

**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE**

CASE NO: 3640/2018

REPORTABLE: YES/NO

OF INTEREST TO OTHER JUDGES: YES/NO

REVISED.

DATE: **12/02/24**

In the matter between:

BALOYI HLULANI MAGALELA WILSON

PLAINTIFF

And

ROAD ACCIDENT FUND

DEFENDANT

JUDGEMENT

KGANYAGO J

[1] The plaintiff has instituted an action against the defendant claiming damages allegedly arising out of a motor vehicle accident which occurred on 21st December 2017. At the time of the accident the plaintiff was the driver of the vehicle with registration number DSC [...]. According to the plaintiff's particulars of claim the accident was caused by the sole negligence of a motor vehicle with unknown registration numbers which was driving behind him in that it flashed its lights which resulted in the plaintiff losing control of his vehicle. As a

result of the accident the plaintiff sustained serious bodily injuries.

[2] The defendant had defended the plaintiff's claim. The defendant in its plea had pleaded that the accident was caused by the sole negligence of the plaintiff. In the alternative the defendant had pleaded contributory negligence on the part of the plaintiff. In the further alternative the defendant had pleaded sudden emergency on the part of the insured driver.

[3] The parties have agreed on the separation of merits and quantum. The plaintiff took the witness stand and testified under oath. He testified that on 21st December 2017 he was involved in a motor vehicle accident whilst driving from Steers. As he was driving, he stopped at the four way stop at Agatha. The road he was using had two lanes on his side and two lanes from the opposite direction. He was driving on the middle lane. About 100 metres after passing the four way stop, he saw through the mirror of his vehicle a vehicle from behind flickering its head lights on him. He tried to swerve to the extreme left lane in order to give the vehicle behind way to pass. However, the vehicle behind him also swerved to the extreme left lane. The plaintiff swerved his vehicle to the right into the lane of oncoming cars, lost control of it and collided with concrete dustbin which was on the right side of the road.

[4] After colliding with the dustbin, the plaintiff's vehicle fell on its side. Some pedestrians came and assisted the plaintiff. The unknown vehicle did not stop after the accident. The plaintiff lost his consciousness and woke in Van Velden hospital, and found that he had sustained some injuries as a result of the accident. The headlights of the vehicle which was driving behind him had blinded him which made him to lose control of his vehicle

[5] The plaintiff was cross examined and it was put him that in his particulars of claim he had not pleaded that he was blinded by the lights of the vehicle behind him, and his response was that he had mentioned that in his police statement and also told his attorney. When asked how the lights of the vehicle from behind had blinded him, his response was that they were so bright

to the extend that it reflected inside his vehicle. He stated that the accident occurred around 24h00. He stated that he did not know where the vehicle behind him came from, but it just emerged from a curve and when it was at a distance of about 10 to 15 metres it started flickering lights to him. The plaintiff stated that he was travelling at a speed of less than 60 km per hour. He further stated that the vehicle behind him came at an excessive speed and he do not know whether it had stopped at the four way stop, and that made him (plaintiff) to end in the lane of oncoming cars as he was trying to avoid it. The plaintiff conceded that after the vehicle from behind him had flickered its lights, he could still see the road ahead of him.

[6] That concluded the evidence of the plaintiff and he closed his case. The defendant in turn closed its case without leading any evidence. Both parties have addressed the court on the merits of the case. The plaintiff argued that the plaintiff lost control of his vehicle as result of been blinded by the vehicle behind him which was travelling at an excessive speed. The defendant argued that this is a case where the plaintiff lost control of his vehicle, and that there was no other car involved. Therefore, the plaintiff was the sole cause of the accident.

[7] It is trite that RAF is obliged to compensate for bodily injury caused by or arising from the driving of a motor vehicle. The casual link that is required is essentially the same casual link that is required for Aquilian liability. There can be no question of liability if it is not proved that the wrongdoer caused the damage of the person suffering the harm. Whether an act can be identified as a cause, depends on a conclusion drawn from the available facts and relevant probabilities. The important question is how one should determine a causal nexus, namely whether one fact follows from another. (See *Grove v The Road Accident Fund*¹).

[8] According to the plaintiff's particulars of claim the unknown vehicle that was driving behind him flashed lights on him which resulted in him

¹ [2011] ZASCA 55 (31 March 2011) at para 7

swerving his vehicle to the extreme left and back to the right lane. As the plaintiff was swerving his vehicle, he lost control of it and hit a dustbin. In court the plaintiff testified that the vehicle behind him had flashed its lights which blinded him, and he tried to swerve to the extreme left. As he was swerving to the extreme left he saw that the vehicle that was behind him was also swerving to the extreme left, and that made him to swerve to the right into the lane of oncoming cars, and in the process lost control of his vehicle. The version of the plaintiff is problematic. Firstly, the plaintiff in his particulars of claim has not pleaded that he was blinded by the flashing of the lights of the unknown vehicle that was behind him. Secondly, if indeed he was blinded, he would not have seen the unknown vehicle swerving on the left. Thirdly, under cross examination the plaintiff conceded that despite the flashing of the lights, he could still see the road ahead of him. If indeed he was blinded by the lights of the unknown vehicle, he would not have seen the road ahead of him or the vehicle behind him through his mirror swerving to the extreme left. Fourthly, at the speed of less than 60 km per hour, he would easily have been able to control his vehicle.

[9] It is normal for a reasonable driver who is faced with a threatening situation to swerve to the left in order to avoid a collision. It is only in exceptional circumstances where the driver will swerve to the right in order to avoid a collision. In *Road Accident Fund v Grobler*² Haneke AJA said:

"When a person is confronted with a sudden emergency not of his own doing, it is, in my view wrong to examine meticulously the options taken by him to avoid the accident, in the light of after-acquired knowledge, and to hold that because he took the wrong option, he was negligent. The test is whether the conduct of the respondent fell short of what a reasonable person would have done in the same circumstances".

[10] The road which the plaintiff was travelling on the date of the accident had four lanes. It had two lanes on the direction in which the plaintiff was travelling,

² 2007 (6) SA 230 (SCA) at para 12

and two lanes from the opposite direction. Immediately prior to the accident the plaintiff was driving on the middle lane. If indeed there was a vehicle which came from behind the plaintiff and flashed its head lights, and when the plaintiff tried to swerve to the extreme left lane that vehicle also swerved to the extreme left lane, a reasonable driver in the position of the plaintiff would have remained on the middle lane to allow the vehicle behind to him to pass on the extreme left lane. The vehicle from behind would have easily passed the plaintiff without causing any hiccupps. There was no need for the plaintiff to swerve to the right in the lane of oncoming cars.

[11] From the facts of this case it is doubtful whether there was any unknown vehicle that came from behind the plaintiff and caused him to lose control of his vehicle. The plaintiff testified that he was blinded by the unknown vehicle behind him, but was able to see that unknown vehicle swerving to the extreme left lane whilst in a state of blindness, and was also able to see the road ahead of him whilst in a state of blindness. The possibility is that this unknown vehicle, is a fictitious vehicle created merely to suite the version of the plaintiff. I agree with the defence counsel that this is a case where the plaintiff lost control of his vehicle, and there was no other car that was involved. The plaintiff was therefore the sole cause of the accident. The plaintiff has failed to prove negligence on the part of the unknown insured driver, if deed it was there on the day in question, and therefore, liability of the defendant has not been proved or established at all.

[12] In the result the following order is made:

12.1 The plaintiff's claim is dismissed with costs.

KGANYAGO J
JUDGE OF THE HIGH COURT OF SOUTH
AFRICA, LIMPOPO DIVISION,
POLOKWANE

APPEARANCES:

For the plaintiff : Adv Nkwenyana

Instructed by : Mashamba Incorporated

For the defendant : R Mudau

Instructed by : Office of State Attorney Polokwane

Date heard : 23rd January 2024

Electronically circulated on : 12th January 2024