

**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG**

Case No: 3577/2019P

In the matter between:

SAZISO VINCENT LINGANISA

PLAINTIFF

And

ROAD ACCIDENT FUND

DEFENDANT

ORDER

1. Judgment on liability is granted in favour of the plaintiff.
2. The defendant is ordered to pay costs

JUDGMENT Delivered:

Mngadi J

[1] The Plaintiff in his capacity as guardian of two minor children instituted an action on behalf of the minor children against the defendant claiming loss of support due to the death in a motor vehicle accident of the father of the minor children.

[2] The plaintiff is Saziso Vincemt Liganisa. The defendant is the Road Accident Fund a juristic person established in terms of the Road Accident Fund Act 56 of 1994 (the Act). The Act obliges the defendant to compensate, *inter alia*, any person for loss suffered as a result of the death caused by or arising from the driving of a motor vehicle if the death is due to the negligence of the driver of the vehicle (the insured vehicle).

[3] The parties at the commencement of the trial sought an order (which was granted) separating the issues of liability from the issues of quantum. The issue of quantum to be held over for later determination. In addition, the parties made the usual admissions regarding the admission of documents and copies thereof to be utilised at the hearing, in particular, that discovered documents shall serve as evidence of what they purport to be without the need for further proof.

[4] In the particulars of claim the plaintiff claimed that on or about 9 August 2013 at approximately 22h00 between Matatiele and Maluti at or near Khoapa Junction, Khumbulani Livingstone Liganisa (the deceased), a police officer, was driving a silver-grey Ford Fiesta registration N[...] 2[...] 6[...] motor vehicle to the direction of Maluti. A truck from Maluti direction driving at a high speed on the lane of the deceased's motor vehicle caused the deceased to, in order to avoid ahead on collision, swerve his vehicle to the left which resulted in the motor vehicle overturning and the deceased sustaining injuries from which he died. The parties at the commencement of trial agreed as agreed in the pre-trial conference that the issue for determination was whether the accident or motor vehicle collision occurred as a result of the insured driver's negligence. Defendant's counsel at the hearing clarified that the defendant disputed that there was an insured vehicle (the truck).

[5] The plaintiff led evidence of one witness, namely Zamokuhle Liganisa (Zamokuhle). The defendant closed its case without leading any witness.

[6] Zamokuhle testified as follows: He knew Khumbulani Livingstone Liganisa, the deceased. The deceased was his uncle. On 9 August 2013 the deceased was involved in an accident. He, Zamokuhle, at the time was a passenger in the greenish Ford Fiesta driven by the deceased. In the motor vehicle, it was him, the

deceased, and the deceased's girlfriend, he knew her as Precious. The deceased was the driver and he, Zamoakuhle sat at the rear seat.

[7] Zamokuhle testified that the deceased was driving from Matatiele to Maluti. The deceased stayed at Maluti where he rented a place. The deceased was driving his own vehicle which he used to drive. The deceased was used to drive on that road between Matatiele and Maluti. At or near Khoapa junction a truck approached driving to the opposite direction. It was driving at a high speed and it was driving on their lane of travel, a lane for vehicles driving to Maluti. The deceased in order to avoid a head on collision swerved to the left. He, Zamokuhle, from that moment lost his senses. He does not know what happened after that. He regained his senses at Taylor Bequest hospital where he had been admitted and receiving medical treatment for the injuries he sustained in the accident. The deceased and Precious were also in the same hospital receiving medical treatment. The deceased died from his injuries. Precious was transferred to Mthatha hospital for further treatment. He learnt that she also subsequently died.

[8] Zamokuhle testified that the road where the accident occurred is tarred and marked. It consists of one lane to each direction. The head lights of the vehicles were switched on. The view of the truck driver to his uncle's motor vehicle was not obstructed. There was nothing blocking the lane to the opposite direction where the truck was supposed to drive. He could see and by its lights that it was a truck. He could not notice the make, colour and nature of the truck but it was a big truck. It was sudden and the deceased had to take evasive action. The Ford Fiesta is greenish in colour. It was not raining. About a day after he regained consciousness, the police came to the hospital, and they interviewed him. Zamokuhle admitted that on 25 November 2014 he was approached by the police and he deposed to an affidavit. In the affidavit he did not mention that Precious was one of the people in the vehicle because he was not asked. The police did not tell him the purpose for making the affidavit.

[9] The counsel for the defendant argued that the evidence of Zamokuhle should be rejected as unreliable since he referred to the Ford Fiesta as greenish whereas it was common cause that it was silver-grey in colour. Further, contended counsel,

Zamokuhle could not describe the make and type of the truck which rendered his evidence unreliable.

[10] Amongst the discovered documents there is an accident report. It has Maluti CAS 53/08/2013. It records that the accident took place at Maluti Road near Khoapa Junction on 9 August 2013 at 22h15. It records the particulars of the deceased and gave his address as Matatiele SAPS. It describes vehicle A as silver- grey Ford Fiesta N[...] 2[...]. Under the description of the accident, it states: 'It is alleged that M/V N[...] 2[...] was from Matatiele direction towards Maluti direction with three (3) passengers including the driver. When they were at Khoapa Junction M/V left the road and rolled until it overturned on the side of the road. Three passengers were taken to hospital by ambulance' It is clear, in my view, that the police officer regarded the driver as one of the three passengers.

[11] The accident report has the particulars of the three (3) persons injured on the accident and it records that they sustained serious injuries. It also shows that they were taken to Taylors Bequest Hospital. The accident report was completed on 10 August 2013 at 04h15. It appears that the Accident Report was completed before the injured persons were interviewed. But the accident report confirms that Zamokuhle was one of the passengers in the Ford Fiesta. The accident report regarding where the accident happened, date and time corroborates the evidence of Zamokuhle. The sketch plan is consistent with the evidence of Zamokuhle regarding the description of the roadway where the accident took place.

[12] In *Sea Harvest Corporation (Pty) Ltd v Duman Dock Cold Storage (Pty) Ltd* 2000(1) SA 827 (SCA) at para [21] it was held that the true criterion for determining negligence is whether in the particular circumstances the conduct complained of falls short of the standard of the reasonable person. In *S v Kramers & Another* 1987 (1) SA 887 (W) at 894 F – H it was held: 'that the standard is not a degree of skill that is reasonable having regard to the general level of skill and diligence passed and examined by the members of the branch of the profession to which the particular practitioner belongs'.

[13] The evidence of Zamokuhle shows that the truck driver drove on the lane of the opposite traffic when there was nothing blocking his lane of travel. He drove on the lane of the opposite traffic when there was traffic on that lane. The traffic on that lane was visible to him. He did so at a high-speed forcing the traffic on the correct lane to take evasive action. It shows gross negligence and or recklessness on the part of the truck driver.

[14] The defendant seems to argue that there was no truck that forced the deceased to take evasive action. This contention is not based on any evidence. The evidence of Zamokuhle who was one of the passengers in the Ford Fiesta is unassailable. He testified in a clear and logical manner. He answered all questions put to him in a confident manner and without unnecessary hesitation.

[15] The probabilities, in my views, support the evidence of Zamokuhle. The deceased was a police officer in the nearby town of Matatiele. He as a passenger had his nephew and his girlfriend. He was driving to Maluti where he stayed. He was familiar with the vehicle he was driving on a road he was familiar with. It is therefore more likely than not that the deceased was forced to take evasive action. In my view, Zamokuhle was an impressive witness.

[16] In *National Employers General Insurance v Jagers* 1984 (4) SA 437 (ECD) at 440D - 441A the court held: '...the onus can ordinarily only be discharged by adducing credible evidence to support the case of the party to whom the onus rests. In a civil case the onus is obviously not as heavy as it is in the criminal cases... the plaintiff can succeed only if he satisfies the court on the preponderance of probabilities that his version is true and accurate and therefore acceptable'.

[17] The plaintiff in my view, has discharged the onus on him by proving on the balance preponderance of probabilities that there was a truck and the manner the truck was driven it forced the deceased to take reasonable evasive action which unfortunately resulted in the motor vehicle capsizing. The sole cause of the accident was the manner the driver of the truck drove.

[18] It is ordered as follows:

1. Judgment on liability is granted in favour of the plaintiff.
2. The defendant is ordered to pay costs

Mngadi J

APPEARANCES

Case Number : 3577/2019P

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Heard On : 12 August 2024

Judgment Delivered On : 23 August 2024