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**REPUBLIC OF SOUTH AFRICA**



**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION  
JOHANNESBURG**

**CASE NO: 17986/12**

(1) REPORTABLE: YES / NO  
(2) OF INTEREST TO OTHER JUDGES: YES/NO  
(3) REVISED.

.....  
DATE

.....  
SIGNATURE

In the matter between:

**EAST RAND BULK (PTY) LTD**

Plaintiff

and

**ROSONNE THOMPSON**

Defendant

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**J U D G M E N T**

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**N F KGOMO, J:**

## INTRODUCTION

[1] The plaintiff issued summons against the defendant for –

1.1 Payment of the sum of R1 231 686,15;

1.2 Interest on the above amount at the rate of 15,5% per annum *a tempore morae* from 30 January 2012,

*alternatively*

from the date of issuing of summons, to date of final payment,  
both days inclusive;

1.3 Costs of the action; and

1.4 Further and/or alternative relief.

[2] The actions arose out of or from a “*collision*” that occurred on or about 30 October 2011 at the intersection of the R554 road and Trichardt Road in or at Elspark. The specific allegations are that the defendant, who was the driver of her motor vehicle bearing registration letters and numbers TXY 328 GP (“*the defendant’s vehicle*”), conducted herself in such a manner at the abovementioned intersection that the driver of the plaintiff’s articulated truck and trailer bearing registration letters and numbers 104 ERB GP (for the

horse) and 309 ERB GP (for the trailer) (both to be referred to as “*the truck and trailer*” or “*the truck*” and/or “*the trailer*” was obliged to take evasive action that led to the truck and trailer jack-knifing and being damaged, it losing some of the petroleum it was carrying as well as requiring repairs to it and the accident scene or area of collision or accident requiring specialised treatment and rehabilitation.

[3] It is so that there was no contact between the plaintiff’s and defendant’s motor vehicles.

[4] The defendant defended the action, denying complicity and/or liability towards the plaintiff’s truck and trailer’s damage and damages. The defendant also pleaded, just like the plaintiff, that the traffic lights were green for it at the time of the accident, i.e. both claiming right of way at the time.

[5] This is a typical case where there are two mutually destructive versions. The court will have to look at issues of credibility, probabilities and surrounding circumstances to arrive at a decision as to who should be held liable for the accident between the two parties herein, whether there was any contributory negligence on the part of either of the parties and to what extent, as well as whether the issue of the quantum of damages deserves to be dealt with in this trial.

ISSUE(S) TO BE DECIDED

[6] The principal issue to be decided herein is who was the cause or probable or proximate cause of this accident.

### THE PARTIES

[7] The plaintiff, East Rand Bulk (Pty) Ltd is a company duly registered and incorporated, with limited liability, in accordance with the company laws of the Republic of South Africa (“RSA”), with its trading address being given as 69 Hunslet Road, Phoenix, Durban, KwaZulu-Natal Province.

[8] The defendant, Rosonne Thompson, is an adult female person ordinarily resident at 9 S[...] Avenue, B[...] P[...], B[...], E[...] in Gauteng Province. She was at the date of the accident herein employed at Reef Tankers CC which has as its principal place of business, 6 Berry Road, Roodekop, Germiston, Ekurhuleni, Gauteng Province.

### EVIDENCE LED IN THIS CASE

[9] The plaintiff led the evidence of two witnesses, namely, their truck driver, Mr Andrew Solomon (“*Solomon*”) and an expert on accident and repairs costing, towing and salvage of heavy duty vehicles, Mr Christaudi Salvatore (“*Salvatore*”).

[10] The defendant herself was the sole witness for the defendant.

[11] In addition to *viva voce* evidence led in court the plaintiff also relied on documents (duly discovered of course) filed by Salvatore through an affidavit in support of damages, which included in its quotes, invoices, technical reports on the roadworthiness of the plaintiff's truck and trailer as well as related documents and data.

### PLAINTIFF'S CASE

#### Evidence by Andrew Solomon

[12] He was the plaintiff's truck driver. On this date, 30 October 2011, he was travelling in the Easterly direction from Potchefstroom direction towards Brakpan and/or Springs direction along the R554 roadway. It is a macadamised road with clearly marked and/or visible road markings. It was just before 06h00 on the Sunday morning. He was transporting 42 000 litres of petroleum. He is a truck driver of 16 years experience.

[13] The road surface was wet from rain.

[14] When he approached the robot controlled intersection of the R554 roadway and Trichardt Road at Elspark, some 100 metres from the intersection, he noticed a motor car approaching the intersection on his left, travelling along Trichardt Road. He was driving at a speed of 80 km per hour

at that stage. The speed limit on this road was 80 km per hour. The traffic lights ahead of him were red.

[15] He reduced the speed of the truck and trailer to 60 km per hour.

[16] When he was 20 metres from the intersection the red lights in front of him turned green. He started to accelerate his truck pace.

[17] When his truck was about three (3) metres from entering the intersection the motor vehicle that he had seen approaching the intersection from the left entered the intersection in the face of an ostensibly red traffic light. He saw that its driver was looking down, talking on a cellphone.

[18] He activated the hooter of his truck and the other driver raised her head and looked towards his truck.

[19] That driver was the defendant in this matter. She was driving a Tata Indica sedan.

[20] Realising that he was going to collide with this vehicle he applied brakes and swerved to the right. His truck jack-knifed and careered to its right until it came to a stop at an aisle, hitting a wall nearby. The whole process damaged the undercarriage or shaft of the trailer and the diesel started leaking.

[21] He alighted from his truck and approached the defendant. At that stage, a white bakkie driven by a white male stopped at the scene and talked to the defendant, whereafter the latter reversed from where her car had come to a standstill and sped away.

[22] Another bakkie with two black males arrived and stopped at the accident scene. He explained to them about the defendant's flight from the accident scene. He was allowed to climb into that bakkie and they chased after her and caught up with her at an Engen Garage some distance ahead. They blocked her car and he (Solomon) jumped inside it. When asked why she drove off she told him (Solomon) that the white man in the white bakkie at the scene of the accident told her to drive away as she was not the cause of the truck jack-knifing and careering into a wall. She was caused to drive back to the accident scene.

[23] According to Mr Solomon, in her haste to leave the accident scene, the defendant's car scraped against the pavement or kerb, causing its front mudguard or valance to be loose.

[24] Both drivers gave their versions of what had happened to the police who arrived at the scene around 12h00, i.e. some six (6) hours after the incidents took place.

[25] It is unfortunate that the police witnesses were not called to testify in this case. Neither is it clear whether or not accident reports were completed

and sketch plans and their keys prepared. They are not part of the paginated papers herein.

[26] It is also unfortunate that the defendant herein was abandoned or jettisoned by her attorneys of record, Messrs Willem W Naude of Glencairn, Wynberg, Cape Town on 22 October 2013. Consequently, she conducted cross-examination by herself and one should appreciate that as a layperson in the law she would find it a challenge to deal with issues like a seasoned lawyer.

[27] I may just mention that the defendant spurned or refused my suggestion that this matter be postponed further to allow her another opportunity to procure legal representation.

[28] The aspect of Solomon's speed reducing from 80 km per hour to 60 km per hour was elicited during this cross-examination. The defendant put it to Solomon that he was the sole cause of the accident by driving at 80 or 60 km per hour in a fully laden truck on a wet roadway towards traffic lights that were red for him and that he consequently entered the intersection at a time when it was not safe or opportune to do so in the circumstances. She also put to him that by accelerating when he was 20 metres away from the intersection solely because the lights turned green at that stage without ascertaining that it was safe to do so was negligence on his part. The witness could not answer the question as to whether his truck was ever sent for a technical report on its



braking system. He said that would be known to or be within the competency of his employers.

[29] It is common cause that Salvatore's bundle of expert's documents contained a report on the truck's braking system. I will deal with it when I analyse Salvatore's testimony. However, according to this witness (Solomon) he noticed the defendant face down in the moving car talking into a cellphone. When she noticed the truck or imminent collision she applied brakes. Unfortunately he had already decided to swerve to his right to avoid a collision.

[30] The long and short of the defendant's questions was that the traffic lights were green for her when she saw the truck approaching the intersection at a speed that presupposed that it would never stop in time if she entered the intersection. That Solomon saw belatedly that he was going through a red light and thought she was going to enter it also as the lights allowed her to, causing him to swerve to his right and causing the truck to jack-knife and career into a wall.

EVIDENCE OF SALVATORE CHRISTALDI (SECOND PLAINTIFF'S WITNESS)

[31] He proved his qualifications and experience as an expert in the field of truck or heavy duty transport collision report writing and costing. He also

handed in his expert bundle with reports relating to what he did relating to this accident.

[32] He has been doing this work for the past 26 years, both in Italy and in South Africa.

[33] He explained and pointed to specific reports relating to damage to the truck and trailer, towing costs, geological clean-up and rehabilitation of the accident area following the diesel spillage, his assessment charges as well as the cost of the diesel lost.

[34] The total costs to the plaintiff according to him was R1 085 097,27, which was the starting point for the computation of the plaintiff's final loss.

[35] During the defendant's cross-examination of this witness she pointed to his expert report which read as follows:

*"My comments regarding this accident are that, after having spoken to the driver and read his statement, I believe that the cause of this accident is caused by brakes malfunctioning which has caused the combination vehicle to jack-knife." (my underlining)*

*The evidence shows clear that the tanker has hit the left side of the horse ..."*

(Folio 19 of the Bundle of expert documents attached to affidavit (by Salvatore) in support of damages.)

[36] The witness did not disown the above statement.

[37] He also agreed with the defendant that a truck and trailer such as the one he was driving would only jack-knife if it was incorrectly loaded. When asked why a correctly loaded truck jack-knifed, he stated that any load over 3 500 kg (which was the case with his load) would make a truck pulling or carrying it and travelling at 40 km per hour to stop only about 16 metres away. He referred the court to the calculations of stopping distances and acceleration in Cooper's Motor Law.

[38] That concluded the plaintiff's case.

#### THE DEFENDANT'S CASE

[39] As stated hereinbefore, it was led through the defendant, Mrs Thompson, as the only witness.

[40] Her version is that on this date, i.e. 30 October 2011 she was travelling towards her workplace along Trichardt Road. It was just before 06h00. Her normal reporting time at work is 06h00. However, as it was a Sunday, strict reporting times were not absolute necessities at her workplace : she was allowed to report even at 06h30.

[41] She drove that route daily and thus knew the timing of the robots at the intersection of Trichardt Road and the R554 roadway : it took a long time to open or turn green for vehicles travelling along Trichardt Road.

[42] The traffic lights were red for her as she approached until she stopped at the intersection. At some stage she saw at the corner of her eye that there was a truck approaching the intersection at a speed that would make it impossible for it to stop if the lights turned red for it. It was travelling along the R554 roadway.

[43] The lights turned green for her and she started to move towards. However, she realised that that truck was not going to stop at the red lights (for it). She applied brakes and stopped. The truck driver also applied brakes. However the truck jack-knifed and careered across the intersection until it hit a wall.

[44] She speculated that the truck driver possibly saw her car late, failed to realise that her car had not entered the intersection and, believing that a collision was imminent, applied brakes in the wet conditions prevailing and consequently caused the truck to jack-knife and hit the wall.

[45] She was frightened by what she was witnessing and thus reversed and stopped nearby, the intention being to go and offer help to the truck driver.

[46] At that stage a bakkie driven by a white male stopped at the area of accident. After she told him what had happened, that white male ordered her to leave the scene and not involve herself with the accident scene as she was not to blame. At that stage the truck driver had alighted from his truck and

was approaching her car aggressively. According to this witness, the truck driver (Solomon) told her that he saw her car late, hence he swerved and the truck jack-knifed.

[47] The white man insisted that she leave the scene and she was intimidated enough to leave.

[48] According to her (Ms Thompson) she intended to drive to her workplace, collect a colleague(s) and then return to the accident scene. In fact this is what she ultimately did later on after her father-in-law, whom she called on her cellphone after the accident had phoned the police and also came to the accident scene.

[49] As she was driving towards her workplace, her path was blocked by a bakkie with two black males with Solomon also on board. That was on the corner of Rodgers Road and the R554 road. Solomon jumped into her car and ordered her to drive back to the accident scene, this time accusing her of having caused the accident and then fleeing the scene.

[50] She denied fleeing the scene. She also denied being on her cellphone looking down to the floor of her car cab and not looking at the road ahead and around her, thus entering the intersection against a red robot or traffic lights.

[51] She stated further that she never damaged the bumper or valance of her car on that date as alluded to by Mr Solomon or at all. She further stated

that she is still driving that car, as such it could still be inspected for any damage to its front bumper or valance.

[52] She produced photos that she had taken of the accident scene. Even though those photos were only taken on 6 December 2013, counsel for the plaintiff did not have an objection if one of them, which I marked Exhibit “1”, could be accepted as evidence as it clearly depicts the intersection where the accident took place.

[53] I obliged. There was no prejudice.

[54] This witness was subjected to lengthy and in-depth or incisive cross-examination by the plaintiff’s counsel. She however stood very well to it. At the end of the cross-examination her version was virtually unscathed.

### ANALYSIS

[55] As I have already alluded to hereinbefore, where there are two mutually destructive versions, the court may look at credibility issues, surrounding circumstances as well as at the probabilities inherent therein.

[56] The defendant’s expert himself ascribed the jack-knifing of the truck to its faulty braking system. It is also so that the road was wet from rain. The truck was fully laden with some 42 000 litres of inflammable material or fuel. This load would have made the pay-load at hand on the day to exceed 3 500

kg, thus making it difficult for the truck to stop from an object at a distance of 20 metres.

[57] Another aspect that ostensibly contributed to the collision is the speed at which the plaintiff's truck was travelling : The plaintiff's truck driver saw a robot being red at a distance of 100 metres and only reduced his speed from 80 km per hour to 60 km per hour. Up to 20 metres to the intersection the truck was still travelling at a speed of 60 km per hour. It is my finding that at such a speed, there was no way the truck would have stopped for any vehicle or object that entered the intersection. Consequently, the plaintiff's truck was travelling at a speed that was excessive in the circumstances. By his own admission, the plaintiff's driver stated that such a truck could only stop at a distance of 16 metres at a speed of 40 km/h.

[58] The two parties herein have contradictory or conflicting versions as to whether the defendant stopped her car at the intersection or just drove through against a red robot.

[59] After critically analysing the versions of the truck driver and the defendant, I am inclined to believe that the defendant's version was the more probable : If she had driven into the intersection without stopping at the stop-line of the cross street she was using, there would have resulted a real collision between her car and the truck: A truck travelling at 60 km per hour and increasing speed would not have succeeded in swerving out of the way. I thus find that the defendant's version that she had this speeding truck within

her line of vision all the time is on all probabilities true. It is also probably true that she stopped at the intersection waiting for the light to turn green for her and when it did, she started moving forward but immediately stopped as she realised that the truck was going to drive through a red light. The probabilities also are that when the plaintiff's truck driver realised that he was going through a red light and another car in the cross street was starting to move forward, he took fright and yanked at the steering wheel while applying brakes hard. Indeed, the brakes would not help the situation at that stage. If I was also allowed to speculate, I would state that the momentum of the forward movement of the truck would not have allowed the truck to stop before the collision had the defendant proceeded to drive through the intersection at the material moment.

[60] On all probabilities, the defendant was a more credible witness. Despite her handicap of being a layperson, she led a straightforward and convincing version of events. It cannot also find any fault with her leaving the scene of the accident. She explained why she did so and how she intended returning to the scene with colleagues. Taking into account evidence that the police only came to the scene six (6) hours later, it is my finding that there was no or would not have been any prejudice to anybody in the circumstances.

[61] It is the plaintiff here who bore the *onus*. Why it did not lead the evidence of the attendant police and/or prove the sketches, keys and say-so's



of those involved herein is beyond this Court. However, any prejudice arising therefrom disadvantages the plaintiff.

### CONCLUSION

[62] When the totality of the evidence led herein is taken into consideration, it is my finding that the plaintiff's evidence is deficient and that the requisite *onus* was not sufficiently discharged. The evidence of Salvatore did not contribute much towards bolstering the merits of plaintiff's case. It concentrated mainly on what should be said about the quantum of damages, which was a bridge too far at this stage.

[63] There are a lot of gaps or *lacunae* in the plaintiff's case on the merits. As such a proper verdict at this stage should be that of absolution from the instance.

### COSTS

[64] Costs herein should follow the cause. There is no way the defendant should be mulcted for costs in the circumstances. The order of absolution should thus be accompanied by a costs order against the plaintiff.

ORDER

[65] The following order is made:

*“Absolution from the instance is ordered with costs (against the plaintiff).”*

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**JUDGE OF THE HIGH COURT OF  
SOUTH AFRICA  
GAUTENG LOCAL DIVISION  
JOHANNESBURG**

FOR THE PLAINTIFF

ADV

INSTRUCTED BY

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FOR THE DEFENDANT

SELF  
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DATE OF HEARING

05 NOVEMBER 2013

DATE OF JUDGMENT

28 FEBRUARY 2013