

HIGH COURT OF SOUTH AFRICA

NORTH GAUTENG PRETORIA

31/08/2009.
CASE NO: 45914/07

GHANIEM, MOHAMMED

PLAINTIFF	OF WHICH WHICHEVER IS NOT APPLICABLE
V	(1) REPORTABLE: ☒ YES/NO.
MOILOA, G M	(2) OF INTEREST TO OTHER JUDGES: YES/NO.
DEFENDANT	(3) REVISED: ☒
27. 8. 09	SIGNATURE
DATE	

JUDGEMENT

SAPIRE, A J

The plaintiff is claiming damages from the defendant arising from a collision between their respective vehicles which took place in Louis Botha Avenue Houghton Estate Johannesburg. The incident occurred at approximately 13h30 near a traffic light controlled T junction of Acorn Lane with Louis Botha Avenue.

The parties have agreed that the issues of negligence and the amount of the award be separated, and that the former be disposed of first. The trial proceeded on that basis.

The Plaintiff recounted in evidence that he was the driver of his motor vehicle. He entered Louis Botha Avenue from Acorn Lane at the T - junction when the traffic lights were in his favour, turning to his right to join traffic travelling towards Orange Grove which lies further to the north. The plaintiff further said that he had travelled some 30 meters when he noticed in his rear view mirror that a car was approaching from behind at what he estimated a high speed. It appears to him that this car was going to collide with him but he could do nothing about it. Shortly thereafter the car approaching from the rear, driven by the Defendant, did in fact collide with the right rear end of the plaintiff's car.

The defendant's car stopped ahead of the plaintiff which was pushed onto the sidewalk. Plaintiff's car was seriously damaged as a result of this collision.

On this account the defendant was to blame for the accident and there would be no question of apportionment.

The defendant however testified and offered a different version. He said that he too entered Louis Botha Avenue from Acorn Lane. He says that there was a line of cars headed by the plaintiff's car followed by another car after which the defendant followed. All three entered Louis Botha Avenue turning to the right. He says that they were all travelling very slowly when suddenly the car ahead of him swerved to

the right to avoid colliding with the plaintiff's car which had come to a sudden stop.

The defendant said that he too tried to swerve to his right but was unable to clear the plaintiff's car which he clipped on the right rear side as he passed. He attributes the collision to the plaintiff having stopped suddenly at a point where he should not have done so. He suggested that the plaintiff intended to make a u-turn. This version abounds with improbabilities and is not an accurate description of the events which led up to the collision.

Defendant's plea in which negligence is attributed to the plaintiff describes such negligence, referring to the plaintiff in these terms:

- a) He drove at a speed which was excessive in the circumstances;
- b) He failed to accelerate, swerve aside, stop, slow down or take any other reasonable steps he could and should have taken to avoid the accident and
- c) He failed to give other car users right of way.

These allegations are not supported in any way by defendant's testimony. The difference between what is pleaded and what was stated in evidence makes it difficult to give credence to what the defendant has stated.

The balance of probabilities lies heavily in the plaintiff's favour and I find that it was defendant's negligence which was the sole cause of the accident.


Sapire A.