

KWAZULU-NATAL HIGH COURT, DURBAN

REPUBLIC OF SOUTH AFRICA

Case no: 213/2007

In the matter between:

M3 CARRIERS CC

PLAINTIFF

Vs

BALIRAJ RAMOUTHAR

DEFENDANT

JUDGMENT

MADONDO J

[1] In this action the plaintiff sues the defendant for payment of the sum of R239 480.00 as damages arising out of a collision between the plaintiff's truck and the defendant's truck which occurred on 28 September 2005 on M4 North bound at Riverside off ramp, Durban.

[2] The defendant has also lodged a counter claim in which he claims payment of the amount of R39 900.00 as damages he suffered when his vehicle got damaged during the aforesaid collision.

[3] In the main application the Plaintiff alleges that the aforesaid collision was occasioned solely as a result of the negligence of the defendant in that he failed to keep a proper lookout and he applied his brakes at a time and in a manner causing his vehicle to jack-knife and thus causing a dangerous obstacle in the road for vehicles travelling immediately behind him.

[4] On the other hand, the defendant alleges that the negligent driving of the plaintiff's driver was the sole cause of the collision. The sum of R399 00.00 which the defendant claims represents the fair, reasonable and necessary costs of repair to defendant's motor vehicle. However, at this juncture the quantum of damages each party allegedly suffered is of no significance since this court has been asked to determine the issue of liability only.

[5] The plaintiff called one witness, Praveen Ramidas, who testified that on 28 September 2005 he was driving a horse and double trailer on the M4 northern bound which is a two lane carriageway. He was travelling in the left lane and the defendant's truck was in front of him, travelling in the same direction. There was a three vehicle gap between the two vehicles. As a result of the debris and stones falling off the defendant's vehicle, Ramidas moved onto the right lane. The defendant's vehicle also moved onto the right lane. At the time the gap had decreased by one vehicle length.

[6] Suddenly Ramidas saw the brakes of the defendant's vehicle coming on. In order to avoid collision with it, since it was too close at the time, Ramidas moved to the left. The defendant's vehicle also swiftly moved across, cut off Ramadas' vehicle and jack-knifed in front of it. In consequence thereof Ramadas' vehicle collided with the defendants' left rear trailer. At the time Ramidas was travelling at the speed of 15-20 kmh.

[7] Defendant testified that on the day in question he was transporting soya which was crushed fine and very light. He denied that any stones could have fallen from the back of his vehicle. The road on which he was driving was flat, the weather as well as the visibility was good. He could see a distance of 700m ahead of him. As he was driving in the left lane, he suddenly saw two Metropolitan buses stationary on the left hand side of the road. On seeing these buses he moved onto the right lane. The

truck behind him also moved onto the right lane. On Riverside Road when he was at a distance of 20-25m away from the said buses, one of them indicated, turned and blocked the right lane. At the time the plaintiff's vehicle which was travelling behind him was very close.

[8] Under cross-examination as well as re-examination Ramidas conceded that immediately prior to the collision he was following the defendant's truck too closely and that had he kept a larger following distance, he could have avoided the collision with the defendant's truck which was in front of him.

[9] Under cross-examination the defendant was hard put to explain why he had only seen the buses when they were 50m away from him while he was travelling on a flat road with 700m visibility. The defendant then conceded that had he kept a proper lookout, he would have seen the buses ahead of him at a distance. He further conceded that his truck jack-knifed before the collision.

[10] He further stated that when the collision occurred both trucks were on the right hand lane. However, the defendant was hard put to explain how it happened that Ramidas' truck crashed into the left rear of his trailer by its right front portion if the two trucks were directly following each other on the right hand lane.

[11] In my view, the version of plaintiff's driver, Ramidas, that when the defendant's truck turned onto the left it jack-knifed and that as a result the right front portion of his truck caught the left rear of the defendant's trailer, when it is compared to that of the defendant, it is more probable and plausible and it clearly explains how the collision occurred.

[12] However, evidence shows that Ramidas was negligent by not keeping a safe following distance

between his truck and that of the defendant, ahead of him. On his own version had he kept such distance, he could have avoided the collision with the defendant's truck. This, in other words constitutes an admission by Ramidas that he was negligent by driving too close behind the defendant's vehicle.

[13] The defendant driving on a flat stretch of road where he could see 700m ahead of him claims to have seen the Metropolitan buses which were stationary on the left side of the road for the first time when he was 50m away from them. He could not tell what could have obstructed his line of vision. This, in my view, clearly points to the fact that the defendant has not been keeping a proper look out.

[14] Secondly, the defendant merely tapped his brakes and he did not sufficiently reduce the speed of his truck to such an extent that he could easily avoid collision with the buses in front of him or that he could stop within a safe distance away from the buses, if either of them unexpectedly drove into the carriage way in front of him.

[15] Thirdly, the defendant drove on until he was 20 – 25m away from the said buses and he thereby negligently allowed himself to be in a situation where he had to take a quick evasive action. In taking such an action he did not look at his rear view mirror in order to establish the whereabouts of the vehicle behind him, but he simply moved to the left. The evidence shows that when the defendant's truck moved to the left, Ramidas' truck was three quarters onto the left lane. Had he looked into the rear view mirror and kept a proper lookout, the defendant would have seen that the truck behind him was then in the process of moving onto the left lane in order to avoid collision with his vehicle.

[16] Fourthly, the defendant failed to manoeuvre his truck properly so to be able to safely negotiate a turn into Riverside Road (a sharp angle turn) – causing his truck to jack-knife. All this shows that the

defendant takes the greater part of the blame for the collision though it cannot be said that the collision was solely caused by his negligence.

[17] The defendant also intended to call Ricky Nelson Soobramoney, a Captain in the employ of Durban Metropolitan Police Service, as an expert witness. However, prior to Soobramoney testifying on the merits of the matter and expressing his opinion on the accident reconstruction, this Court was asked to determine and rule on the sufficiency of his qualifications experience and expertise so to be said to be an expert witness who could express an opinion on accident reconstruction. After hearing the said Soobramoney on his qualification, experience and expertise and considering argument by both counsel, I ruled that Soobramoney has failed to show that he has sufficient qualifications, experience and expertise to testify as an expert witness on the subject. Whereupon, the defendant closed its case without calling any further evidence.

[18] In the light of the finding that the defendant's negligence has largely contributed to the collision, I deem it unnecessary to deal with his counter claim. Taking into account the degree of negligence of each party, I deem it just and fair that their contribution to collision be apportioned as follows:

The plaintiff's negligence has contributed 30% to the collision and the defendant's negligence 70%.

[19] In the result, the defendant is 70% liable to compensate the plaintiff for the damages it suffered on 28 September 2005 as a result of a collision between the two vehicles with costs.

Date judgment reserved: 30 September 2011

Date judgment delivered: 1 December 2011

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