

25/9/2009
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VAN BELANG VIR ANDER REGTERS: JA/NEE.	
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25/9/2009	
DATUM	HANDTEKENING

IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG HIGH COURT, PRETORIA)

CASE NO: 14396/2004

In the matter between:

RICHARD M HADEBE

Plaintiff

And

ROAD ACCIDENT FUND

Defendant

JUDGMENT

LEDWABA, J

- [1] The plaintiff instituted an action for damages against the defendant arising out of an accident which occurred on 3rd June 1999, on the N4 highway next to Cullinan in the Gauteng district. The plaintiff was the driver of an Isuzu three ton truck with registration number DCB 756 GP, (first truck), which collided with a twenty-two metre long truck with registration number HTF 595 GP, (second truck), driven by France Mathaba, (the insured driver).

- [2] When the trial commenced I ordered that the merits and quantum be separated in terms of Rule 33(4). The trial was to proceed on the merits and the proceedings in relation to issues concerning quantum were postponed *sine die* or stayed. The parties by agreement handed to the court exhibit A, a bundle consisting of documents and photos, and exhibit B, a bundle of photos.
- [3] The facts of this matter are not complex; it is common cause that on 3rd June 1999 at about 22H00 the first truck collided with the rear of the second truck on the N4 highway. Both trucks were on the extreme left lane before the collision and were facing the western direction. After the impact of the two trucks came to a standstill on the same left lane.
- [4] The plaintiff and the insured driver, together with his witness, Mr. Isaa Riba, (Mr. Riba), did not agree on the exact location of the accident. However, they all said the scene where the accident happened had no street lights, the moon was not shining and it was dark. Furthermore, it was not raining and the road was dry.
- [5] The plaintiff's version of how the accident occurred is that as he was driving at a speed of about 80 kilometres per hour, his head lights were on 'bright' and they shone for a distance of about 7 metres. He saw an obstruction before him, the second truck, for the first time at a distance of 5 to 6 metres. He further said that the second truck's lights were off, its

reflectors and the yellow reflective sign plate (chevron) at the back of the truck were not visible.

- [6] Plaintiff said to avoid the collision, he changed down the gears and applied brakes but the accident occurred. He further said he did not swerve the first truck because there could be a ditch on the side of the road.
- [7] Plaintiff stated that after the accident the insured driver approached him whilst he was stuck behind the steering wheel and he asked the insured driver why was the second truck on his path, the insured driver's response was that it broke down and it could not move. The insured driver, when he testified, denied that he told the plaintiff and that the second truck had a break down.
- [8] The plaintiff further said that the police came to the scene, after furnishing the police with his particulars, he collapsed and was taken to the intensive care unit where he was kept for five days.
- [9] The version of the insured driver and his passenger Mr. Riba, is that on the day of the accident they left Middelburg, in the Mpumalanga district, between 17H00 and 18H00 after loading twenty-five tons of washed coal dripping with water.
- [10] They said when they left Middelburg they checked if the indicators and lights of the second truck were in good working condition. They were satisfied that the lights were in

good working condition and that the chevron on the back of the second truck was clearly visible and not covered with the coal dust.

[11] As they were driving on the freeway towards the west with the lights of the second truck on the road was ascending. The insured driver said he saw the first truck from his rear-view mirror approaching. He estimated the speed of the second truck to have been about sixty kilometres per hour, and Mr. Riba estimated the speed to have been about fifty kilometres an hour. They suddenly heard a bang and the second truck came to a stand still.

[12] Mr. Riba said that he went to the rear of the truck to check what happened and reported to the insured driver who also went to check what happened. They saw the first truck which had collided with the rear of the second truck and the front part thereof was underneath the second truck. About two tyres on the second truck were damaged. Both of them said that the lights of the second truck were on when the accident occurred.

[13] From the aforesaid it is clear that the crucial issue to be determined is whether the second truck was mobile or stationary when the accident occurred.

[14] When the plaintiff was specifically asked if the second truck was stationed or mobile his response was that it was not visible. His response to the same question asked by the

court he said he does not know if the second truck was mobile or stationery.

- [15] The plaintiff in paragraph 5 of his particulars of claim made the following allegation:

“The aforesaid collision was caused solely by or arose out of: The reckless/negligent driving of the Insured vehicle by the Insured driver, who was reckless/negligent in one or more of the following respects;

5.1 He failed to adhere to the road traffic rules by keeping his vehicle stationery in the middle of the road at night.

5.2 He failed to take any, alternatively sufficient cognizance of the presence and the actions of the Plaintiff by not putting up reflectors to warn other road users in particular the Plaintiff.

5.3 He failed to discharge his reasonable duty of care by putting the lives of other road users in particular the Plaintiff at risk by leaving his vehicle stationery on a highway and at night.

5.4 He failed to avoid the collision when, by taking reasonable and proper care he could have done so”.

- [16] During arguments, the plaintiff's counsel brought an application, which application was opposed, to amend paragraphs 5.1 and 5.2 of the plaintiff's particulars of claim

by further adding that the second truck was travelling at a low speed.

[17] The plaintiff's counsel further submitted that the defendant should be held liable because the defendant drove the second truck at a very low speed on a highway without warning other road users and that the insured driver was further negligent in that, he operated a truck covered with coal on a free way without ensuring that it was visible to other road users.

[18] Of importance, in paragraph 2 of the plaintiff's affidavit dated 13th May 2002 on page two of exhibit A, he said the following:

"2. I collided into a stationery truck in the left lane. The truck had neither lights nor any signs to warn oncoming traffic. I did not see the truck until I collided into it. There was no way I could avoid the accident." (own underlining).

[19] Plaintiff's attorney instructed Fleet Management Consultancy CC to reconstruct the accident. In their report, see page 20 of the exhibit A it is noted that the plaintiff told A. M. Savage that he saw a stationery vehicle which had no tail-lights. It is further noted that "... Mr. Hadebe could not identify the exact location of the accident as many aspects such as the tall plaza's and road markings had changed in the last ten years since the accident occurred."

- [20] Contrary to what is set out in the aforesaid, the plaintiff testified that he does not know if the second truck was mobile or stationery and he testified that he did see the second truck before the collision.
- [21] When the plaintiff was cross-examined he said he could not say if the truck was covered with dust or not, according to him it was not visible. The submission made by the plaintiff's counsel, that the truck was not visible because it was covered with coal dust is contrary to the evidence of the insured driver and Mr. Riba. Furthermore, there is no evidence to support same.
- [22] The plaintiff's counsel submitted that the insured driver and Mr. Riba's evidence had material contradictions. Despite the contradictions mentioned by the plaintiff's counsel, I find that they were reliable and credible witnesses and their version that the truck was mobile, visible and that its lights were on is probable and cannot be rejected.
- [23] The insured driver and Mr. Riba's failure to explain satisfactorily why at about 22H00 they were still on the road on the freeway next to Cullinan and have only covered a distance of about 100 kilometres if they left Middelburg at about 17H00, does not in my view, negate the fact that the vehicle was mobile and that the lights on the back of the second truck were on.

- [24] The insured driver and Mr. Riba testified, that after the accident, that the second truck was moved from the road and parked under the bridge. Mr. Riba further said the second truck was driven to Rosslyn after its tyres were changed. If the truck could move after the accident I fail to understand why the insured driver would have let it stop it in the left lane used by the vehicle on the N4 freeway.
- [25] On the plaintiff's version the head lights of the first truck did not shine for a reasonable distance and the fact that he said he could not see the truck is, in my view, an indication that he did not keep a proper lookout. Plaintiff's failure to observe and respect the rights of other vehicles on the road constitutes negligence, see **Hoffman v South African Railways and Harbours 1955 (4) SA 476 (A)** and **S v Van Deventer 1963 92) SA 475 (A)**.
- [26] The plaintiff keeps on supplementing and changing his version. Initially he stated that the defendant's vehicle was stationery, now in his evidence he said he did not know if it was stationery.
- [27] The application to amend at such a late stage of the proceedings would be prejudicial to the defendant.
- [28] The alleged negligence raised by the plaintiff's counsel about driving at a slow speed on a highway has no causal link to the accident. I have considered the question of contributory negligence and cannot find that the plaintiff proved same.

[29] I therefore, make the following order:

(i) Plaintiff's claim is dismissed with costs.



A. P. LEDWABA
JUDGE OF THE HIGH COURT