

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

Case Number: 35348/21

(1)	<u>REPORTABLE: NO</u>
(2)	<u>OF INTEREST TO OTHER JUDGES: NO</u>
(3)	<u>REVISED.</u>
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DATE	SIGNATURE

In the matter between:

CEDRICK XOLANI GASA

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

PIENAAR AJ:

Introduction

[1] Mr Cedrick Xolani Gasu ("the Plaintiff") instituted action against the Road Accident Fund ("RAF") in which he claims damages as a result of the injuries he sustained in an alleged motor vehicle accident.

[2] The issue of quantum and liability were separated in terms of the Uniform Rule 33(4) and the Plaintiff proceeded on the issue of liability only.

[3] There was no appearance for the Defendant and the trial proceeded by way of default. The court was satisfied that the notice of set down was properly served on the Defendant.

Merits

[4] The merits evidence before me, is the Accident Report (AR) Form, the claimant's section 19(f) affidavit confirming the accident, and the ID copy of the claimant.

[5] The Plaintiff testified that he was injured in the accident that occurred in 2018, at Port Shepstone and he was driving at 70 km/h. As he was about to pass the vehicle that vehicle turned. This vehicle made a U-turn when it was nearby.

[6] It is Plaintiff's contention that the insured vehicle suddenly and without warning, made an U-turn and he then hit his car towards the rear right side.

[7] I next turn to the Accident Report which forms a crucial part of the claim instituted by the plaintiff against the defendant. According to driver of motor vehicle "A" which is the Insured Driver he alleged that he was about to turn right into a clients driveway, when he heard a bang. Motor Vehicle" B"which is the Plaintiff had collided with his vehicle at the back. On the evidence of the plaintiff against the OAR, it is two

different versions before the court.

Evaluation

[8] It is trite that the onus rests on the Plaintiff to prove the Defendant's negligence which caused the damages suffered on a balance of probabilities. It is clear that the insured driver failed to keep a proper lookout by not observing the Plaintiff in his rear view mirror. If he did, continuously so, then he would have seen the Plaintiff approaching to his right side. According to the brief description of the accident on the Accident Report, the insured driver alleged that the Plaintiff collided with his vehicle at the back.

[9] Section 1(1)(a) of the Apportionment of Damages Act 34 of 1956 gives a discretion to the trial court to reduce a plaintiff's claim for damages suffered on a just and equitable basis and to apportion the degree of liability. Where apportionment is to be determined, the court is obliged to consider the evidence as a whole in its assessment of the degrees of negligence of the parties. Writers have opined that apportionment of liability should only generally be considered where it can be proven that the plaintiff was in a position to avoid the collision. In this instance in order to prove contributory negligence, it is necessary to show that there was a causal connection between the collision and the conduct of the Plaintiff, this being a deviation from the standard of the diligence paterfamilias.

[10] In argument, counsel for Plaintiff referred the court to the case of *Brown v Santam Insurance Co Ltd 1979 (4) SA 370 (W)*, the court held that even if the driver of a motor vehicle had given a signal to show that he was going to turn right, he had nevertheless been negligent in concluding the motorist behind had observed his signal and in failing to look again in his rear-view mirror. The court considered the facts and found that it had not been established that the former had given warning signals of any sort.

[11] The law regarding the duty of a driver is trite, a driver should scan the road ahead continuously for obstructions or potential obstructions. In *Nogude v Mniswa* 1975(3) SA 685 (A) at 688D a "proper look-out" was described as follows:

"More than looking straight ahead it includes awareness of what is happening in ones immediate vicinity. He (the driver) should have a view of the whole road from side to side."

[12] In *Mvimbi v Road Accident Fund* ¹, the court considered the circumstances of a collision where a vehicle had turned to the right, and had not kept a proper lookout in the process of doing so. The vehicle in this case had substantially commenced a right-hand turn and negligence was apportioned as being thirty percent (30%) to the insured driver and seventy percent (70%) to the plaintiff. It was held that the plaintiff had ample time to view the turning manoeuvre and had ample opportunity to react timeously.

[13] The following extract from *Ditsela v Road Accident Fund* (59582/18) [2019] ZAGPPHC 531 is equally applicable to the matter in casu:

"There have been a number of cases dealing with vehicles colliding with obstructions in the road. The problem faced by such a driver has been described as "the horns of a dilemma". The problem is this: If the driver had been keeping a proper lookout and had been driving at a reasonable speed, he would have been able to pull up before the vehicles collided (See: *Manderson v Century Insurance Co Ltd* 1951 (1) SA 533 (A) at 537 H). Since the driver could not do so, he must either have been driving too fast, or he did not keep a proper lookout. This is, in my view, even more applicable where the accident happens in daytime in good visibility. The question must be asked: Why could plaintiff not have avoided the collision? In my view he was either travelling too fast, or he did not keep a proper lookout, and he only realized that the truck was travelling

¹ [2010] ZAWCHC 113 (26 March 2010)

slower than he was when it was too late to avoid the collision. There is no doubt that plaintiff was negligent.”

Conclusion

[14] The law regarding the duty of a driver is trite, a driver should scan the road ahead continuously for obstructions or potential obstructions. In *Nogude v Mniswa* 1975 (3) SA 685 (A) at 688D a “proper look-out” was described as follows:

“More than looking straight ahead it includes awareness of what is happening in ones immediate vicinity. He (the driver) should have a view of the whole road from side to side”

[15] In the circumstances, having considered all of the evidence and taking into account the probabilities of the circumstances of the matter, I make the following order:

Order

1. The defendant shall pay the plaintiff 75% of his proven agreed damages.
2. The trial in respect of quantum is postponed sine die.
3. The defendant is ordered to pay the costs of the merits trial on party and party scale, Scale “B”



PIENAAR, M
ACTING JUDGE OF THE HIGH COURT GAUTENG DIVISION

Date of hearing : 31 March 2025

Judgment delivered : 17 June 2025

Plaintiff Counsel : Adv J M Matladi

Instructed by : Komane & Associates

Appearance for the Defendant: No appearance

Link no: 4485496
