IN THE HIGH COURT OF SOUTH AFRICA

(NORTH GAUTENG HIGH COURT PRETORIA)

CASE NUMBER 29547/06

DATE: 11 DECEMBER 2009

In the matter between

SELEGE PAUL DIKETANE **PLAINTIFF**

AND

ROAD ACCIDENT FUND **DEFENDANT**

JUDGMENT

TLHAPI AJ

[1] The plaintiff instituted action against the defendant for injuries sustained in a collision at Tafelkop between the vehicle driven by the insured driver Mr JB Matlala ("Matlala") with registration numbers […...] and that of the plaintiff with registration numbers […......] plaintiff claims carnages amounting to R2 150 000 00 for general damages, loss of income, future medical expenses and related expenses. By agreement between the parties only the issue of liability had to be determined. A separation was ordered in terms of Rule 33(4) of the rules of Court.

The main issue to be determined by the court pertained to the point of impact. The plaintiff and the insured driver maintain that the point of impact was in their respective lanes.

THE FACTS

[2] The collision occurred at about 21.30 on 7 March 2003. The plaintiff was travelling from his home at Phokoana towards Tafelkop. The road had two lanes divided by a white doted line in the middle and yellow lines on the left each lane. According to the plaintiff there were no streets lights and he reduced his speed to 60km as he drove through Tafelkop which was

in a built up area. There were no street lights. He saw a vehicle which was at a distance of 80 -100km from his vehicle. The said vehicle had its bright lights on, and was travelling in the opposite direction. He flickered his lights to indicate to the oncoming vehicle that its lights were on bright. The driver of the oncoming vehicle failed to dim his lights. Although the Plaintiff swerved his vehicle more towards his left, he was familiar with the condition of the road, he knew that he could not swerve to the left off the tarmac because his vehicle would have capsized. He also lowered his eyes towards the dashboard in order to focus and see the lines on the road He heard a loud noise and regained consciousness after two days. The impact took place in his lane. After he recuperated he accompanied the police to the scene and a sketch plan of the accident scene was drawn so that he could lodge a claim with his insurers.

[3] Inspector Mokolo attended the scene on 7 March 2003. Both drivers had been injured. He visited the scene about 3 month later and had taken the drivers individually on different occasions in order to draw a sketch plan. On the day of the accident he made certain observations. The plaintiffs vehicle a Polo Classic ('vehicle A') was damaged on the right hand side of the driver and it was facing towards Mosterlus. The bumper and lights fell off and were next to the vehicle to the left of point V on the sketch plan. The insured driver was driving a Mitsubishi half/ton truck (vehicle B') and the damage was on the right hand side of the driver in front. The insured driver's vehicle was facing the road with a pan of its body outside the edge of the road.

The sketch plan by Inspector Mokolo was annexed to the merits bundle which formed part of the pleadings and the following observations are made:

1. The road was divided by a dotted line, the yellow lines are not shown.

2. A1 was the point of impact shown by the plaintiff and it appears more or less next to the dotted line in plaintiff s lane

3. B1 is the point of impact shown by the insured driver and it is more or less in the middle of the lane on which he was travelling;

4. The distance between A1 and A (the vehicle) was 6 1m;

5. The distance between B1 and B (the vehicle) was 5.4m;

6. The distance between A and the fixed pole electric pole point C was 26,3m.

7. The distance between B and C was 24.8m

8. The distance between A and the edge of the lane of travel was 4,5m;

9. Vehicle B appears to have come to a standstill after the collision on the edge of the lane of its travel with half of its body or the gravel outside the edge of the road and the front portion protruding onto the tarmac.

10. Vehicle A appears to have come to a standstill with the rear and the two hind wheels protruding onto the lane of travel of vehicle B

11. The width of the entire road was 9.3m

Inspector Moloko was also responsible for the Officer's Accident Report and drew the sketch plan appearing on page 8 of the report

[4] The insured driver testified that he was from Groblersdaal travelling towards Tafelokop and Mosterius, travelling at 60km. His head lights were on dim and, although there were no street lights, he had good sight of the road. He saw two vehicles approach from the opposite direction at high speed. The vehicles were at a distances of about a 100 metres. The first vehicle drove past and suddenly the second vehicle encroached onto his side of road, he tried to swerve towards the left but it was too late the two vehicles made contact and collided with each other. His vehicle B was damaged on the right hand side in front and the vehicle A was damaged on the driver's side the right front.

SUBMISSIONS

[5] The following submissions were made

For the plaintiff

1. It was submitted that the version of the plaintiff with regard to the point of impact was never challenged in cross examination;

2. That the point of impact was closer to the dotted line in the lane of travel of the plaintiff which was where the debris from his vehicle was found;

3. Although the versions of the witnesses were mutually destructive the version of the plaintiff was favoured by the probabilities:

   For the defendant:

4. The plaintiff failed to show the court what the path of travel was of his vehicle prior to impact;

5. The point of impact as shown by him on the sketch plan, conflicts with his version that he could not see the road and swerved towards his left;

6. The point of impact shown by the insured driver was more probable.

THE LAW

[6] It was conceded that the two versions were mutually destructive. The plaintiff bore the onus to prove his case on a balance of probabilities and where the versions of the parties are mutually destructive the plaintiff will succeed only where the probabilities favour him

Machwewane v Road Accident Fund 2005 (6) SA 72 at 76 D-E;

[7] It was common cause that the collision occurred in a built up area where there were no street lights. The question that needs to be asked is whether the point of impact appearing as A1 on the sketch plan accords with the evidence of the plaintiff. In order to avoid the collision plaintiff swerved towards his left he could not go off the road completely that is onto the gravel, because of the gravel was in bad condition and he feared that his vehicle would capsize. Inspector Moloko corroborated him by explaining in his cross examination that the gravel portion on the extreme end of the lanes had holes, small and medium sized. Unfortunately the sketch plan did not show any yellow line on both lanes, therefore it is not possible to determine the position of plaintiff s vehicle after the collision, in relation to the dotted line, the yellow line and the edge of the road. It was suggested to the plaintiff in cross examination that he could not have pointed out the point of impact because he did not see how the collision took place furthermore that no mention was made of it in his statement. His response was that he saw the point of impact because the collision occurred before he lost consciousness in his evidence in chief ne said

> "I lowered my eyes towards the dashboard so that I could see the lines I reduced my speed to 60km, I saw the ether vehicle approaching, I tried to swerve to the left, I am familiar with the road. I kept to the left, I could not go further because the vehicle would capsize, then there was a big noise. I regained consciousness after two days."

Having regard to the above statement it was, in my view, impossible for plaintiff to have seen the point of impact. His concentration was shifted from the oncoming vehicle because he had lowered his eyes to the dashboard. He probably could have seen the point of impact if he was looking straight ahead of him or if he had alighted from the vehicle after the collision to view the damage.

[8] The plaintiff denied that he was following another vehicle and veered into the lane of the insured driver. It is not disputed that the insured diver's vehicle came to a standstill to the left of his lane. Whether it be on the version of the insured driver or the sketch plan of Inspector Moloko there is no explanation from the plaintiff or from any other source which would assist

the court in determining how the insured driver's vehicle landed where it did, that is if according to the plaintiff, the collision occurred in his lane. It seems to me having regard to the positions of the vehicles that the collision occurred in the lane of the insured driver

[9] A1 is very close to the dotted line In the lane of the plaintiff. Unfortunately again there are no measurements of the distance between A1 and the dotted line to assist. However, if the version of the plaintiff is to be believed the court must Determine the position of A1 having regard to the evidence of the plaintiff and in relation to the sketch plan. A1, in my view, is definitely not to the left or more towards the left or towards the left and at the edge of the road on plaintiff's lane. A1 is more towards the right next to the dotted line in plaintiff’s lane. Inspector Moioko tried his utmost to convince the court that A1 was more towards the left but he finally conceded. Even if he had not conceded. I would have had problems with his evidence because he admitted to being the author of the sketch plans on page 8 and 11. Although he was not cross examined on the stark and telling differences in the two sketch plans the court is entitled to consider and comment on them. The differences in the two sketch plans are irreconcilable with the evidence of the plaintiff, the most important being the positions of the vehicles after the collision.

[10] I conclude that on the probabilities and on the evidence before the Court, the plaintiff failed to satisfy the court on a balance of probabilities that the insured driver was negligent and responsible for the collision.

[11] In the premises, the order given is that of

> “An absolution from the instance"

TLHAPI. V

(ACTING JUDGE OF THE HIGH COURT)

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