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**IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MBOMBELA (MAIN SEAT)**

CASE NUMBER A08/2024

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED.

DATE 20/03/2025

SIGNATURE

REINHARDT TRANSPORT GROUP (PTY) LTD

APPELLANT

and

LANGA GEOTECHNICAL SERVICES (PTY) LTD

RESPONDENT

JUDGMENT

SHAI AJ

Introduction

[1] This is an appeal against the whole of the judgment and order of Judge Mashile, dated 19 September 2023.

[2] Leave to appeal to the full court was given on 18 December 2023.

[3] The appeal is opposed by the respondent, who was the defendant in the trial court.

Brief litigation history

[4] The action arose from a motor vehicle collision that occurred on 28 August 2015 between vehicle with registration letters and number C[...] 2[...] Z[...] G[...] which was there and then pulling two trailers (herein referred to as appellant's vehicle"), and a vehicle with registration letters and number Z[...] 5[...] G[...] (herein referred to as "respondent's vehicle")

[5] Appellant's vehicle was driven by appellant's employee and respondent's vehicle was driven by the respondent's employee.

[6] Appellant's version is that the respondent's vehicle veered onto appellant's lane of travel thereby solely causing the collision.

[7] The respondent has no pleaded version and no evidence was adduced by the respondent relating to the collision.

[8] In my view, the issue of negligence is not an issue herein as no evidence was led by the respondent to gainsay or disprove that the accident was caused by the sole negligence of respondent's driver.

[9] The contentious issue became whether the appellant had locus standi or not.

[10] Of relevance hereto is that in paragraph 4 of the appellant's particulars of claim, the appellant pleads as follows:

"At all times material hereto the plaintiff was the owner, alternatively the bona fide possessor of a vehicle... in terms of which the risk of damages thereto and/loss thereof has passed to the plaintiff."

The respondent's response was:

"Defendant cannot admit or deny the contents and accordingly denies it and place the plaintiff to the proof thereof."

[11] It was testified, inter alia, on behalf of the appellant by Mr Els, appellant's logistics manager, that:

11.1 Appellant becomes the owner of the trucks through contracts with, inter alia, Scania.¹

11.2 When the appellant purchases trucks, they are registered and licensed under the appellant's name and undergo a roadworthy test.

11.3 A licence is then issued in the name of the appellant for each specific vehicle.²

11.4 He eventually identified the motor vehicle licence, licence disc roadworthy certificate of appellant's vehicle issued three months before the accident, in the name of the appellant.

11.5 He attends monthly management meetings with the board of directors.

11.6 Appellant's sold the vehicle after the accident.

[12] The respondent did not adduce any evidence.

[13] After hearing evidence, the trial court dismissed the claim on the grounds that the appellant failed to prove that it was the owner or bona fide possessor of the vehicle.

[14] The trial court concluded that the licence, roadworthy certificate and operator card of the vehicle, which bore the name of Reinhardt, were inadequate to prove that Reinhardt was the owner of the truck at the time of the collision.

Issue

[15] The issue for determination herein is whether the trial court erred in finding that the appellant failed to prove locus standi by failing to prove either ownership or bona fide possession of the vehicle.

The law

[16] In an appeal of this nature, the court should consider the available testimony and evidence produced at court during the trial. The appellant will only succeed in its appeal if it succeeds in proving that it was the owner or bona fide possessor of the vehicle.

¹ Vol 6 p489, line 1 - 21

² Vol 6, p492 line 22- p493 line 5

[17] This court is barred from setting aside the decision of the trial court where it exercised its discretion, merely because this court would on the facts before the trial court have come to a different conclusion³. It may interfere only when it appears that the trial court failed to exercise its discretion judicially, or that it had been influenced by wrong principles or misdirection on the facts, or that it had reached a decision which in the result could not reasonably have been made by a court properly directing itself to all the relevant facts and principles⁴.

[18] *Locus standi* concerns the sufficiency and directness of a party's interest in the litigation to be accepted as a litigating party⁵. It is trite that the owner of a property has a *locus standi* to litigate in matters relating to the property. A bona fide possessor possesses and believes himself to be the owner. He has the detention or physical possession and the *animus possidendi*. He possesses in the belief that he is the legal owner or that no one has a better title.⁶

Evaluation

[19] The appellant's version in relation to how the accident was caused is uncontested. It is, therefore, appropriate to make a decision based on the evidence adduced by appellant's driver. That evidence is to the effect that the respondent's driver was negligent.

[20] The licence, roadworthy certificate and operator card of the vehicle bore the name of the appellant. In dismissing them as not being sufficient enough to prove ownership or bona fide possession the trial court relied on the decisions in *Info Plus v Scheeke and another*⁷ and *Akojee v Sibanyoni and another*⁸. Similarly, the trial court made reference to the judgment in *Ronel Noleen Smit v Calvin Kleinhans*⁹, The facts in *Akojee* are distinguishable from the facts herein in that the court in *Akojee*

³ Naylor v Jansen 2007 (1) SA 16 (SCA) at 23G-24B; MTN Service Provider (Pty) Ltd v Afro Call (Pty) Ltd 2007 (6) SA 620 SCA at 624E-H

⁴ National Coalition for Gay & Lesbian Equality v Minister of Home Affairs 2000 (2) SA 1 (CC) at 14B-D.

⁵ Gross v Pentz 1996 (4) SA 617 (A)

⁶ Fletcher v Bulawayo Waterworks 1915 AD 636

⁷ (381/96)[1998]ZASCA 21; 1998(3) SA 184 (SCA)

⁸ 1976 (3) SA 440 (W) at 442 C- F;

⁹ Case no 917/2020[2021] ZASCA 147 (18 October 2021] at paragraph 11

was called upon to determine whether ownership in a vehicle is passed by delivering the registration papers of the vehicle. In *Akojee*, the appellant had kept the papers when he left his vehicle with a dealership to sell it on his behalf. The dealership fraudulently sold the vehicle to an innocent party. The court found that the retention of the papers did not mean that ownership had not passed to the innocent party, hence the quoted paragraph in paragraph [31] of the trial court judgment.¹⁰

[21] In *Info Plus* the SCA determined that ownership of a vehicle remained with the seller until all instalments were paid, even though the vehicle was delivered and registered in the name of the buyer.

[22] Similarly, in the *Ronel Noleen Smit* case the court was called upon to decide on the issue of *rei vindicatio* where a hire-purchaser brought *rei vindicatio* in relation to a vehicle the ownership whereof was retained by the financial institution.

[23] The *Akojee* and *Info Plus* cases are distinguishable from this case as, in both cases, there was a dispute on who the owner was. In this case, the evidence adduced, which is not disputed, is that the vehicle is registered in appellant's name. The reason (*causa*) for such registration and the title were not directly challenged by the respondent. It is further not in dispute that the possession by appellant was *bona fide*.

[24] The trial court held in paragraph [32]:

"...I am reminded of the fact that vehicles are often financed by financial institutions. To secure the amount advanced to the debtor, these institutions enter into financial instruments invariably with a clause that the vehicle will remain their property until fully paid.... Thus, in some instances, even a registration certificate may not be sufficient proof of one's ownership. There is no allegation that the Volvo was financed. As such, that question does not arise."

¹⁰ Vol 7, page 624 line 6-12

Having found as aforesaid, the trial court should have found that this is a case wherein the registration certificate, in the absence of any challenge to ownership and the authenticity of the certificate, was sufficient proof of appellant's ownership. More particularly in that a hire purchaser of a vehicle is deemed to be a bona fide possessor who is entitled to sue in his own name for damage negligently done or caused to the vehicle.¹¹

[25] Having found that ownership was not sufficiently proven, the trial court proceeded to consider whether the appellant succeeded in proving that it was a *bona fide* possessor. The trial court relied on the decision in *Four Wheel Drive CC v Rattan*¹².

[26] A bona fide possessor is entitled to recover damages.¹³

[27] This court is thus compelled to decide on the issue by inferring from the evidence on record as stated in *Govan v Skidmore*¹⁴ that:

"...In finding facts or making inferences on civil cases, it seems to me that one may, ..., by balancing probabilities select a conclusion which seems to be the more natural or plausible conclusion, from amongst several conceivable ones, even though that conclusion be not the only reasonable one."

[28] *In casu*, the registration licence reflects that the appellant is the entity in whose name the vehicle is registered; the vehicle was driven by its employee; there is no challenge to its title as the owner of the vehicle; there is undisputed evidence to the effect that appellant was the owner.

[29] Even if one were to doubt that the appellant was the owner, the circumstances are such that one cannot escape concluding that the appellant was in bona fide possession of the vehicle.

¹¹ Vaal Transport Co-operation (Pty) Ltd v Van Wyk Venter 1974 (2) SA 575 (T)

¹² (1048/17)[2018] ZASCA 124 (26 September 2018)

¹³ Rademeyer v Rademeyer 1967 (2) Sa 702(C)

¹⁴ 1952 (1) SA 732 (N)

[30] The trial court should, therefore, at least have found that the appellant was a bona fide possessor.

Merits

[31] The appellant called its driver, Mr Ndaba, who testified that:

31.1 He had, as at the date of accident, been employed by the appellant for about two years;

31.2 He was on his way from Mozambique to Steelpoort on the date of accident.

31.3 As he drove downhill, he saw respondent's vehicle on his lane of travel; i.e the respondent's vehicle was on the wrong lane;

31.4 He flashed lights, hooted, reduced speed and swerved to the left to avoid a collision;

31.5 Despite this, a collision occurred.

[32] The respondent did not adduce evidence to refute the version of the appellant.

[33] It is trite that a driver has a duty of care and cannot drive against oncoming traffic.

[34] The respondent's driver breached this duty and is, therefore, negligent. His negligence caused the collision as a result of which the appellant's vehicle was damaged.

[35] the respondent is liable to compensate the appellant to the extent of his proven damages.

Quantum

[36] Evidence was adduced by the appellant through an independent expert witness, Mr Grobler, who testified that:

36.1 He is a panel beater who has expert knowledge to make a cost assessment on damaged vehicles.

36.2 He initially received an initial quote of R789 230.65 for the truck repair but same was reduced to R564 975.45 after negotiating with the repairer and that they

were able to find stock and alternative parts to reduce the cost. The reparation to the trailer was R12 271.00.

36.3 He was not sure as to whether it was a 2012 or a 2013 model truck but replacing the parts would not have been much different on price.

36.4 He determined the maximum repair cost at 70% of the market value as R682 000-00.

[37] In dealing with quantum computations in personal injury claims, our courts had stated what follows hereunder. In my view the principles are, *mutatis mutandis*, applicable herein.

[38] In the event that the court finds that there is a loss, quantum should be determined. An enquiry into damages for loss of earning capacity 'is of its nature speculative, because it involves a prediction as to the future, without the benefit of crystal balls, soothsayers, augurs or oracles. All that the court can do is to make an estimate, which is often a very rough estimate of the present value of the loss.¹⁵ The court, in this enquiry, can refer to actuarial calculations, which are an informed guess as opposed to a trial judge's blind guess.¹⁶

[39] There are two approaches to determining a loss:

39.1 one is for the judge to make a sound estimate of an amount which seems to him to be fair and reasonable.

39.2 The other is to try to make an assessment, by way of mathematical calculations, on the basis of assumptions resting on the evidence.¹⁷

39.3 If there is an admission of damage, the Court should not be deterred by reason of the difficulty of computing an exact figure from making an award of damages.¹⁸ The question that must be answered in the assessment of damages is and what must be determined is whether there is a disability which is likely to impair the injured person's earning capacity.¹⁹

¹⁵ Southern Insurance Association v Bailey NO 1984 (1) SA 98 (A) at 113F-113E

¹⁶ Ibid, at 114C-D

¹⁷ Mlotshwa v Road Accident Fund (9269/2014)[2017]ZAGPPHC 109 (29 March 2017), at paragraph 17 referring to *Bailey supra*

¹⁸ Lazarus v Rand Steam Laundries 1952 (3) SA 49 (T) at page 53, 8-F

¹⁹ Ibid, at page 30

[40] It is sometimes simply not possible to place evidence of one's before Court and there may be no evidence upon which a mathematical calculation can be made.²⁰

[41] Once the court is satisfied that pecuniary damage has been suffered, it must make an award of an arbitrary amount of what seems to be fair and reasonable even though the result might be more than an informed guess.²¹

[42] In motor collisions, damages suffered can be determined by the diminution in value of the motor vehicle. That is the difference in the vehicle's pre-accident value and its value in its damaged state or the necessary and reasonable cost of repair, provided that the cost of repair does not exceed its reduction value²².

[43] *In casu* an expert, whose qualifications were not challenged, testified on a reasonable amount for compensation.

[44] According to him, a reasonable amount would be R589 517-45 made up of R564 975-45 for costs of repairs to the truck and R12 271-00 for repairs to the trailer. The appellant claimed an amount of R596 854-45.

Conclusion

[45] There were no findings of credibility in the trial court. This court is, therefore in as good a position as the trial court. The misdirection of the trial court was not on issues related to findings of fact but rather on the final ruling on the issue of locus standi.

[46] All the facts relating to merits assessment are not in dispute and the evidence relating to quantum determination is also on record.

[47] There is nothing preventing this court from making a finding and making an order on merits and quantum, as the trial court should have done.

²⁰ Griffiths v Mutual and Federal Insurance Co Limited 1994 (1) SA 535 (A)

²¹ *supra*, at 546F-G

²² Erasmus v Davis 1969 (2) SA (1) A at 7E and 9

[48] Consequently, the following order is made:

1. The appeal is upheld;
2. The order granted by the trial court is hereby set aside and it is substituted by the following:
 - 2.1 The respondent is ordered to pay the plaintiff an amount of R589 517-45 together with interest thereon at the prescribed rate a tempore morae;
3. The respondent is ordered to pay costs on a party and party scale C, including the costs of the court a quo, such costs to include the costs of Counsel where so employed.

SHAI AJ

I agree.

ROELOFSE AJ

I agree and it is so ordered.

RATSHIBVUMO DJP

DATE OF HEARING: : 25 OCTOBER 2024

DATE OF JUDGMENT : 20 MARCH 2025

This judgment was handed down electronically by circulation to the parties' representatives by email and release to SAFLII. The date and time for hand-down is deemed to be **09h00** on **20 MARCH 2025**.

**THE NAMES, TELEPHONE NUMBERS AND EMAIL ADDRESSES OF THE
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