

26/3/09
NOT REPORTABLE

1	DELETE WHICHEVER IS NOT APPLICABLE
(1)	REPORTABLE: YES/NO.
(2)	OF INTEREST TO OTHER JUDGES: YES/NO.
(3)	REVISED.
	DATE: 26.03.09
	SIGNATURE: <i>Sapire</i>

IN THE HIGH COURT OF SOUTH AFRICA
NORTH AND SOUTH GAUTENG

Case No: 1191/2005

In the matter between:

B R VAN DER GRIENDT

Plaintiff

and

P G STRYDOM

Respondent

J U D G E M E N T

Sapire, AJ:

This is an action in which the plaintiff claims payment from the defendant of an amount of R660 000, 00 The amount represents damages allegedly sustained by the

plaintiff from personal injuries in a road accident which took place on the 25th of August 2003.

Plaintiff alleges that the defendant was the driver of a vehicle owned by the plaintiff and in which the plaintiff was a passenger. The plaintiff had brought the vehicle to the defendant to have modifications made to the vehicle in order to increase its efficiency and high speed capabilities. It is worthwhile bearing in mind that the vehicle was manufactured as a bakkie intended for work normally done by bakkies. The fact that its design was tampered with may well have contributed to the accident which took place that day. There is some dispute as to what if anything was done to the vehicle during the morning preceding the afternoon when the accident occurred.

The plaintiff has testified, and this appears to be common cause, that after lunch which they took together with others plaintiff together with the defendant went to drive the vehicle on the hospital road in Brakpan. There is evidence that this particular road is used to test drive vehicles which the defendant had modified.

The plaintiff says that the purpose of the drive was to test the vehicle and admits that in order to do so the vehicle had to be driven at a high speed, much in excess of the speed limit prescribed for that vicinity.

Plaintiff has testified that the defendant was driving the vehicle in order that he could get a feel of the engine on which he had worked and on which work was still to be done.

While they were driving at an excessive speed the defendant, so the plaintiff says, lost control of the vehicle which left the tarmac road, careered into the veld, rolled, and finally came to rest a considerable distance from the road at or in a ditch which carries water through the field.

The defendant was thrown from the vehicle some distance before the vehicle came to rest while the plaintiff was found lying next to the left hand side of the vehicle, his head near the back of the rear wheels and his feet towards the ditch.

It seems to be an irresistible conclusion that the defendant was thrown from the vehicle before the plaintiff as the defendant was found injured and lying nearer to the road than the plaintiff. How the defendant emerged or was thrown from the vehicle is not clear on the available eyewitness evidence. This is the account given by the plaintiff.

The defendant claims to be suffering from retrograde amnesia and has no recall at all of the incidents to which the plaintiff has testified from about the time lunch was taken. No medical evidence substantiates this. He cannot himself contradict the plaintiff's testimony but has placed before the court the opinion of one Strydom, (unrelated to the Defendant, said to be an expert on the reconstruction of road accidents.

The parties fought the case on the basis that I was to determine, if possible, only who the driver of the vehicle was and who was the passenger at the time of the accident. This was the sole issue for decision.

No serious fault can be found in the manner in which the plaintiff testified. He related what is after all a simple story which prima facie has the ring of truth.

There are circumstances which support what he told the court. The first is the defendant's presence in the car at all. There seems to be no reason for the defendant to have been in the car otherwise than to test it and to get the feel of it. If the plaintiff was to have done the testing there was no need for the defendant to have been there at all.

The second circumstance which seems to support the plaintiff's version is that he was found lying next to the left hand side of the vehicle. It is reasonable to infer that it was on the left hand side of the vehicle that he was sitting when the accident took place. This would make him the passenger. He claims to have correctly applied his seatbelt. There is evidence which suggests that the seatbelt was damaged by forces engendered in the movement of the vehicle after leaving the road.

Photographs before the court show the left hand seatbelt hanging and the damaged mechanism was produced as an exhibit.

There is a hospital record to which the Defendant has apparently subscribed. In it the accident is described much as the plaintiff has recounted. Although the defendant while admitting his signature claims not to have been responsible for the description of the accident which is neither in his handwriting nor his language, Afrikaans. The hospital record is part of the bundle of documents placed before the court in respect of which it is agreed that that documents included in the bundle are what they appear to be but are not in themselves proof of the contents thereof. The description of the

accident is therefore not proved by the production of this document. Its existence however favours the probabilities of the plaintiff's account for the information therein probably came from the Defendant or someone acting on his behalf. Not too much reliance is placed on this document but it is a factor taken into account with other evidence favouring the probabilities of the Plaintiff's version.

The defendant called one Strydom as an expert to infer from the available evidence that it was the defendant who was the passenger and that the plaintiff must have been the driver. Strydom was only consulted some two years after the occurrence of the accident and clearly with a brief to theorize and to come to the conclusion favourable to the defendant, contradicting that of the Plaintiff. Although Strydom claims to have been impartial, and independent, while not disbelieving him his theorising seems to be directed to establishing the defendant's case

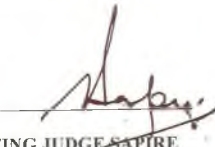
In any event the evidence of an acceptable eyewitness account about what took place is preferable to the conclusion arrived at by the reconstruction of anyone not present at the time.

What was argued to be a probability favouring the defendant is the fact that the defendant must have been thrown from the vehicle before the plaintiff. The defendant's theory is that this could not have happened if the defendant had been the driver. It is argued that the plaintiff must have emerged from the vehicle on the left hand side because it is the passenger's door which was opened. The driver's door after the accident was closed and could not be moved. The right hand door was however damaged bowed outwards and the frame of the window bent to leave a gap between it and the body of the car. There is nothing to eliminate the possibility of the

plaintiff knowing been thrown from the vehicle from that side. Strydom the expert, dismiss this as a possibility but his reasons for doing so are not clear. From the pictures which are exhibits in the case I find that this possibility cannot be excluded nor can the possibility be excluded that the door opened when the vehicle rolled and later closed again and became immovable.

As I have no reason to disbelieve the plaintiff I find that he was a passenger and the defendant was the driver.

Cost will follow the event and the defendant must pay the plaintiff's costs.



ACTING JUDGE SAPIRE
HIGH COURT, PRETORIA