

**FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA**

Case No. : 1027/08

In matter between:

LIONEL FRED LANGEVELD

Plaintiff

and

ELDRID PRINSLOO

Defendant

HEARD ON: 15 NOVEMBER 2011

JUDGMENT BY: C.J. MUSI, J

DELIVERED ON: 18 NOVEMBER 2011

[1] On May 2005 at approximately 16H20 at Voortrekker Street Odendaalsrus the plaintiff was a passenger in a motor vehicle with registration number BRH 034 FS driven by the defendant. The vehicle crashed against a pole as a result of which the plaintiff sustained injuries. The plaintiff alleges that the crash was caused by the defendant's negligence. The defendant denies that he was negligent.

- [2] On 26 August 2010 Mocumie J ordered the separation of the merits from the quantum. This judgment only deals with the merits. The parties agreed that the issue of apportionment of damages should be adjudicated when quantum is adjudicated.
- [3] The evidence in this matter is relatively simple. The plaintiff called three witnesses and the defendant called two witnesses.
- [4] Mr Lionel Langeveld, the plaintiff, testified that on the afternoon of 1 May 2005 he was invited by the defendant to the latter's house. When he got there they had a few drinks. Later that afternoon the defendant asked him to accompany him to fetch their friend, James Malema. Their other friend, Colin Schwartz, went with them.
- [5] He sat in front while Mr Schwartz sat at the back. They drove in Erleigh Street and approach a traffic circle from the six o' clock position and turned left into Voortekker Street at the nine o' clock position.

- [6] According to him the defendant was driving in excess of the speed limit when they approached the circle. As they were driving too fast the defendant could not control the vehicle and they drove against the curb. The vehicle went over the curb against a pole. He sustained injuries.
- [7] He further testified that when they approached the circle he requested the defendant to drive slower. He did not see any other vehicles on the road. He did not wear a seatbelt.
- [8] Mr Thembekile Joseph Kana testified that he is a warrant officer in the South African Police Services stationed at Odendaalsrus. On 1 May 2005 at 16H20 he attended the crash scene. He completed an accident report and drew a plan of the scene. He also measured the distances. The distance from where the vehicle drove against the curb to the pole is 32.6m. From the pole to the place where the vehicle came to a stand still is 3m. He noticed that the vehicle's bonnet and its left side were damaged.
- [9] He spoke to the defendant who told him that the vehicle's tyre burst as a result of which he lost control of the vehicle

and drove into the electric pole. The defendant did not appear to be under the influence of alcohol. He noticed that a rear tyre had burst.

[10] Mr Lionel Gordon, a mechanical engineer and accident reconstruction expert, testified that he computed the speed at which the vehicle would have travelled if it hit the pole at 55km/h and at 60km/h.

[11] He used conservative estimates. According to him if the vehicle crashed against the pole at 60km/h it means it drove against the curb (point A) of Mr Kana's plan at approximately 76km/h. If it crashed against the pole at 55km/h it drove against the curb at 72km/h. He did not even consider the retardation that would have been caused by the two other curbs that the vehicle drove over.

[12] If the vehicle hit the curb and the defendant then braked, medium to hard, the vehicle would have stopped approximately 31,5m later. If maximum brake was applied it would have stopped under 20m from point of impact with the curb. If the defendant hit the curb at 60km/h and applied

brakes the vehicle would not have crashed against the pole.

[13] Mr Eldrid Prinsloo, the defendant, testified that on 1 May 2005 he was driving in Erleigh Boulevard towards Odendaalsrus town. There were vehicle driving in front of him. The vehicle turned right into a filling station and he proceeding straight towards the traffic circle. He was travelling under 60km/h. When he got to the traffic circle he slowed down because there were other cars approaching. He then turned left and accelerated.

[14] He felt a bump or noise and had no control over the car before he reached the curb. The vehicle veered to the right, hit the curb and got onto the island. He accelerated and the vehicle crashed against a pole. He did not apply brakes. It is possible that he said to warrant officer Kana that the back tyre burst. The car was written off and he received R11500-00 therefor.

[15] Mr Collin Schwartz confirmed that they were driving at approximately 60km/h when they approached and drove out of the circle. He heard a sound and the vehicle veered to the

right. The defendant tried to control the vehicle but it went straight into the pole. He does not know whether the defendant applied brakes.

[16] The plaintiff bears the onus to prove that the defendant drove the vehicle negligently.

[17] Negligence is the failure to exercise the degree of care and skill the reasonable man (*bonus or diligens paterfamilias*) would have exercised in the circumstances. The standard by which a driver's conduct is to be judged is an objective one. In applying this standard the court must, to the best of its ability, place itself in the position of the driver at the time of the occurrence and judge whether he/she exercised the care which the reasonable person in his position would have exercised in the circumstances. The conduct of the driver is not judged with hindsight by examining the conduct in the placid atmosphere of the court in the light of after-acquired knowledge. See **Cooper: Delictual Liability in Motor Law** Revised Ed 1996 at p76.

[18] Mr Louw, on behalf of the defendant did not criticize any of

the plaintiff's witnesses. Mr Langeveld impressed me as an honest and trustworthy witness. There are no improbabilities in his evidence. If his evidence is evaluated in conjunction with the evidence of Mr Gordon it becomes abundantly clear that the defendant drove that vehicle at a speed that exceeded the speed limit and that he could not control it properly after he negotiated the left turn at the circle. His evidence is that he did not hear any sound akin to a tyre burst. It was put to him that the defendant and Mr Schwartz would say that a tyre burst. He denied it. When Schwartz and the defendant testified they said they do not know what caused the vehicle to veer towards the right. The inconsistencies in the defendant and Mr Schwartz's version also enhanced the probabilities of Langeveld's version.

- [19] The defendant's version is at variance with Gordon's version. It is common cause that the speed limit was 60km/h. Gordon's evidence is clear that the damage to the vehicle and the speed with which it probably hit the pole, conservatively estimated, show that the defendant drove the vehicle at a speed in excess of 70km/h, which is above the speed limit. That is probably why he could not negotiate the

turn properly. When the defendant was asked by Kana what happened he categorically said that the vehicle's tyre burst. When he testified he said that it was a mechanical problem. During cross-examination he said it may be a tyre burst or a mechanical fault or both. He could give no explanation why he did not apply brakes when he heard the sound or even after he mounted the curb.

[20] It is significant that both the defendant and Schwartz do not state, in their statements, what happened after the vehicle moved onto the island. The defendant's actions to control the vehicle is limited to what happened before it hit the curb. No explanation is given for the 32.6m that the vehicle travelled, subsequent to hitting the curb.

[21] Mr Schwartz clearly wanted to protect the defendant. Firstly he testified that there were brake marks on the road surface. He then said that he saw the brake marks two days after the incident and he does not know whether it was caused on that day. Secondly he testified that the vehicle was not badly damaged. It was common cause that the vehicle was so badly damaged that it had to be sold as scrap. Thirdly when

he was confronted about the gaps in his statement he testified that he made a more detailed statement which he gave to the defendant.

[22] I am convinced that the evidence of Langeveld is to be favoured above the evidence of the Prinsloo and Schwartz. I accept Langeveld's evidence as to what happened on the 1 May 2005 at that scene. On his evidence it is clear that the defendant drove too fast; could not control the vehicle and drove onto the curb and ultimately into the pole. His conduct fell short of that of a reasonable person. He drove the vehicle negligently.

[23] Even if I am wrong, on the defendant's own version he drove the vehicle negligently. He testified that he heard the sound and he tried to control the vehicle. The vehicle drove against and over the curb. It travelled for approximately 32m. During all this time he did not apply brakes in order to stop the vehicle. A reasonable person in the defendant's position would have attempted to bring it to a halt by applying brakes. He did not do that, he accelerated instead of braking. On his own version he was negligent.

[24] Neither of the parties requested me to make a costs order at this stage. The issue of apportionment of damages still have to be adjudicated. In my view the issue of costs should be reserved for decision by the Court that would finalise this case.

[25] I accordingly make the following order:

- a) The defendant is liable for the damages, if any, that the plaintiff suffered in consequence of the defendant's negligent driving of motor vehicle BRH 034 FS on 1 May 2005 at Odendaalsrus.
- b) The costs stand over for later adjudication.

C.J. MUSI, J

On behalf of the Plaintiff:
Instructed by:

Adv. A.K. Boomaert
Rosendoff Reitz Barry
6 Third Street
Bloemfontein

On behalf of the Defendant:
Instructed by:

Adv. M.C. Louw
Hill McHardy & Herbst
Collinstraat 7
Aboretum
Bloemfontein

/ar