

**IN THE HIGH COURT OF SOUTH AFRICA
[EASTERN CAPE DIVISION – EAST LONDON]**

CASE NO.: EL 500/2021

In the matter between:-

LINDELWA AGATHA DAKADA

APPLICANT

and

ROAD ACCIDENT FUND

RESPONDENT

JUDGMENT

NORMAN J:

- [1] This is an action arising from a motor vehicle collision. At the commencement of the trial Mr. Taljaard applied for separation of issues of merits and quantum. The court accordingly made a ruling for separation of quantum and merits in Rule 33(4) of the Uniform Rules of Court.
- [2] Mr Taljaard advised the court that this matter was transferred by an order of the Mthatha Court to this court. He further informed the court that the Defendant was directed to attend a pre-trial conference but failed to do so. He submitted that on the previous occasion there was no appearance for the defendant. He indicated that plaintiff was ready to proceed because the claims handler of the defendant had been contacted by his instructing attorney but was not present at court and there was no representative for the defendant.

[3] There is indeed a court order on file evincing that on 08 February 2024, Hartle J issued a case flow management directive wherein she directed the defendant to, respond to the plaintiff's request to hold a pre- trial conference and to obtain firm instructions in respect of the questions raised on her behalf in the relevant rule 37 (4) agenda. The court further ordered that the defendant was to be held strictly to the provisions of the amended rule 36 (9) and that filing of any expert notices / reports out of time will require to be condoned by the court.

[4] When the court resumed today, there was no appearance for the defendant. The plaintiff was present at court and was ready to proceed with the trial.

Plaintiff's evidence

[5] Plaintiff testified that she is employed as a Deputy- Director General at the Office of the Premier. She testified that on 8 April 2017 at approximately 07h00 she was driving a Nissan NP 200, a bakkie, and had passengers in front and at the back of the bakkie. She was driving on the road from Coffee Bay towards Mqanduli, in the Eastern Cape Province. The road was a narrow-tarred road. The weather was good and clear. There was no rain. She was driving at a speed of between 60km and 100 km per hour. As she was approaching the right turn into Mancamu Village she noticed an Avanza approaching. She was driving on the correct side of the road. She observed that the Avanza was wobbling but then stabilized and came towards her.

[6] She heard a bang. She believed that she lost consciousness. When she came to her senses there were people asking her to come out of the vehicle. She could not get out of the vehicle because both her hands were fractured and she was trapped inside the vehicle. Jaws of life had to be used to get her out of the vehicle. She observed that her vehicle was in the middle of the road. She observed that the Avanza was, off the road surface, on her side of the road, on the grass and it was facing the road. She observed that the damage on her vehicle was on the right front corner. She testified that before the accident she was driving and had remained on the correct side of the road. That was the plaintiff's evidence. Plaintiff closed her case.

Submissions on behalf of the plaintiff

[7] Mr. Taljaard applied for judgment in favour of the plaintiff. He further submitted that based on the maxim *res ipsa loquitur*, the court must find that the driver of the Avanza was the sole cause of the accident.

Discussion

[8] In her particulars of claim plaintiff pleaded , that the driver of the Avanza, Ngubombi, was negligent in that he failed to keep a proper lookout; he drove the Avanza at an excessive speed; he failed to apply brakes timeously; he drove the Avanza onto the incorrect side of the roadway; he failed to keep the Avanza under control ; he failed to have sufficient regard to other vehicular traffic on the roadway , particularly, her vehicle.

[9] The defendant denied that there was a collision in paragraph 1 of its plea. In the alternative it pleaded that the plaintiff drove recklessly; she drove in an unreasonable and excessive speed; failed to apply brakes when it was required of him to; failed to exercise due diligence and avoid the collision with the insured driver's vehicle. Defendant further denied that plaintiff suffered any injuries and denied any liability to compensate her.

[10] The uncontested evidence is that the Avanza was wobbling and became stable and came towards the plaintiff's vehicle and she heard a bang . She was driving on the correct side of the road. When she came to her senses the Avanza was on her side of the road but off the road surface and on the grass. If the Avanza was on the plaintiff's side of the road that means the driver of the Avanza drove on the incorrect side of the road. The damage on the plaintiff's bakkie was on the right front corner. This evidence is consistent with the allegations in the particulars of claim, amongst others, that the driver of the Avanza drove on the incorrect side of the roadway. The plaintiff, in my view, is entitled to say *res ipsa loquitur*.

[11] The facts as stated by the plaintiff point to one direction that the driver of the Avanza vehicle was the sole cause of the accident. The Plaintiff's evidence that she suffered bodily injuries arising from the accident was also not contested¹. The defendant has failed in these proceedings to render any acceptable or reasonable account of the events that led to the accident. In **Road Accident v Mehlomakulu**, *supra*, at page 394 para J, Jones J stated:

¹ **Road Accident Fund v Mehlomakulu** 2009 (5) SA 390 (E).

*“A different class of occurrence is to be found, for example, in the leading case of **Arthur v Bezuidenhout and Mieny**² , : *res ipsa loquitur* where the occurrence was not merely a collision between two vehicles, but where it was known that one motor vehicle was driven on its incorrect side of the road for no apparent reason, and collided with another motor vehicle approaching from the opposite direction. This illustrates that for the maxim to be brought into play , the occurrence is sufficiently described to make the finding of negligence self- evident from its very nature. Even then, the inference need not be drawn, and further, it may be negated by a contrary explanation by the defendant or by some other means.”*

[12] The plaintiff gave her evidence in a clear and straightforward manner. She answered questions as she was led by counsel clearly and confidently. Plaintiff’s version was not controverted by the defendant. I accordingly accept her evidence as reliable.

[13] The court has, in the circumstances accepted the facts set out by the plaintiff. There is no explanation from the defendant why the Avanza was driven on the incorrect side of the road. That leaves this court with an inescapable conclusion that by driving onto the incorrect side of the road, the driver of the Avanza collided with the plaintiff’s bakkie. I find that the driver of the Avanza, by so doing, was negligent and was the sole cause of the accident that resulted in the plaintiff suffering bodily injuries. I accordingly find that the plaintiff discharged the onus resting on her³. The defendant is found liable to compensate the plaintiff for all proven damages suffered by her.

Costs

[14] On the issue of costs the rule is that a successful party is entitled to her costs. There are no facts that would warrant a departure from that rule.

² **Arthur v Bezuidenhout and Mieny** 1962 (2) SA 566 (A) at 574.

³ **Sardi and Others v Standard and General Insurance Co. Ltd** 1977 (3) SA 776 (A).

[15] I accordingly make the following Order:

ORDER

IT IS ORDERED THAT:

1. The defendant is 100% liable to compensate the plaintiff for all proven damages that the plaintiff has suffered on account of the injuries she sustained in the motor vehicle accident that is the subject of this action.
2. The action is postponed to 5 August 2024 for the determination of quantum of the plaintiff's damages.
3. The defendant shall pay the costs occasioned by the postponement up to and including 29 April 2024, together with interest thereon calculated at the prescribed legal rate of interest from the date 14 days of *allocatur* to the date of payment thereof, which costs shall include:
 - 3.1.1 the qualifying expenses (if any) and the fees of Dr. Olivier, Ms. Cornelius, Mr Shapiro and Mr Loots.
 - 3.1.2 the fees and expenses of the plaintiff's legal representatives to prepare for trial, consult with witnesses, minute statements, prepare heads of argument and their day fee in respect of their court appearances on 29 April 2024;
 - 3.1.3 the travelling accommodation expenses of the plaintiff and her witness to attend court on 29 April 2024.
4. The fees of the plaintiff's counsel shall be calculated in accordance with the tariff set out in Scale B as contemplated in Rule 69 of the Uniform Rules of Court.

5. The defendant shall deposit the aforementioned costs together with interest thereon, if applicable, by direct electronic transfer into the trust account of the plaintiff's attorneys, Drake Flemmer & Orsmond Incorporated, the details of which account are as follows:

Account Name: Drake Flemmer & Orsmond Incorporated

Bank: S[...]

Bank branch code: 0[...]

Bank account No.: 0[...]

Ref No.: B[...]

6. If the defendant intends to adduce expert evidence, it shall deliver expert notices and summaries in terms of rule 36(9)(a) and (b) by no later than (10) TEN days before the date set out in paragraph 1 above. In this regard, defendant's attention is again drawn to the Court Order issued by Hartle J on 08 February 2024, to the effect that the defendant was to be held strictly to the provisions of the amended rule 36 (9) and that filing of any expert notices / reports out of time will require to be condoned by the court.
7. No further postponements of the action will be granted unless a substantive application for such relief is made.

T.V. NORMAN

JUDGE OF THE HIGH COURT

APPEARANCES:

For the PLAINTIFF: **ADV TALJAARD**

Instructed by: **DRAKE FLEMMER & ORSMOND INC.**

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For the DEFENDANT: **NO APPEARANCE**

Instructed by: **ROAD ACCIDENT FUND**

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LINK NO. 4133801

Matter heard on : **29 April 2024**

Judgment Delivered on : **30 April 2024**