



**IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MBOMBELA**

CASE NO: 3120/2020

- (1) REPORTABLE: ~~YES~~/NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
(3) REVISED: ~~YES~~/NO

08 November 2024

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DATE

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SIGNATURE

In the matter between:

SIFISO CORNELIUS DIBAKOENA

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

Mazibuko AJ

Introduction

[1] The plaintiff instituted a personal injury claim against the defendant arising from a motor vehicle collision along N4 Road from Komatipoort towards Malelane, Mpumalanga Province.

Background

[2] The plaintiff alleged that on 23 April 2021, whilst driving his motor vehicle, an unknown motor vehicle driven by an unidentified driver (hereinafter referred to as 'an insured driver') driving at a high speed suddenly drove into his lane of travel. While trying to avoid a head-on collision, he collided with a stationary truck parked next to the road.

[3] As a result, the plaintiff suffered an injury on top of his left eye and a deep wound on the eyelids. The cause of the accident, pleads the plaintiff, was the sole negligence of the insured driver. He claims damages in the amount of R4 808 000.

[4] The defendant is disputing liability. In defending the action, the defendant contested that the plaintiff was under the influence of alcohol. Therefore, the accident was caused by the plaintiff losing control of his motor vehicle and colliding with a stationary truck. It denied that there was an unidentified insured driver driving another unidentified motor vehicle.

Issues for determination

[5] The issues, among others, identified in relation to the determination of the merits were the cause of the accident, whether the other driver had been negligent, whether the plaintiff suffered any injuries, and whether the defendant was liable for compensation to be paid to the plaintiff.

[6] The court ordered that the determination of the merits be separated from the determination of quantum in terms of rule 33(4) of the Uniform Rules of Court¹. The matter proceeded to trial on the question of merits only.

Legal framework

[7] In terms of section 17(1) of the Road Accident Fund² (The RAF Act), the defendant is obliged to compensate a person for loss or damage suffered because of bodily injury caused by or arising from the driving of a motor vehicle. The defendant's

¹ Act 59 of 1959.

² Act 56 of 1996.

liability is conditional, however, upon the injury having resulted from the negligence or wrongful act of the driver.³

[8] In the case of *National Employers' General Insurance Co Ltd v Jagers*⁴, the court held: '*...in any civil case, as in any criminal case, the onus can ordinarily only be discharged by adducing credible evidence to support the case of the party on whom the onus rests.*

[9] In *Schwikkard PJ (et al.)*, *Principles of Evidence*,⁵ the learned writer observed that: 'In civil cases the burden of proof is discharged as a matter of probability. The standard is often expressed as requiring proof on a "balance of probabilities" but that should not be understood as requiring that the probabilities should do no more than favour one party in preference to the other. What is required is that the probabilities in the case be such that, on a preponderance, it is probable that the particular state of affairs existed.'

Evidence at the trial

Plaintiff

[10] The plaintiff testified that on the day of the accident, he was driving home at 60 to 70 kilometres per hour from his workplace, the restaurant in Komatipoort. It was in the evening at approximately 20H30. There were streetlights. There were no clouds, rain and overcast. Before joining the N4 Road, he stopped at the stop sign, put on his right indicators and observed the road signs. Satisfied that there was no motor vehicle, he joined the N4 road towards Malelane. Whilst driving, he suddenly heard a bang on his left-hand side. He swerved into the road, as there were no cars. He lost control until he leaned against a stationary truck which was on his right. He lost consciousness and woke up at the hospital, where he received medical treatment.

³ MP Olivier, 'Social Security: Core Elements', *LAWSA (LexisNexis, Vol 13(3), 2ed, July 2013)*, at paragraph 163.

⁴ [1984] 4 All SA 622 (E), at 624-5

⁵ 5th Ed, 2016, ch32-p 628.

[11] He stated that he did not know what caused the loud bang as he could not see anyone. It came from the left and hit him on the left side of his face. In his opinion, there was nothing that he could have done to prevent the accident, as he was in the correct lane, and the bang came from nowhere. After the accident, he went back to work. However, it has been difficult as he is now forgetful.

[12] Under cross-examination, he testified that after the bang, the glass pieces from the windscreen flew into his eyes. He does not know whether the bang was from a motor vehicle, truck or bus. However, it could not have been from a brick or a bicycle. His car was damaged in the front bumper.

[13] He was referred to his section 19(f) of the RAF Act affidavit (the affidavit) dated 12 July 2021 where in paragraph 2, he stated:

‘... While I was driving past the T-Junction, I had right of way when suddenly another motor vehicle (truck) bearing registration letters and numbers unknown to me (hereinafter referred to as the insured motor vehicle) driven by an unknown driver (hereinafter referred to as the insured driver) came and collided with my motor vehicle on my left-hand side, I don’t remember what happened after the collision I woke up at hospital.’ (sic).

[14] It was put to him that his oral evidence and his affidavit were different from his particulars of claim, since the particulars of claim read:

‘Paragraph 4: ... While driving the plaintiff came across a motor vehicle bearing unknown registration numbers and letters (herein referred to as the unknown insured driver) that was driven at a high speed which suddenly drove into the plaintiff’s lane of travel. While trying to avoid a head on collision the plaintiff ended up knocking a truck that was parked next to the road.’ (sic).

He responded that he could not tell what caused the bang and reiterated that he did not see any vehicle and did not try to avoid a head-on collision.

[15] He was further referred to his warning statement dated 29 June 2021, which reads:

‘... I was bumped by an unknown vehicle, and it did not stop. I then lost control until I knocked the truck that was queuing on the N4 road. I then sustained

injuries on my left eye. I was then taken Tonga hospital...'(sic).

He repeated that he did not know what hit him, but it was not something small like a bicycle or a brick when he considered the impact and damage on his motor vehicle.

[16] He conceded that the officer accident report dated 22 July 2021 made no mention of another car, as it read: *'It is alleged that Driver B was stationary on the queue to the border then vehicle came from the Komatipoort direction towards Malelane and lost control of his vehicle and bumped vehicle B.'*

[17] When he was referred to his hospital records about his intoxication state on admission at the hospital, he conceded that he was under the influence of alcohol at the time of the accident.

[18] During re-examination, he testified that he was mildly intoxicated, not to the extent that he could not drive. When asked whether he was confirming his affidavit, he answered in the affirmative.

[19] To questions put to him by the court, the plaintiff testified that after cashing up at his workplace before 22H00, he bought and consumed two black label beers, 350 ml with 4,5% to 5% alcohol content, to release fatigue. He then drove, observing all the road signs until he met with the accident. The accident occurred about 35 minutes after the consumption.

[20] The plaintiff closed his case without calling any further witnesses.

Defendant

[21] The defendant led no evidence.

Discussion

[22] It is trite that the onus rests on the plaintiff to prove that the defendant was negligent on a balance of probabilities. The plaintiff is required to adduce credible evidence in support of its case. In deciding whether the evidence is true, the court will weigh up and test the plaintiff's allegations against the general probabilities. If the

balance of probabilities favours the plaintiff, then the court will accept his version as being probably true.

[23] It is essential first to establish where on N4 the accident occurred. Was it at the T-Junction, joining the N4 or on N4? According to his affidavit, he was driving past the T-junction as he had a right of way. In his warning statement to the police, particulars of claim and his *viva voce* evidence, he was already on the N4 road, having passed the T-Junction. According to the accident report, he was already on the N4 towards Malelane. It can be accepted that he was not joining the N4, as stated in his affidavit.

[24] Secondly, what caused the accident? In his testimony, the plaintiff was consistent that he could not tell what caused the accident, as he did not see anyone and could not say whether it was a car, truck or a bus, but it was not a brick or a bicycle, he testified. He heard a bang, he lost control of his vehicle and swerved into the road until he leaned against a stationary truck parked on the right-hand side of the road.

[25] Only in his affidavit did he mention what kind of vehicle collided with his motor vehicle. He stated a truck suddenly came and collided with his motor vehicle on his left side. However, this version could not be sustained during his testimony, as he testified that he did not know what had caused the bang.

[26] Though the accident report only comes after the effect, it is helpful as it provides a somewhat independent view of the matter. In this case, it does not mention another vehicle except the driver of the stationary truck, referred to as Driver B. It stated the truck driver was inside the stationary truck in the queue to the border, and then the plaintiff's vehicle came from the Komatipoort direction towards Malelane. He lost control of his vehicle and bumped vehicle B (the truck).

[27] Lastly, was there another driver who was negligent and is the defendant liable? The pleadings are not aligned with either his testimony or the affidavit version. In the particulars of claim, to which the defendant would have pleaded, he averred that he came across an unknown motor vehicle driven at a high speed, which suddenly drove into his lane of travel. He swerved into the road to avoid the head-on collision until he

collided with a stationary truck parked on the right side of the road. This evidence suggests that the other vehicle was driving in the opposite lane for him to have come across it. There was no collision between his vehicle and this other unknown vehicle. The collision was between himself and the stationary truck in his attempt to avoid a head-on collision with the unknown vehicle, which came into his lane of travel and sped away.

[28] Conversely, according to his warning statement, the unknown vehicle bumped him and did not stop. His affidavit shows that it was a truck that bumped him. In this regard, one would have expected the plaintiff's testimony to clarify these differences. However, he failed to do so, even when his counsel and the defendant's counsel, respectively, attempted to elicitate his specific response. He maintained that he did not know what hit his motor vehicle. He also could not explain whether he collided with the unknown vehicle or the unknown vehicle caused him to collide with the stationary truck. Or whether he first collided with the unknown vehicle and thereafter with the stationary truck.

[29] It was not disputed that the accident happened at night on the N4 freeway. The evidence presented by the plaintiff was his own testimony about the accident. His evidence is not consistent. He could not explain the differences in the evidence. He based his claim, as contained in the particulars of claim, on averments different from his testimony and other pieces of evidence he disclosed in support of his case. There is no explanation why the allegations in the affidavit were not pleaded in the particulars of claim if he believed that was what happened on the night of the accident. Instead, different averments were made in the particulars of claim.

[30] It is unclear whether a motor vehicle, a truck, a bus or something else collided with him or caused him to collide with the stationary truck. His affidavit and *viva voce* evidence do not support the allegations in the particulars of claim. In his own words, he testified he could not say what caused the bang. His testimony did not even complement his affidavit's version, as they differ.

[31] The plaintiff did not adduce credible evidence in support of its case. The plaintiff did not explain why the court should accept his affidavit as true whilst rejecting his

other versions, including his testimony and the averments in his particulars of claim concerning the collision.

[32] The plaintiff's evidence was self-contradictory, with inconsistent statements. He was not a credible witness. He elected to confirm the content of his affidavit among his different versions and testified otherwise. Even if one were to accept his affidavit, as he suggested, the plaintiff would still have difficulty substantiating his claim as the averments in the particulars of claim differ from his affidavit. I found his testimony unreliable when considering all the evidence, including the officer's accident report.

[33] Though, the possibility cannot be excluded that an entirely truthful and accurate recall of the events would have been compromised by the passage of time and the uncontested fact that he lost consciousness immediately after the collision. The probabilities of the plaintiff's version, however, require further remark in that there was uncontested evidence that the plaintiff was under the influence of alcohol. Notwithstanding that, there was no report of whether the alcohol content was above the acceptable limit for drivers. It cannot be ignored that the accident occurred within an hour of alcohol consumption by the plaintiff. However, in the absence of the report, it is not available to the court to make a finding.

[34] In terms of Section 17 of the RAF Act, the defendant is obliged to compensate a person for loss or damage suffered because of bodily injury caused by or arising from driving a motor vehicle. The defendant is only liable when an injury results from the negligence or wrongful act of the driver. The plaintiff's evidence must be clear in this regard. However, in this case, it was not. The plaintiff did not know how the accident occurred. He could not tell whether there was an insured driver who collided with him or caused him to collide with the stationary truck.

[35] The contradictions and inconsistencies in his evidence remain unexplained. I find that the plaintiff lost control of his motor vehicle, and whilst trying to control it, he drove into the stationary truck. Had there been another unknown vehicle, his testimony would have been to that effect. However, the plaintiff did not testify to that effect. I, therefore, find that there was no unidentified driver whose negligent driving caused the collision, resulting in plaintiff's injuries on the day in question.

[36] Even though the defendant has not called any witnesses to testify on the merits, the plaintiff retains the onus to prove that the defendant's negligence caused the accident. No negligence was proved on the part of the alleged unidentified insured driver, as the court rejected that there was an unidentified driver. I find the plaintiff's version highly improbable and inconsistent and stands to be rejected. In light of the above, it cannot be said that the plaintiff has discharged the onus. He has failed to prove on a balance of probabilities that there was an insured driver who was negligent. As a result, the claim of the plaintiff ought to fail.

[37] There is no reason the general rule concerning costs can not be applicable.

[38] Consequently, the following order is granted.

Order:

1. The plaintiff's claim is dismissed with costs.


N G M Mazibuko

Acting Judge of the Mpumalanga Division, Mbombela

This judgment was handed down electronically by circulation to the parties' representatives by email.

Representation:

For the Plaintiff:	Ms K. Mahlalela
Attorneys for the Plaintiff:	Mahlalela Attorneys

For the Defendant:	Ms J. Ragau
Attorneys for the Defendant:	State Attorney (Mbombela)

Reserved on:	22 August 2024
Date of Judgment:	08 November 2024