

IN THE SOUTH GAUTENG HIGH COURT, JOHANNESBURG

CASE NO: 2010/40161

In the matter between:

COETZEE: DANIEL JERIMIAH

and

ROAD ACCIDENT FUND

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES/NO	
(2) OF INTEREST TO OTHER JUDGES: YES/NO	
(3) REVISED.	
15/02/2012	<i>[Signature]</i>
DATE	SIGNATURE

Plaintiff

Defendant

JUDGMENT

FRANCIS J

Introduction

1. The plaintiff was involved in a motor collision on 31 July 2007 at approximately 06h15 at Fedler Street, Randfontein with a vehicle bearing registration letters and numbers FVN058GP (the insured vehicle) there and then being driven by M Busakwe as a result of which he sustained injuries.
2. He instituted an action for damages against the Road Accident Fund (the defendant) for the injuries sustained.
3. The matter was enrolled for a hearing on 14 February 2012. The parties appeared before the deputy judge president when an order was made that quantum be separated from the merits and that the matter proceed on the merits only.

The evidence led

4. The plaintiff testified that on the morning of 31 July 2007 whilst he was walking to work, he was given a lift by a person called Sebastian who works at a cafe called Madeira which is right across where the plaintiff worked. Sebastian dropped him in front of Madeira Cafe. He got out of the vehicle and went next to Fedler Street with the intention to cross it. A minibus taxi came and stopped at a stop street in Fedler Street. The taxi driver indicated to him with his hand that he could cross the street. The taxi was still stationary at the stop street when he went across the street next to the stop street sign. There is also another stop street sign on the opposite side of Fedler Street. There is a pedestrian crossing between the two stop streets. Whilst he was crossing the street, he was struck by another taxi. He did not know what happened thereafter. At the time of the accident, he was wearing a denim trouser, a T-shirt and a jersey with a reflector vest. He was crossing in front of the stop street and pedestrian crossing. Fedler Street is a one way. The taxi that stopped was in the lane and was travelling in the direction that he was crossing. He sustained injuries on the right side of his body including his chest and shoulders.
5. During cross examination the plaintiff said that he could not recall how the accident happened at all. He agreed that he did not cross at the designated pedestrian crossing. He said that it might be possible for two vehicles to have travelled in the one lane. He agreed that he knew that there was a pedestrian crossing and that he had elected not to use it. When the taxi driver indicated for him to cross, the street was clear at that stage but he did not know if there were vehicles behind the taxi. He was asked that if there were vehicles behind

the taxi whether they would have seen him since the stationary taxi might have obscured him. He said that he did not know. He agreed that any vehicle that was travelling behind the taxi that had stopped at the stop street sign would have expected a pedestrian to cross at the pedestrian crossing. He was asked if it was not the taxi whose driver told him to cross that struck him and he said no. He was asked whether he would agree that he was negligent when he did not cross at the pedestrian crossing. He said no. He was asked whether he agreed that he did not look properly to see if there were no other vehicles before he crossed. He said that he had said that it was clear all over and that there was only one taxi that was standing. He was asked whether it could be assumed that he was struck by the taxi that had stopped at the stop street sign. He said no and wanted to know how he could have been hit him when he was standing. He said that he was struck by a taxi but not the one that was at the stop street. The taxi that struck him came from south to north but he did not see this but was told about this by other people. He did not know where the taxi came from. The taxi that stopped at the stop sign came from south to north and he had sustained injuries on the right side of his body.

6. The plaintiff testified and did not call any witnesses. At the end of the plaintiff's case, the defendant had initially applied for absolution from the instance but withdrew it. It closed its case without calling any witnesses.

Analysis of the evidence and arguments raised

7. It was argued on behalf of the plaintiff that the plaintiff's version was uncontested. He had

stopped at a stop sign when a taxi driver that was stationary indicated to him that he could cross the street. Whilst he was crossing, he was struck by another vehicle. There was no suggestion that the defendant was not liable. The insured driver was clearly negligent since the plaintiff had the right of way. The plaintiff was not told about the action of the insured driver. There are two stop street signs and the plaintiff had stopped, saw that there was nothing and crossed. He was struck by the other vehicle without any warning from behind.

8. It was contended on behalf of the defendant that no adverse inference should be drawn from its failure to call the insured driver as a witness. Defendant's counsel agreed that no version was put to the plaintiff about what the insured driver's version would be. It was contended that the plaintiff was negligent in that he did not cross the street at the designated pedestrian crossing and that he was 30% negligent.
9. The facts in this case are not complicated. The plaintiff had stopped at a stop sign at Fedler Street. A taxi driver whose vehicle was stationary at the stop street indicated to him that he could cross the street. Before he started crossing, he saw that the street was clear and proceeded to cross when he was struck by another vehicle. He did not know how the accident happened and where that vehicle came from.
10. This court was informed by defendant's counsel that an assessor was going to come to court with the insured driver. This court was also informed that the defendant had obtained a statement from the insured driver. It is trite that there is a duty on a party to put a version to

a witness to allow that witness to comment on the said version. No version was put to the plaintiff about how the accident happened and in what respect it was alleged that he was negligent. Mr Snoyman had initially applied for absolution from the instance on the grounds that the plaintiff had failed to prove that he was struck by the insured driver. After the court had brought it to the defendant's attention that the defendant had admitted in paragraph 5 of its plea that the plaintiff had sustained injuries as a result of a collision between a vehicle driven by the insured driver, the defendant abandoned its application for absolution.

11. No plausible explanation was given why the insured driver was not called as a witness. This court was informed that he was available and would have come to court with an assessor. The only inference to be drawn about the defendant's failure to call the insured driver as a witness is that he would have supported the plaintiff's version about how the accident happened. This also explains why no version was put to the plaintiff about how the accident happened or in what respects he had contributed towards the accident.
12. The plaintiff's version about how the accident happened is uncontested. This court is not faced with two diametrically opposed versions. This court is faced with the plaintiff's version only. The court is bound to accept the plaintiff's version. There is nothing inherently improbable about his version. He clearly had the right of way when he walked across Fedler Street next to the stop street sign. There was no vehicle other than the taxi that stood at the stop street sign. After he saw that there was no vehicle, he walked over. The fact that he crossed the street where he did and not at the designated pedestrian street

crossing does not imply that he was negligent. The insured vehicle that collided with him must have been travelling at a high and had failed to stop at the stop street sign. There are stop street signs on both sides of Fedler Street. The insured driver was solely responsible for the accident. There was no contributory negligence on the part of the plaintiff.

13. I am satisfied that the defendant is liable for the damages suffered by the plaintiff.

14. There is no reason why costs should not follow the result.

15. In the circumstances I make the following order:

15.1 The defendant is liable for the proven damages of the plaintiff.

15.2 The defendant is to pay the plaintiff's cost of the suit.


FRANCIS J

JUDGE OF THE SOUTH GAUTENG HIGH COURT

FOR THE PLAINTIFF : IZ ZIDEL SC INSTRUCTED BY DE BROGLIO INC

FOR THE DEFENDANT : C SNOYMAN INSTRUCTED BY SISHI INCORPORATED

DATE OF HEARING : 14 FEBRUARY 2012

DATE OF JUDGMENT : 15 FEBRUARY 2012