IN THE HIGH COURT OF SOUTH AFRICA

EASTERN CAPE DIVISION, GQEBERHA

CASE NUMBER: 2192/2023

In the matter between:

REGGIE WILLEM BEZUIDENHOUT **PLAINTIFF**

And

ROAD ACCIDENT FUND **DEFENDANT**

JUDGMENT,

NKELE AJ:

INTRODUCTION

[1] This is a claim for damages arising out of a motor vehicle accident that occurred on 28 August 2019, along the R330 road, running between Hankey and Humansdorp. Plaintiff issued summons against the defendant for the recovery of damages suffered as a consequence of the injuries sustained in that accident. The defendant has entered an appearance to defend and filed both a special plea as well as the plea over.

[2] The matter was set down for trial on 27 August 2025, and it proceeded on 28 and 29 August 2025. On 29 August 2025, the parties were ordered and directed to file written submissions, 30 days after receipt of the transcribed record. Plaintiff's written submissions were filed on 6 November 2025, and, to date, the defendant has failed to provide its written submissions.

ISSUES FOR DETERMINATION

[3] At the outset, the parties applied for separation of the issues in terms of Rule 33(4) of the Uniform Rules of Court, and I accordingly granted the separation. The matter therefore proceeded to trial only on the question of liability.

[4] A brief overview of the relevant legal principles is set out below.

LEGAL FRAMEWORK

[5] In terms of ***section 17(1)*** **of the Road Accident Fund Act** ("the Act")[1], the defendant is obliged to compensate a person for loss or damage suffered because of a bodily injury caused by or arising from the driving of a motor vehicle. The defendant's liability upon the injury having resulted from the negligence or wrongful act of the driver[2]. That necessarily entails that a plaintiff has to prove negligence.

[6] It is trite that such loss or damage can be reduced by the degree of any contributory negligence on the part of the accident victim. That is made clear by the provisions of section 1 of the Apportionment of Damages Act[3], which provides that:

"(1)(a) Where any person suffers damage which is caused partly by his own fault and partly by the fault of any other person, a claim in respect of that damage shall not be defeated by reason of the fault of the claimant but the damages recoverable in respect thereof shall be reduced by the court to such an extent as the court may deem just and equitable having regard to the degree in which the claimant was a t fault in relation to the damage[4].

(b) Damages shall, for the purpose of paragraph (a), be regarded as having been caused by a person's fault notwithstanding the fact that another person had an opportunity of avoiding the consequences thereof and negligently failed to do so".

[1] Act 56 0f 1996, *section* 17(1)
[2] MP Olivier, 'Social Security: Core Elements', LAWSA Vol 13(3) 2nd July 2013 at paragraph 163
[3] Act 34 of 1956, *section* 1
[4] Act 34 of 1956, *section* 1(a)

[7] The implication of ***section 1(a) of Act 34 of 1956*** is that the court should exercise its discretion in determining the extent of the apportionment. That is, if the court holds that there is some fault attributable to the plaintiff[5].

[8] The legal principles tabulated above constitute an elementary framework for the assessment of the facts in the present matter. I proceed to deal with the evidence during trial proceedings.

PLAINTIFF'S EVIDENCE

[9] Plaintiff testified on his own behalf. He testified that on 28 August 2019 he was driving a motor vehicle with registration letters and numbers, H[...], a Toyota Land Cruiser, between Hankey and Humansdorp, along the R330 road, when he collided with a motor vehicle with registration letters and numbers J[...], ("the insured vehicle"), driven at the time by one Marid Loesen ("the insured driver"). He stated that he was from Hankey heading towards the direction of Jeffrey's Bay, and it was about 17h15 in the early evening. He was together with his assistant, Mr Kenan Swartz, at the time, and he was seated next to him. The road at that section was a two-lane way, composed of one lane for each side of the road.

[10] He further testified that while still enroute from Hankey, he observed pigs that were crossing the road from the left-hand side, and immediately he lowered the speed of his vehicle so that the pigs could cross completely. While he was still driving slowly, there came another pig, also from the left-hand side, and

[5] Nontsele v Road Accident Fund (474/2022) [2023] ZAEMHC 28(2 May 2023) para 29

he tried to avoid colliding with it by swerving to the right, but he drove over it. When he collided with the pig, the wheels of his vehicle had already crossed the white middle traffic line. After colliding with the pig, he then returned to his correct lane, that is, on the left-hand side, and continued to drive for about 20 metres when he observed a white vehicle coming from the opposite direction. At the time, it was being driven on its lane. Upon further observation, he noticed that it was swerving towards his lane of travel and eventually it was in his lane. That prompted him to move his vehicle further to the left. Immediately thereafter the bakkie collided with his motor vehicle. He further stated that the impact of the collision caused his vehicle to move such that its wheels on the left-hand side were on the gravel part or sidewalk, while those on the right-hand side were on the tar-marked part.

[11] After the collision, the plaintiff testified that he took out his phone to report the accident. While still on the phone, he was approached by the insured driver who said what was he doing. He did not answer, and he walked away. Thereafter, he alighted from his vehicle and walked in the direction from which the insured vehicle was coming from to a point where the brake marks started. He then measured the distance from where the brake marks started to the point of impact and found that the distance was about 60 paces.

[12] The plaintiff's testimony relating to photographs is to the effect that the photo at page 1 of the photo album depicts the point of landing of his vehicle after impact and it clearly shows the brake marks caused by the insured vehicle

that moved from its lane of travel across the white line to encroach upon the lane of travel traffic coming from the opposite direction. That photograph shows clearly that the insured vehicle crossed the white middle line, and the point of impact is shown to be over the centre line. The photos on pages 5,6 and 7 show the damaged Land Cruiser from the front right wheel, the right fender, and the right-hand side door. Photos numbered 5, 6, 7, and at pages 10, 11 and12 of the album, depict the brake marks left by the insured vehicle on the tar mac before impact. His further testimony was that the damage to his vehicle was on the right-hand side, which clearly shows that it is the insured vehicle that came to hit his vehicle. There is no damage to the front of his vehicle. The damage is on the right-hand side, starting from the wheel, the fender, and the door on the right-hand side. The same applies to the insured vehicle, as depicted in the photographs, the damage is more on the right-hand side, starting from the right bumper to the fender, and, according to him, it confirms that the insured vehicle was hit by the Land Cruiser on its lane.

[13] During cross-examination, the plaintiff stuck to his guns and was steadfast in his testimony as to how the accident occurred. Nothing new came out of his testimony when he was under cross-examination. He strongly disputed that he was the cause of the accident and that he drove on the lane of travel for the traffic coming from the opposite direction. He further denied that he swerved into the lane of the insured driver and thereby caused the collision.

[14] In support of his testimony, the plaintiff called Keenan Christopher Swartz to testify in support of his version of events. In his testimony, Mr. Swartz confirmed that he was a passenger in an orange Toyota Land Cruiser driven by the plaintiff, and they were on their way from Hankey to Jeffrey's Bay when the accident occurred. He described how the accident occurred when he stated that while they were still travelling, their vehicle drove over a pig, and thereafter they became involved in an accident. After the collision, there came a white bakkie from the opposite direction, into their lane of travel, being driven fast, and it collided with their vehicle.

[15] Under cross-examination, he testified that their vehicle first slowed down to avoid colliding with a group of pigs, which they noticed when they were at about 5 to 10 metres away. Thereafter, they collided with another pig. At the time, according to him, they were travelling at a speed of about 70 to 80 kilometres an hour. He disputed that their vehicle caused an obstruction to the insured vehicle. He testified that the plaintiff swerved to the right-hand side to avoid collision with the pigs and thereafter came back to his lane. He therefore disputed that the plaintiff was the cause of the collision. The collision occurred a while after the Land Cruiser had returned to its lane of travel.

DEFENDANT'S CASE

[16] The defendant called Mr Mario Loesen as its first and only witness. He is employed as an investigating officer with the South African Police Service, stationed at Hankey Police Station. On 28 August 2019, he was driving a

white Nissan bakkie with registration letters and numbers: **J[...]**, from Humansdorp along the R330 road. When he was about 120 metres away from the Weston T-junction at Weston, Hankey, he got involved in an accident. While he was still driving, he saw a pig coming out of the bush onto the tar-marked road. He stated that there is a bend where the pig was entering the road. At that moment, there came an Orange Toyota Land Cruiser from the opposite direction, and it swerved after it collided with a pig on its lane. Thereafter, the insured driver testified that the Land Cruiser attempted to return to its lane, and the accident occurred on the middle line. Before the accident happened, the insured driver stated that he heavily applied the brakes in an endeavour to avoid a head-on collision with the Land Cruiser.

[17] After the collision, he stated that his vehicle came to a standstill. The cruiser ended up with its wheels on the right hand-side on the tar-marked road while those on the left-hand side were on the gravel part of the road, and it stopped slightly diagonal from the insured vehicle. As a result of the impact, the right-hand door of the insured vehicle got stuck, and he was assisted by people from the neighbourhood to get out of the vehicle. In his testimony, he confirmed that the skid marks that appear from the photograph on page 1 of the photo album were made by the insured vehicle, that is, the Nissan Bakkie he was driving, and that they started on his lane, and crossed over the middle line. He explained why he started to apply the brakes, and he said it was because he could see that the Land Cruiser was swerving to his lane of travel to avoid colliding with the pigs, and it ended up partly in his lane. He confirmed that the photo on page 2 of the album correctly depicts that he

veered over the white middle line and explained that this happened when he was trying to avoid a head-on collision. He further stated that his vehicle was never fully on the lane of the oncoming traffic.

[18] When it was put to him that the brake marks are continuous and that they measure about 60 paces approximately, he agreed that the brake marks are continuous, but disputed the distance of the skid marks, although that was not challenged by defendant's counsel during plaintiff's testimony. He further disputed that he was travelling at a high speed immediately before the collision occurred, and he explained that the reason why he applied the brakes was that the Land Cruiser was approaching him head-on, hence he applied the brakes in an endeavour to avoid it, and at one point, all four wheels were on his lane. In conclusion, he disputed that he was the one who caused the collision, he could not have done that, as the Land Cruiser was a big vehicle. According to him, it is the plaintiff's vehicle that drove into his lane of travel, and all he was doing was to avoid a head-on collision.

EVALUATION OF EVIDENCE

[19] It is indisputable that in this matter, as in all civil matters, the plaintiff bears the onus to prove the allegations of negligence against the defendant's insured driver. This is the case because the defendant has denied the allegation of negligence and has gone to the extent of pleading that the plaintiff's negligence is the cause of the accident, alternatively, that it contributed to its

occurrence. Therefore, the onus lies with him[6]. The principle regarding the onus to prove has been restated repeatedly. It is trite that our law proceeds from the point of view that a litigant requesting a remedy has to prove that he is entitled to it[7]. In Schwikkard et al the authors made the following observation regarding this point:

> "*In civil cases, the burden of proof is discharged as a matter of probability. The standard is often 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 another. 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*."[8]

[20] From the evidence presented by the parties during trial, there is clearly a divergence of opinion as to who was responsible for the collision. Now the task at hand is to evaluate the evidence and make a finding as to which version is more probable than the other.

[21] As already stated, plaintiff presented his own evidence about how the accident occurred, and his evidence was also corroborated, in material respects, by his witness, Mr Keenan Christopher Swartz, who was his assistant and a passenger at the time of the accident. The plaintiff, as a

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[6] Madolo v Road Accident Fund (1199/2017) [2023] ZAECMHC 63 (23 May 2023) para 16
[7] CWH Schmidt and H Rademeyer Law of Evidence LexisNexis para 2 2 1 1 page 2-10
[8] Schwikkard et al: Principles of Evidence Juta 4th Ed, 2016, page 628

witness, was credible and made a consistent and probable account of the events regarding how the accident occurred. Even under cross-examination, there were no obvious contradictions. Regarding reliability, no justified criticism could be made against him. His evidence was supported, in all material respects, by that of Mr Keenan Swartz, especially regarding what happened before the collision, how the insured vehicle came to collide with their Land Cruiser, the damage to it, as well as the point of landing after impact.

[22] Both the plaintiff and his witness corroborated each other that, before the collision, they were disturbed by pigs that were crossing the road from left to right. The plaintiff had to slow down the Land Cruiser to avoid colliding with them. After that, a lonely pig crossed the road, also from left to right, and the Land Cruiser had to swerve to the right and crossed the white middle lane, and in the process drove over the pig. In the process, the Land Cruiser crossed the white middle line, and thereafter it returned to its correct lane. They then drove for about 20 metres when they saw a white bakkie coming out of a bend, crossed the middle line, and came to collide with their vehicle.

[23] Counter to that, the insured driver testified that the Land Cruiser, to avoid colliding with the pig, swerved onto his lane of travel. He had to brake heavily to evade a head-on collision and had even decided to go around it, on the right-hand side if it did not fully return to its correct lane. In this regard, the plaintiff's version of events, that is, relating to how the accident happened, is

credible and on a balance of probabilities it is believable. This is for the following reasons. First, the long brake marks of approximately 60 paces clearly demonstrate that the insured driver was speeding, and that is corroborated by the insured driver's testimony that he had to brake heavily to avoid a head-on collision. The long skid marks lead me to only one conclusion that the insured driver was driving at an excessive speed at the time, hence his inability to control the insured vehicle. He was therefore negligent. In addition, thereto, those brake marks are continuous, in a straight line, which indicates that no attempt was made to avoid the plaintiff's vehicle, as the insured driver would have the court believe.

[24] Secondly, the documentary evidence, in the form of photographs, remains unassailable and the insured driver conceded that the brake marks were continuous, that the point of impact is beyond the middle white line, on the side of the oncoming traffic and he could not explain why this is so if at all the other driver was to blame for the accident, especially in the light of his version that the Land Cruiser had traversed his path of travel and he heavily applied brakes to evade a head collision. His version is improbable to be true in this regard. What the objective facts and evidence presented at the trial show is that the insured vehicle crossed over the white middle line and collided with the plaintiff's vehicle on the left-hand side, that is, on its correct lane of travel. That is clear from the fact that the point of impact, which is not in issue, is on the plaintiff's lane of travel.

[25] Thirdly, the damage to the plaintiff's vehicle clearly indicates that the vehicle was hit on the right front side. In this instance, the front right tyre, right front fender, and right-hand door were damaged. The location of the damage to the plaintiff's vehicle is clear evidence of the fact that it was hit or collided with by the insured vehicle. That is confirmed by the damage in the Insured vehicle, which is mainly on the front right-hand side head lamp. Moreover, the position of the Land Cruiser after the impact, the diagonal position, to me, indicates that it was hit more on the right-front part by the insured vehicle that was progressively protruding and encroaching on its path of travel. I am therefore convinced, by the totality of evidence presented during the trial, that indeed the plaintiff has proved his case on a balance of probabilities. The insured driver was clearly negligent in the factual circumstances of this case. His evidence that he did everything he could to avoid the collision is improbable to be true and is not borne out by facts and evidence brought to the court's attention.

[26] The fact that the collision occurred on the incorrect side of the road may, in certain circumstances, constitute evidence of prima facie negligence on the part of the driver who travelled on his or her incorrect side of the road[9]. **In President Insurance Company Ltd v Tshabalala and Another**[10], it was held that going to the wrong side of the road when another vehicle is approaching on its wrong side is a dangerous course which the circumstances may justify, but which nevertheless should not be lightly resorted to. If other satisfactory

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[9] HB Klopper, The Law of Third-Party Compensation, LexisNexis 3rd Ed, page 84

[10] President Insurance Company Ltd v Tshabalala and Another 1981 (1) SA 1016 (A) at 1020B-D

means are available for avoiding the accident, then that course should not be taken, because there is always the risk that the other party may come back to his correct side[11]. Applying this salient principle to the present factual matrix, I am of the view that the insured driver did not do what a reasonable person would have done when faced with a similar situation. He had plenty of space on the left-hand side and, in my view, swerving to the left was a far safer option than swerving to the wrong and incorrect side of the road. This is what a reasonable person would have done. The insured driver's testimony that there was a deep slope on the left holds no water, as all that he needed to do in the circumstances was to slightly swerve to the left to avoid the collision.

[27] Furthermore, the trite principle of our law is that a driver who remains on his correct side of the road whilst being approached by another vehicle on its incorrect side of the road will rarely be found to be negligent[12]. In this regard, I conclude that the insured driver's attempt to exonerate himself from blame by stating that he tried to manoeuvre to avoid the collision is inherently improbable, as it is not borne out by the objective facts and evidence presented at the trial. The law is very clear that it does not mean a driver who is being approached by a vehicle on the incorrect side of the road is not required to take evasive action as soon as he is being approached. In such a case, a driver is required to take all reasonable steps to avoid the collision[13]. In the present matter, as already stated, the only reasonable way to avoid the collision from happening would have been to swerve to the far left, rather than

[11] President Insurance Company Ltd v Tshabalala, ibid
[12] HB Klopper, ibid page 84
[13] Burger v Santam 1981 (2) SA 704 (A)

to the right. In my view, he had plenty room of and space to do so. All that he could have done to avoid the collision was to swerve a little bit to the left.

[28] However, the matter does not end there. It is obvious from the photographs that the point of impact is very close to the white line on the plaintiff's lane of travel. What is also a matter of common cause is that the plaintiff's vehicle landed where it was after the accident because of the impact caused by the collision. There is no evidence as to what steps the plaintiff took to avoid the collision. It is trite that every driver has the responsibility to avoid an accident, and the plaintiff should have played his part, which he did not. That therefore leads me to consider whether the plaintiff contributed to the occurrence of the collision and, if so, to what degree or extent. In other words, a determination needs to be made of their relative degrees of negligence. In my view, to a greater degree, the insured driver was negligent, and judging from the facts, such negligence amounts for 80% of the accident, while that of the plaintiff is equal to 20%. I conclude that blame should therefore be apportioned 80% - 20% in favour of the plaintiff.

[29] Consequently, I make the following order.

(a) That the defendant is held liable to pay 80% of the plaintiff's proven damages.

(b) That the defendant is liable to pay plaintiff's party and party costs in terms of scale B of the Uniform Rules of Court

T.A. NKELE

ACTING JUDGE OF THE HIGH COURT

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