA

IN THE SUPREME COURT OF SOUTH AFRICA
(APPELLATE DIVISION)

In the matter between:

THE MOTOR VEHICLE ASSURANCE FUND

Appellant

AND

ANNA MOKGATLA

Respondent

CORAM: Rabie, CJ, Joubert, Nicholas, JJA, Galgut and Howard, AJJA

HEARD: 17 May 1984

DELIVERED: 29 May 1984

J U D G M E N T

NICHOLAS, JA

At about 5 o'clock on the morning of Saturday

12 May 1979, the late WILLIAM MOKGATLA ("WILLIAM") left

his

his home to go to his work on a farm near Sannieshof.

He never returned. At about half past seven that evening

his dead body was found by Sgt. CRAUSE of the South African

Police stationed at Sannieshof. It was lying on the tarred

road running between Mafikeng and Sannieshof at a place

about 8 km from Sannieshof.

In his lifetime WILLIAM and ANNA MOKGATLA ("ANNA")

were partners to a customary union as defined in s. 35

of the Native Administration Act, No 38 of 1927. Arising out

of WILLIAM's death, ANNA instituted an action against the

Motor Vehicle Assurance Fund, claiming damages in her

personal capacity and in her capacity as the mother and

natural guardian of the minor child born of the union.

At

At the trial, the only issue between the parties was whether the driver of the unknown motor vehicle, which, it was common cause, had collideded with WILLIAM and so caused his death, was negligent. On this issue BOSHOFF J P found in favour of ANNA, to whom he awarded agreed damages of R2 000,00 in her personal capacity and R1 450,00 in her capacity as mother and natural guardian of the child.

The Fund now appeals.

There was no eye-witness to the collision.

Neither the vehicle involved nor its driver could be traced. As a result, negligence could be established only by way of inference from the proved facts and the opinion evidence of experts.

No evidence was led on behalf of the Fund, and the facts proved in the evidence led on behalf of the plaintiff were meagre.

The Mafikeng-Sanniespos road runs from north to south. When WILLIAM's body was found by Sgt. CRAUSE, it was lying, seriously mutilated, on the tarred surface of the road, about half a meter from its eastern edge, that is, on the side of the road which would normally be used by vehicles travelling from north to south. CRAUSE's immediate impression was that the victim had been struck by a motor vehicle. About 4 meters to the north of the body, and also about half a meter from the eastern edge of the tarmac, were patches of blood and pieces of brain tissue.

Through

Through these patches CRAUSE observed the track of a vehicle leading in the direction of the body. Apart from these CRAUSE observed no brake marks, drag marks, dried mud, broken glass or any other indication of the point of impact, or of the course of the vehicle before the collision. The road was straight and level and unobstructed for a considerable distance. It was dry. There were no buildings or trees at the sides which could have cast shadows.

Dr J M FERREIRA, the district surgeon of Sannieshof, gave evidence that he performed a post-mortem examination on WILLIAM's body on 14 May 1979. He recorded in his report that the deceased's height was 1,67 m and his weight 64 kg. His head, face, chest and abdomen were seriously

mutilated

mutilated. Half of the brain was missing, and the rest of the brain had been crushed.

In the opinion of the doctor based on his observations of the injuries, the deceased was struck from directly in front while he was in an upright position. The vehicle must have been heavy and high. In Dr FERREIRA's view the injuries were consistent with the deceased having been struck by one vehicle. It was improbable that he was struck by more than one vehicle - if he had been there would have been other indications which he did not find.

ANNA said in her evidence that it was WILLIAM's habit to cycle to work. On the preceding Wednesday, however, his bicycle was out of order, and he walked to work on the

Wednesday

Wednesday, Thursday, Friday and Saturday, returning (except on the Saturday) at about 6 p.m. She was unable to say what clothes he was wearing on the Saturday, except that he invariably wore black and white football stockings.

The question then is, what inferences can properly be drawn from the facts and the expert opinion evidence?

The inference to be drawn from what was seen on the road is that immediately before the collision the vehicle was travelling from north to south on its correct side of the road. The presence of brain tissue on the road indicates that the skull was split open on impact, and the final position of the body indicates that it was thrown for a distance of at least 4 meters to the south.

It

It is reasonable to infer from the absence of brake marks or any indication of a swerve, that the driver of the vehicle did not attempt to take any avoiding action, from which the further inference can be drawn that he did not see WILLIAM in the road until a very late stage, if at all.

The facts that WILLIAM's body was lying about half a meter from the eastern edge of the tarmac, that the first patches of blood and the brain tissue were the same distance from the edge, and that WILLIAM must have been in an upright position, facing the approaching vehicle, point to the conclusion that he was proceeding on foot from south to north on the eastern edge of the road.

It is true that it is somewhat puzzling why, if this was the fac-

tual

tual situation, he did not step off the road to avoid the approaching vehicle. But it may be that he expected that the driver had seen him in his lights and would give him a clear berth. Or it may be that the vehicle was traveling without lights or with only the off-side head light burning. However it may be, the inference remains that he was probably walking on the road in the direction of the oncoming vehicle.

It was suggested on behalf of the Fund that he might have staggered, or stumbled, or walked into the road. From the photographs of the scene which were placed before the trial Court, it does not seem that there was anything on or near the road to cause him to stumble, and there is

nothing

nothing to suggest that he had consumed liquor. It is highly improbable that he would have walked into the road across the path of an approaching vehicle. The suggestion are therefore mere speculative possibilities for which there was no basis on the evidence..

It was argued, on the basis of R v. Yssel, 1945 TPD 235 at 243, that there was no proof of negligence because there was no evidence to prove that WILLIAM was visible "so that a person keeping a proper look-out or driving at a reasonable speed in the circumstances ought to have seen the obstruction in time to avoid the accident..." In this regard it was not possible for the plaintiff to prove more than was stated in evidence by sgt. CRAUSE: there was nothing unusual in the prevailing conditions, and no apparent reason why the driver should not have seen WILLIAM in time to avoid.....

avoid colliding with him.

Counsel for the Fund placed reliance on a piece of evidence given by Dr FERREIRA. He said -

".... al is dit sterk maanlig ...
as dit 'n Swartman is op 'n swart pad
op 'n swart nag is jy op hom voor jy
hom sien. Ek het al self baie keer ...
ongelukke verhoed deur vinnig uit te
swaai. Dit is 'n werklike groot ge-
vaar eintlik naweke."

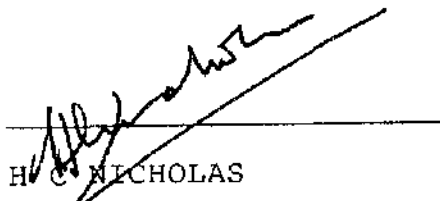
I do not think that his evidence is destructive of the plaintiff's case. On the contrary, it shows that if a proper look-out is kept while travelling at a reasonable speed, collisions with black pedestrians are avoidable.

In my view, therefore, the plaintiff established a prima facie case, which, in the absence of an answer

from

from the Fund, became conclusive.

The appeal is dismissed with costs.



H. C. NICHOLAS

RABIE, CJ	} Concur
JOUBERT, JA	
GALGUT, AJA	
HOWARD, AJA	