

## REPUBLIC OF SOUTH AFRICA



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

CASE NO: 2013/18886

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

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DATE

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SIGNATURE

In the matter between:

**SLATER, RUSSELL CHARLES****PLAINTIFF**

And

**S A RACING PROMOTIONS (PTY) LTD****1<sup>ST</sup> DEFENDANT****VAN RENSBERG, MICHAEL****2<sup>ND</sup> DEFENDANT**


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


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**WRIGHT J**

1. The plaintiff, Mr Slater is a dragster racing car enthusiast who was nearly 20 years old on 14 June 2010. On that day he was working on a dragster racing car at the Tarlton International Raceway near Krugersdorp. The second defendant, a mechanic working in the course and scope of his employment

with the first defendant which operates the Raceway, started the engine of the dragster. The plaintiff's right hand was injured to the extent that he lost the baby finger and part of each of his remaining fingers on that hand leaving only three stumps and a thumb.

2. The plaintiff sues both defendants for damages. By agreement, the matter proceeds before me only on the question of whether or not the second defendant was negligent and if so whether or not the plaintiff was negligent, calling for a reduction of his damages.
3. I admitted exhibit A1-19 by agreement. A1-8 are photos of the plaintiff's right hand. A9-19 are photos of the vehicle, and in particular the relevant part of its engine taken by the defendant's attorney in January 2015. It is common cause that although the vehicle was used between 14 June 2010 and the day on which the photos were taken there is no material difference between the way the vehicle appeared on 14 June 2010 and the way it appeared when the photos were taken.
4. The plaintiff testified.
  - 4.1 His father had introduced him to the sport of dragster car racing. The plaintiff had driven two other dragsters in earlier years. In one year he won the National Championship in a particular class.
  - 4.2 Starting a dragster requires three people. The plaintiff's 15 or 16 year old cousin, Mr JC Slater sat in the cockpit. He was a novice at the sport. JC Slater was to perform certain limited functions like holding the clutch and watching the oil pressure gauge. His main function was, at the appropriate moment, to indicate to the plaintiff that the plaintiff could begin adding fuel to a certain part of the engine. The plaintiff's function was to add fuel at the appropriate time and to activate the ignition switch which was on a console between JC Slater's legs. Normally, an experienced driver would himself or herself activate the ignition switch. On the day in question it was felt that JC Slater was too inexperienced for that task. The third person was the second defendant, Mr Michael Van Rensberg.

- 4.3 Mr Michael Van Rensberg lived in a flat a few hundred meters from the where the incident took place. He was an experienced dragster mechanic. He was described by the plaintiff as the person in charge of the start-up operation. He was considerably older than the plaintiff, perhaps 40 years of age. The plaintiff viewed Mr Van Rensberg as a mentor who knew far more about dragsters than the plaintiff did.
- 4.4 The vehicle had its large back wheels raised off the ground and resting on trestles. The vehicle was outside its garage and in the open.
- 4.5 Mr Van Rensberg's task was to operate the starter. The starter is a handheld machine weighing about 8 – 10 kilograms. It is a machine separate to the dragster. To begin the start-up procedure the starter is locked onto part of the engine of the dragster.
- 4.6 Once the starter person, in this case Mr Van Rensberg triggers the starter an electrical current is sent to the engine of the dragster. This causes the oil in the engine to start circulating. This leads to an increase in oil pressure. Once the person in the cockpit, in this case JC Slater is satisfied that the oil pressure is sufficiently high he gives the signal to the person who has to add the fuel, in this case the plaintiff. The fuel is added manually by the fuel operator who squeezes the fuel out of a container, an old Domestos bottle. Domestos is a common household disinfectant.
- 4.7 On the day in question the first two attempts to start the motor failed. The first attempt failed as the engine backfired. Mr Van Rensberg immediately switched off the starter motor and said that the problem was that some wires had been wrongly connected. He reconnected them correctly. After the second attempt failed Mr Van Rensberg said that the super-charger belt was loose. The plaintiff replied that he had checked the belt shortly before. Mr Van Rensberg insisted that the belt was loose and that the plaintiff should check it.
- 4.8 The belt in question runs around two pulleys. One pulley has teeth. The dragster's motor turns very quickly.

- 4.9 The plaintiff, because Mr Van Rensberg was his senior in years and in experience was loathe to argue with Mr van Rensberg. Despite the fact that it was all systems go for the start he obeyed Mr Van Rensberg's instruction to check the belt. Had the person in Mr Van Rensberg's position been a person of less experience or not a mentor of the plaintiff the plaintiff would have insisted that Mr Van Rensberg disconnect the starter at least partially so that the belt would not start turning simply by one easy activation by Mr Van Rensberg of the switch on the starter mechanism. The plaintiff reached for the belt with his right hand. As soon as he held the belt with his thumb above the belt and his fingers below it Mr Van Rensberg activated the starter. The plaintiff's fingers were caught between the belt and the teeth of the pulley below the belt.
- 4.10 The plaintiff said that Mr Van Rensberg must have seen the plaintiff reaching for the belt as Mr Van Rensberg was standing at most a meter away from the plaintiff next to the cockpit and on the other side of the vehicle to which the plaintiff was standing and had just told the plaintiff to check the belt. The plaintiff said that he had put the Domestos bottle next to him on the ground prior to reaching for the belt. The plaintiff felt that even if Mr Van Rensberg did not see the bottle on the ground he should have seen that the plaintiff did not have the bottle in his hand and therefore that the plaintiff was not ready to commence with the start-up operation.
5. The plaintiff struck me as an honest person giving straight forward evidence.
6. JC Slater testified.
- 6.1 The discussion between the plaintiff and Mr Van Rensberg ended with the plaintiff saying that he, the plaintiff would check the belt. The plaintiff, in his testimony did not refer to his having said this. In my view nothing turns on this because Mr Van Rensberg, when he testified conceded having told the plaintiff to check the belt.

- 6.2 JC Slater got out of the vehicle after the accident and asked Mr Van Rensberg what he had done. Mr Van Rensberg said that he was sorry and that he had not seen the plaintiff's fingers.
7. Mr Van Rensberg testified. He was most unsure of what had happened. He conceded that he had looked away at the crucial moment for about two seconds and that he had made a mistake. He admitted telling the plaintiff, just before the plaintiff reached for the belt, to check the belt. In testimony Mr Van Rensberg said that he had not meant that the plaintiff check the belt there and then.
8. Mr Van Rensberg's negligence was not seriously disputed by Mr JD Maritz SC who appeared for the defendants. Mr Maritz argued that the plaintiff's damages should be reduced by 50%. Mr Maritz based his argument on the supposed negligence of the plaintiff in feeling the belt when it was unsafe to do so.
9. Mr Maritz argued that the instruction by Mr Van Rensberg to the plaintiff was ambiguous and therefore the plaintiff should not have reached for the belt. In my view the plaintiff was not negligent. Even though he knew the situation was dangerous it was reasonable for him to rely on Mr Van Rensberg to act properly. The circumstances making it reasonable for the plaintiff to have relied on Mr Van Rensberg not to activate the starter when he did are the following:
- 9.1 The plaintiff was 19 years old at the time and Mr Van Rensberg was about 40 years old.
- 9.2 Mr Van Rensberg was an experienced dragster mechanic who knew the particular vehicle better than any other person. Mr Van Rensberg had driven the vehicle in question for a number of years prior to the plaintiff becoming its driver.
- 9.3 The plaintiff reasonably viewed Mr Van Rensberg as a mentor.
- 9.4 The plaintiff was not unreasonable in assuming that Mr Van Rensberg would keep his eye on what the plaintiff was doing.

- 9.5 It was reasonable of the plaintiff not to engage Mr Van Rensburg in a debate about the tension of the belt.
- 9.6 It was reasonable of the plaintiff to assume that Mr Van Rensburg would not activate the starter until after the plaintiff had checked the belt.
10. The plaintiff's claim is for R476 046,70. His testimony of the injury to his hand was not challenged. In my view High Court costs should be awarded at this stage. These costs are to be for all aspects of the case except those relating only to quantum. Mr JF Grobler, for the plaintiff sought such an order.

**Order:**

1. The defendants are jointly and severally liable to the plaintiff for the damages he proves arising out of the accident on 14 June 2010.
2. The defendants are jointly and severally liable to pay all the plaintiff's party and party costs in the action to date except those costs which relate to the quantum of damages.

**GC WRIGHT J**  
**JUDGE OF THE HIGH COURT,**  
**GAUTENG LOCAL DIVISION,**  
**JOHANNESBURG**

On behalf of the Applicant:

Adv JF Grobler

082 776 3213

Instructed by:

Levin Van Zyl Inc.

011 886 0915

On behalf of the Respondent:

Adv JD Maritz SC

083 227 9301

Instructed by:

Roderick and Lowe Attorneys

011 782 2271

Dates of Hearing:

4 and 5 February 2015

Date of Judgment:

5 February 2015