

REPUBLIC OF SOUTH AFRICA



HIGH COURT OF SOUTH AFRICA, GAUTENG LOCAL DIVISION

CASE NO: 2014/07486

DELETE WHICHEVER IS NOT APPLICABLE

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

DATE

SIGNATURE

In the matter between:

RAYMOND EDWARD GEORGE FARAH

Plaintiff

And

ROAD ACCIDENT FUND

Defendant

J U D G M E N T

MASHILE J:

[1] The Plaintiff instituted this delictual damages action against the Defendant for personal injuries that he sustained during a motor vehicle accident on 20

December 2012 at a traffic light controlled intersection of Potgieter and Jim Fouche Roads in Roodeport. The Plaintiff believes that the manner in which the accident occurred renders the Defendant vulnerable to liability for the damages claimed by him.

- [2] The case served before this court with the parties having agreed to separate issues as envisaged in Uniform Rule of Court 33(4). The court accepted the parties' agreement and ordered that merits and quantum be treated discretely. Accordingly, this matter proceeds on merits only. In the circumstances, should the Plaintiff be successful on merits, the Defendant shall be liable for all the subsequent proven damages of the Plaintiff. Conversely, if the Defendant is absolved from liability, the case will be dismissed without the need to determine quantum.
- [3] In his endeavor to prove his case against the Defendant, the Plaintiff testified on his own behalf and thereafter closed his case. The Defendant did not call any witnesses whatsoever.
- [4] The Plaintiff's brief testimony is that he was riding his bicycle travelling into a westerly direction in Hendrik Potgieter Road on that fateful day. Hendrik Potgieter Road consists of four lanes into each direction and he occupied the lane that was meant for motor vehicles proceeding straight. Two of the lanes are meant for motor vehicles that would ultimately turn left at the intersection while the other two are for those vehicles that would be travelling straight.
- [5] He had passed a slip road to his left when he noticed a combi driving parallel occupying the right lane, which is meant for vehicles proceeding straight. The traffic lights at the intersection ahead were green for motor vehicles travelling into a westerly direction. Shortly after entering the intersection, the driver of the combi suddenly swerved to his left hand side. Confronted with such an unexpected move from the driver of the combi, he collided with it. The damage to the vehicle was slightly after the front passenger door.
- [6] He fell from his bicycle and the driver of the combi and a lady in his company stopped to find out whether he needed their assistance or not. They subsequently

conveyed him to hospital and left him there without leaving any particulars whatsoever.

- [7] The Plaintiff was cross-examined but his evidence as described above did not change significantly. He nonetheless made the following concessions during his cross-examination:

7.1 He did not look back while travelling;

7.2 He increased speed as he was approaching the intersection;

7.3 He did not see whether or not the driver of the combi indicated that he would be turning to his left hand side at the intersection.

- [8] The accident happened during day light, it had not rained, the road was not slippery and he is familiar with the surrounding as he and his mates often cycle in the area. After his discharge from hospital, he utilized the first possible moment to report the case to the police to investigate the circumstances under which the collision occurred.

- [9] From the evidence of the Plaintiff outlined above, this court is called upon to decide who of the two, the insured driver or the plaintiff, was negligent. The locus classicus on negligence is set out in the case of *Kruger v Coetzee* 1966 (2) SA 428 where it was stated:

“For the purposes of liability *culpa* arises if -

(a) *adilgens paterfamilias* in the position of the defendant -

(i) would foresee the reasonable possibility of his conduct injuring another in his person or property and causing him patrimonial loss; and

(ii) would take reasonable steps to guard against such occurrence; and

(b) the defendant failed to take such steps.”

- [10] I have also been referred to the case of **Martindale v Wolfaardt** 1940 AD 235 at 240 where it was stated that: “a driver is entitled to regulate the manner of his driving on the assumption that another driver will not suddenly, without warning and recklessly, expose himself and others to danger.”

[11] In **AA Mutual Insurance Association Ltd v Nomeka** 1976 3 SA 45 (A) 52 E – G the court outlined the duty of care that motorists intending to travel across the path of oncoming or following traffic bear:

“Since it is inherently dangerous to turn across the line of following or approaching traffic, there is a stringent duty upon a driver who intends executing such a manoeuvre, to properly satisfy himself that it is safe and the opportune moment to do so.”

[12] In the matter of **Reemers v AA Mutual Insurance Association Ltd** 1962 (3) SA 823 (W) at 825 H this court held that:

“The act of turning off a road to the left, though not as dangerous a manoeuvre as a turn to the right, is nevertheless an act which must be undertaken with due regard to the presence of other users of the road. It should be done at a safe and opportune moment, and regard should be had to the fact that a following car may be travelling immediately behind.”

[13] The Plaintiff has pleaded the instances in which the insured driver was negligent as follows:

- 13.1 He failed to keep a proper lookout;
- 13.2 He failed to keep his vehicle under proper control;
- 13.3 He drove his car at an excessive speed in the circumstances;
- 13.4 He failed to turn at the slipway as opposed to at the lights;
- 13.5 He failed have regard to the lawful rules of the road; and
- 13.6 He failed to have regard to the rights of other road users.

[14] The Defendant has pointed out that the Plaintiff was negligent in more than one respect and these are:

- 14.1 The Plaintiff was under a duty to look behind him whilst riding his bicycle;
- 14.2 The Plaintiff was under a duty to maintain his speed and keep a proper look out relative to the Insured Driver’s vehicle in front of him;

14.3 The Plaintiff could have and should have, swerved to the right into the other lanes of traffic to the right of his lane to avoid the collision;

[15] The Defendant also asserted that the court should not draw any adverse inference from the Insured Driver's failure to give his details to either the Plaintiff or the nursing staff at the Hospital. He argued that there could have been many other reasons why the insured driver failed to leave his particulars at the hospital. The Defendant, however, did not give one such possible reason. This will be discussed later in this judgment.

[16] With regard to subparagraph 13.1 above, I agree entirely with Counsel for the Plaintiff that had he turned his head to look back at the traffic, he would not have endangered his life only but would have placed many other lives of innocent motorists under precarious conditions. In any event I see no relevance of this because the uncontested evidence is that the insured driver was driving parallel to the Plaintiff and suddenly turned towards him thereby causing the collision.

[17] It is noteworthy that other motorists overtook the Plaintiff without any incidence. That mere fact posits that the Plaintiff did nothing wrong. It was instead the insured driver who suddenly and inopportunistically turned onto the path of travel of the Plaintiff. The insured driver should have ensured that it was safe to turn in front of the Plaintiff as the Plaintiff could not have anticipated that he would execute such a sudden turn. See the **Reemers** case *supra*.

[18] With regard to the second manner in which the Defendant alleges the Plaintiff was negligent, it must be noted that the evidence is that the insured driver and the Plaintiff came travelling alongside each other and after entering the intersection, the insured driver suddenly cut in front of the Plaintiff's path of travel thereby causing the Plaintiff to collide with him. There is no evidence that the insured driver was in front of the Plaintiff. The Plaintiff could therefore not read the intention of the insured driver as he was driving parallel to him. There cannot be talk of failure to keep a proper look-out in this instance. The Plaintiff did not expect that the insured driver would "suddenly, without warning and recklessly expose himself and others to danger." See the **Martindale** case *supra*.

[19] Thirdly, the Defendant's suggestion that the Plaintiff should have turned towards his right hand side in an attempt to avoid the collision would have been as dangerous as turning around to look back while cycling. It must be borne in mind that the evidence of the Plaintiff is that the insured vehicle was about a metre from him. A sudden turn towards him would have prevented him to turn to his right hand side besides, assuming that he successfully did so, he would have run the risk of being run over by other vehicles coming from behind intending to travel straight. This was no option at all.

[20] Lastly, I believe that there is something to be said about the insured driver's behavior subsequent to the collision. Generally, under these circumstances one would have expected him to leave his contact particulars with the Plaintiff. The evidence led does not suggest that doing so would have put his life in danger as is often the case in some other instances. He was not confused as he stopped and assisted. The collision happened during the day so he could not have feared attack from the unknown. The answer to his failure to leave his particulars with the Plaintiff must be that he knew that he was to blame for the collision. I am mindful that this is not the only inference that can be drawn but it is nonetheless the most probable of the many.

[21] In the circumstances, this court finds:

19.1 The insured driver did not keep a proper look-out;

19.2 He failed have regard to the lawful rules of the road; and

19.3 He failed to have regard to the rights of other road users.

[22] Accordingly, I make the following order:

1. The Defendant shall be liable for 100% of all the Plaintiff's proven damages;
2. The Defendant shall be liable for the costs of the Plaintiff.

B. A. MASHILE
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

Counsel for the Plaintiff: Adv E. Dos Santos Soares
Instructed by: Munro, Flowers & Vermaak Attorneys

Counsel for the Defendant: Adv G. Ally
Instructed by: Molefe-Dlepu Attorneys

Trial proceedings took place on 04 June 2015
Date of delivery of Judgment: