

IN THE SOUTH GAUTENG HIGH COURT OF SOUTH AFRICA

JOHANNESBURG

CASE NO: 04644/2010

DATE: 2011-09-06

In the matter between

MOKOENA AUBREY

Plaintiff

10and

ROAD ACCIDENT FUND

Defendant

J U D G M E N T

WILLIS J:

[1] The plaintiff claims against the Road Accident Fund in terms of the Road Accident Funds Act 56 of 1996. The claim arises from a collision which the plaintiff alleges occurred on 12 September 2007 at approximately 05:30 at the intersection of Maphalala and Masenge Streets, Jabulani, Soweto..

[2] The plaintiff claims alternatively in as much in his particulars of claim he alleges that the collision occurred with a motor vehicle having

registration number CCF 813 GP then owned by one R.M. Motlane and the plaintiff who was a pedestrian. On the other hand, the plaintiff alleges in the alternative that the collision took place between himself as a pedestrian and a vehicle, the identity of which vehicle, as well as the driver are unknown to him.

[3] The plaintiff testified that on this morning he walked with his mother to a taxi rank. He was accompanying her to make sure that she got safely to the taxi rank as is his practice and then he returned home. This evidence
10 was not challenged, but I might pause to mention that the plaintiff's version that he accompanied his mother to a taxi rank on her way to work as part of his daily routine, is unusual. Few young men arise easily at this early hour in the morning. Be that as it may, his version is that he was walking along Maphalala Street and he turned left into Masenge Street, walking on the left side of the road, when a car basically following his direction, travelling along Maphalala Street turned left into Masenge Street and collided with him.

[4] As a result his left patella was injured, the entire claim is based upon
20 him injuring his left patella. The plaintiff's version was confirmed by his mother to this extent that she testified that he had accompanied her to the taxi rank on the day in question. On the plaintiff's version, which he presented in court, his mother was not with him at the time of the accident.

[5] He said that he was taken to hospital where he spent some two to three weeks and that certain observers had given him the registration CCF 813 GP as one of the motor vehicles that had collided with him. There is in the admitted documents before me a statement by R M Motlotlane of which he denied having driven this vehicle at this particular place on the day in question.

[6] The truthfulness of that version is not admitted, but it is nevertheless a relevant factor that there is this version that registration numbers were
10given to him and certain difficulties as much as the person who owned the vehicle with that registration with those numbers deny the accident had occurred.

[7] The hospital records show or strongly suggest that the plaintiff was discharged from hospital after two days. There are unexplained notes relating to his examination on 12 December 2007 which suggested the injury to the patella may have been old, and I make no pertinent finding in regard thereto, but there is the proverbial doctor scribble next to the observation concerning the injury to the patella with a clearly written word
20old next to it.

[8] No evidence was put before the court as to any ambulance record showing that the plaintiff had been transported from the scene of the accident to Baragwanath Hospital on the day in question and indeed no police records relating to the accident as alleged on that particular day

were made available at all.

[9] It also appears that the earliest that the plaintiff went to report the alleged accident to the police was in 2009 - some 18 months to two years after the accident. Furthermore, in the statements there is a contradiction in as much as in one statement it appears that he says that his mother was with him at the time of the collision and managed to jump out of the way which is contrary to another statement which he said in his evidence.

10[10] Most importantly, right from the start there were problems with the plaintiff's version of events: if the vehicle had come from behind travelling as he described how come he was injured on the left and not the right part of his body which would have been exposed to the impact of the vehicle as described?

[11] Counsel for the plaintiff argued that if it is common cause that the plaintiff was injured on that particular day, why would he fabricate this story? I regret to say that I have sufficient experience in this court of people thinking that the Road Accident Fund is an easy target for any kind
20of accident that occurs. Moreover the injuries in question may not even have occurred as a result of the motor collision.

[12] Unfortunately, a lot of time is then wasted: the time of attorneys acting for the fund, time of counsel that put a lot of effort into the matter on behalf of the plaintiff to ensure that an injustice to a victim was not done. The

time of this court has been wasted by having to hear the matter. The probabilities indicate that the plaintiff was certainly not involved in an accident on the day in question, and decided opportunistically to make a claim against the Road Accident Fund.

[13] I had a short debate with counsel for the defendants as to whether the appropriate order is that absolution from the instance should be granted or whether the action to be dismissed. The quality of the evidence in this matter has persuaded me that the action should be
10dismissed with costs.

[14] Judgment is given in favour of the defendant against the plaintiff. The following is the order of the court:

The plaintiff's claim is dismissed with costs.

Counsel for the plaintiff: Adv E Ferreira

Counsel for the defendant: Adv T Mosenyeni

Attorneys for the plaintiff: Raffaele Craughenoff,

Attorneys for the defendant: M F Jassat, at Dlamini Inc

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Date of hearing 5th and 6 September 2011

Date of judgment 6 September 2011.