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**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case Number: 2024-16366

(1) REPORTABLE: YES / NO

(2) OF INTEREST TO OTHER JUDGES: YES/NO

(3) REVISED: YES/NO

DATE: **11 March 2025**

SIGNATURE

In the matter between:

MADITSE MARTINA MOTLADILE

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

Mkhabela AJ

Introduction

[1] This is a delictual action in terms of which the Plaintiff alleged that the defendant is liable for damages she has suffered as a result of the negligent driving caused solely by the insured wrongful driver. At the commencement of the trial, I made an order that the issue of liability is separated from quantum as envisaged by rule 33(4) of the Uniform Rules of Court.

[2] The gist of the Plaintiff 's claim is premised on the allegation that on 14 April 2020 at or near the N12 East Road, Johannesburg, the Plaintiff was driving a motor vehicle with registration number B[...] when she lost control.

[3] The Plaintiff alleges that she lost control of the vehicle whilst she was trying to avoid a collision with another motor vehicle which remains unknown to the Plaintiff. Consequently, the Defendant became liable to the Plaintiff for the injuries that the Plaintiff sustained pursuant to the Road Accident Fund Act¹.

[4] The Plaintiff pleaded in her particulars of claim that the cause of the incident was attributable to and caused solely by the fault and /or negligence of the unidentified insured driver of the unknown or unidentified driver who was negligent on various grounds pleaded by the Plaintiff, inter alia, the following:

4.1 The unknown insured driver caused the Plaintiff to lose control and consequently the Plaintiff's motor vehicle rolled several times while trying to avoid a collision with the insured driver.

4.2 As a result of the unknown insured driver's fault or negligence in causing the collision, the Plaintiff alleges that she sustained serious bodily injuries including a head injury and a skull fracture.

4.3 The insured driver had overtaken the Plaintiff and came to a sudden stop in front of the Plaintiff's motor vehicle causing the Plaintiff to swerve off the road in an attempt to avoid colliding with the insured driver's motor vehicle.

[5] Counsel for the Plaintiff, Mr Mavunda, submitted in his opening statement that "the Plaintiff was driving her motor vehicle and the unknown insured driver s' motor vehicle came in front of the Plaintiff and suddenly stopped in front of the Plaintiff vehicle and the Plaintiff tried to avoid the accident, but lost control and she was not alone".

[6] Mr Mavunda then called the Plaintiff who testified as a first witness in support of her case. Her evidence could be summarised as follows:

¹ Section 17(1) of the Road Accident Fund Act 56 of 1996.

6.1 she was 38 years at the time of the incident.

6.2 she was driving on the left-hand side of the road and the traffic had stopped and the other insured driver who was driving on the right-hand side crossed into her lane which was on the left-hand side and came to drive in front of her.

6.3. The other driver realised that on the left-hand side the traffic had come to a halt and the insured driver did what is called sudden stop in front of her.

6.4. She attempted to swerve towards the left-hand side. It was at that time when her vehicle or that she lost control and her vehicle moved out of the road. She fainted, lost consciousness and regained consciousness seven days later in hospital.

[7] After the Plaintiff had given the above evidence, the court asked few questions. One of the questions was “whether the other motor vehicle in question had attempted to overtake whilst the traffic had come to standstill?”

[8] In response, the Plaintiff then changed her version and stated that the other driver was actually not overtaking but was changing lanes, in other words “moving from where he was from the right-hand side into the left-hand side where she was”.

[9] The Plaintiff in her further response to the court ‘s questions repeated her evidence in chief and stated as follows:

“Because I was driving on the left – hand lane and as he came and made a sudden stop in front of me, I then swerved to avoid an accident on the left hand – side of the road in the process I lost control”.

[10] The Plaintiff stated further that she was driving at approximately 67 km per hour and that she applied her brakes when the other driver made a sudden stop in front of her car. She estimated that her speed may have been reduced to 60 km per hour when she lost control of her motor vehicle.

[11] The next witness that testified in support of the Plaintiff’s case was Constable Molefe (Molefe). His evidence could be summarised as follows:

- 11.1 Constable Molefe and the Plaintiff were travelling together on the N12 road towards Lenasia.
- 11.2 Whilst travelling, a motor vehicle came and overtook the Plaintiff and the insured driver made a sudden stop in front of the Plaintiff's vehicle.
- 11.3 The Plaintiff then applied her brakes in an attempt to avoid the collision and lost control of her motor vehicle and it rolled over.

[12] However in response to the court 's questions as to whether the insured driver had attempted to overtake the Plaintiff's motor vehicle and suddenly came to an abrupt stop, Molefe changed his version.

[13] Molefe s' new version was that "the motor vehicle driven by the insured driver "did not stop completely but reduced his speed".

[14] Furthermore, Molefe testified that "the insured driver had managed to execute and completed the overtaking process and the insured driver s' motor vehicle ended up being in front of the Plaintiff's motor vehicle".

[15] Moreover, Molefe told the court that "the Plaintiff's car ended up being behind the insured driver's motor vehicle after the insured driver had completed the overtaking process"

The law

[16] It is trite that the Plaintiff bears the onus to prove both liability and the quantum of the claim. In order to establish liability, the evidence must demonstrate that it was the negligence or the wrongful act on the part of the insured driver that caused or contributed to the collision which resulted in the death or injury of the Plaintiff.²

[17] In terms of section 17(1) of the Act, the defendant is obliged to compensate a person in the position of the Plaintiff for loss or damage suffered because of bodily injury caused or arising from the driving of a motor vehicle. The defendant's liability is

² *Macdonald and others v Road Accident Fund* [2012] Jol 29313 SCA at para 14.

however conditional upon the injury having resulted from the negligence or wrongful act of the insured driver³.

[18] In the case of *National Employers General Insurance Co LTD v Jagers*⁴, the court held that:

“...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.”⁵

[19] Similarly, Schwikkard PJ (et al), *Principles of Evidence*, the learned author observed that in civil cases the burden of proof is discharged as a matter of probability.⁶

[20] In the case of *Selamolele v Makhado*⁷ the court stated as follows:

“It is common caused that the plaintiff bears the overall onus of proof... It may be that the defendant has some duty of adducing evidence in support of the latter version but the onus of proof in the overall case never shifts, it remains on the plaintiff⁸.”

[21] The Supreme Court of Appeal in *Grove v Road Accident Fund*⁹ restated the same principle quite eloquently and I can do no better to illustrate this trite principle in that case other than quoting the relevant passage which reads:

“there can be no question of liability if it is not proved that the wrongdoer caused the damage of the person suffering from harm. Whether an act can be identified as a cause, depends on a conclusion drawn from available facts and

³ MP Olivier, *Social Security Core elements*, LAWSA Lexisnexis Vol 13(3) 2nd ed, July 2013 at para 163.

⁴ 1984 (4) SA 437 (ECD)

⁵ *Ibid* at p 440D.

⁶ 4th Ed, 2016 Chapter 32 page 628.

⁷ 1988 (2) SA 372 (V).

⁸ *Ibid* at p 374.

⁹ *Grove v Road Accident Fund* [2011] ZA SCA 55 (31 March 2011)

relevant probabilities. The important question is how one should determine a causal nexus, namely whether one follows from another”¹⁰

The Issue

[22] The issue that is before me for adjudication is the determination of liability. Putting it differently, the question is whether the accident was caused by the negligent driving of the unknown insured driver?

Analysis

[23] It is evident that there are many versions given by the Plaintiff and her witness as to how the incident happened. The first version is that the insured driver came from the right hand-side to the left hand-side on which the Plaintiff’s motor vehicle was travelling forcing the Plaintiff to swerve her car and thereby losing control of her motor vehicle.

[24] The second version is that the insured driver overtook the Plaintiff’s motor vehicle and made a sudden stop in front of the Plaintiff’s motor vehicle causing her to swerve and ultimately losing control of the motor vehicle.

[25] The third version is that the insured driver did not overtake the Plaintiff but changed lanes and came on the Plaintiff’s path forcing her to swerve to the left hand – side of the road and ended up losing control of her motor vehicle.

[26] The sixth version was given by Molefe who was a passenger in the same vehicle driven by the Plaintiff and it is to the effect the insured driver successfully managed to overtake the Plaintiff’s motor vehicle and reduced his speed but did not come to a sudden stop in front of the Plaintiff.

[27] Accordingly, there are now different versions given by the Plaintiff and Molefe pertaining to the same collision or the incident. This is without the other concomitant version that the traffic had come to stop when the insured driver moved from his lane into the plaintiff’s lane.

¹⁰ *Ibid* at para 7.

[28] It follows therefore that in the light of the material contradictory versions given by the Plaintiff and Molefe, it is difficult, if not impossible to conclude that the Plaintiff has managed to discharge her onus to prove liability on a balance of probabilities. The burden of proof that rests on the Plaintiff does not shift to the defendant notwithstanding that the defendant has some duty to adduce evidence and to rebut the Plaintiff's evidence¹¹.

[29] It is also trite that it is impermissible for a litigant to plead a particular case and seek to establish a different case at the trial¹². This is precisely what happened in this case given the contradictory versions given by the Plaintiff. The court is not in a position to know what caused the incident.

[30] Accordingly, there is no evidence before this court that the insured driver's conduct on the day in question was negligent and further there is no evidence that the Plaintiff's injuries were caused by the insured driver's negligent conduct at all.

[31] The Plaintiff's version that the traffic had come to stand still on the day in question before the insured driver came to her left lane and further that she was driving at approximately 67 km per hour is incongruent with the nature of the injuries suffered¹³.

[32] Lastly, it is trite that the obligation of the defendant to compensate the Plaintiff for the alleged damages for bodily injury must arise from the negligent driving by the insured driver¹⁴.

[33] Adopting a practical common-sense approach without the benefit of expert evidence, it is improbable on the totality of the evidence that the Plaintiff could have suffered such severe injuries even if her many contradictory versions were to be accepted.

¹¹ *Salamolele v Makhado* 1988 (2) SA 372 V, at para 374

¹² *Molusi v Voges* NO 2016 (3) 370 (CC).

¹³ It was alleged that the plaintiff suffered a skull fracture and lost consciousness and regained her consciousness seven days later in hospital.

¹⁴ *Grove*, supra.

[34] On the version given by Molefe, the insured driver had not made a sudden stop as testified by the Plaintiff. Further, the insured driver had managed to complete the overtaking process and the Plaintiff's motor vehicle ended up being in front of the insured drivers' motor vehicle.

[35] Based on this version given by Molefe and once the insured driver was now in front of the Plaintiff's motor vehicle, any subsequent loss of control of the motor vehicle by the Plaintiff could not be attributed to the conduct made by the insured driver.

[36] One could accept that the Plaintiff was involved in an accident given her injuries. However, from her testimony concomitant with the testimony of Molefe, I am unable to conclude that the Plaintiff had managed to discharge her onus on the balance of probabilities of proving that the incident happened as a direct result of the insured driver's negligent conduct.

[37] For all these reasons, I am constrained as a matter of logic and common sense to conclude that the evidence adduced by the Plaintiff and Molefe does not establish any negligent conduct on the part of the insured driver. Accordingly, liability on the part of the defendant does not arise.

Order

[38] In the circumstances, the Plaintiff's case is dismissed and since there is no appearance for the defendant, there is no order as to costs.

MKHABELA AJ
JUDGE (ACTING) OF THE HIGH COURT,
PRETORIA

Appearances

For the Appellants: Adv MC Mavunda

Instructed by: PP Petshana Attorneys

For the Respondent: No appearance for the Respondent

Date of hearing: 8 November 2024

Date of judgment: 11 March 2025