

**SAFLII Note:** Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

**REPUBLIC OF SOUTH AFRICA**



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

**CASE NO: 2011/ 43693**

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

.....

In the matter between:

**DANIEL STEPHANUS PIENAAR**

Plaintiff

And

**ROAD ACCIDENT FUND**

Defendant

---

**JUDGMENT**

---

**WANLESS, AJ:**

## **Introduction**

- [1] This is an action instituted by DANIEL STEPHANUS PIENAAR (hereafter referred to as “the Plaintiff”) against the ROAD ACCIDENT FUND (hereafter referred to as “the Defendant”) in terms of the Road Accident Fund Act, No. 56 of 1996 (hereafter referred to as “the Act”) for damages arising from a collision which occurred on the 16<sup>th</sup> of June 2010 on Fifth Avenue, Benoni, Gauteng.
- [2] On the 20<sup>th</sup> of August 2015 an Order was made in this Court as follows:-
- [a] The issue of liability is separated from the determination of the Plaintiff’s quantum of damages in terms of Rule 33(4) of the Uniform Rules of Court;
- [b] The determination of the Plaintiff’s quantum of damages is postponed *sine die*.
- [3] In the premises, I am asked only to determine whether or not the Defendant is liable to compensate the Plaintiff as a result of the aforementioned collision.
- [4] It is common cause in this matter that on the afternoon of the 16<sup>th</sup> of June 2010 at approximately 14h54 and on Fifth Avenue, Northmead, Benoni near the intersection of Fifth Avenue and

Tenth Street, a collision occurred between a BMW motor cycle with registration letters and numbers [F..... 3.....] NW driven by the Plaintiff (hereafter referred to as “the Plaintiff’s motor cycle”) and a maroon Audi motor vehicle bearing registration letters and numbers [T..... 3... GP] (hereafter referred to as “the insured vehicle”) driven by one ANGELIQUE STRYDOM (hereafter referred to as “the insured driver”).

- [5] This court must decide whether the sole cause of the collision was the negligent driving of the insured driver, alternatively, whether the sole cause of the collision was the negligent driving of the Plaintiff, alternatively, whether negligence attributable to the cause of the collision should be apportioned between the Plaintiff and the insured driver in accordance with the provisions of the Apportionment of Damages Act No. 34 of 1956 (as amended).

### **The evidence**

- [6] Four (4) witnesses testified on behalf of the Plaintiff, namely the Plaintiff; Terry Pienaar (the ex-wife of the Plaintiff); Morake Zabulon Bookholane (an Inspector in the employ of the Ekurhuleni Metropolitan Police, Accident Unit, Eastern Region) and Roedolf Opperman (an Accident Reconstruction expert).
- [7] One (1) witness testified on behalf of the Defendant, namely the insured driver.

### **Evidence of the Plaintiff (Daniel Stephanus Pienaar)**

- [8] The sole purpose of the Plaintiff's evidence was to clarify the discrepancies between the statement made by him on the 18<sup>th</sup> of July 2010 when the crime of reckless and negligent driving was being investigated as a result of the collision ("the first statement") and the affidavit deposed to by him on the 19<sup>th</sup> of August 2010 which forms part of the documents lodged on behalf of the Plaintiff in support of his claim against the Defendant in terms of the Act ("the second statement").
- [9] The first statement is at pages 19 to 21 inclusive of exhibit "B" and the second statement is at pages 13 and 14 of exhibit "C".
- [10] In the first statement the Plaintiff states that apart from seeing a motor vehicle in front of him he cannot remember anything else in relation to the collision whilst in paragraph 4 of the second statement the Plaintiff states, *inter alia*, that a maroon Audi was travelling in front of him in the middle lane of Fifth Avenue; the driver had missed the turn-off and suddenly stopped right in front of him whereafter he collided with the said motor vehicle.
- [11] When he testified the Plaintiff confirmed the contents of the first statement and that the averments as set out in paragraph 4 of the second statement were based on information supplied to him by Terry Pienaar (his ex-wife).
- [12] In light of the material facts of this matter which are either common cause or cannot be disputed, it is not necessary for me to come to a finding regarding the credibility of the Plaintiff as a witness when deciding the probabilities of this matter.

[13] The further evidence given by the Plaintiff that he suffered a head injury and was rendered unconscious as a result of the collision was not disputed by the Defendant. I accordingly accept that the Plaintiff has no recollection of the cause of the collision.

[14] In the premises, the evidence of the Plaintiff takes this matter no further.

**Terry Pienaar (the Plaintiff's ex-wife)**

[15] The evidence of this witness was tendered on behalf of the Plaintiff to confirm his testimony that the information as set out in paragraph 4 of the second statement had been obtained by the Plaintiff from this witness and also, to support the version of the Plaintiff that the insured driver had been negligent in the driving of the insured vehicle.

[16] In broad summary, this witness testified that she arrived at the scene of the collision shortly after the collision had occurred. She spoke to the insured driver and the insured driver's mother who was a passenger in the insured vehicle. She then relayed the contents of this conversation (either the conversation she had directly with the insured driver and/or the insured driver's mother and/or which she overheard between the insured driver and her mother) to the Plaintiff after he left hospital approximately five days following the collision.

- [17] The foregoing conversation and / or conversations consisted of, *inter alia*, whether or not the insured driver had indicated to turn right from Fifth Avenue into Tenth Street and whether or not the insured driver had nearly missed the turn-off from Fifth Avenue into Tenth Street.
- [18] Once again, in light of the material facts of this matter which are largely common cause or cannot be disputed, it is not necessary for me to make any findings pertaining to the credibility of this witness. I accordingly refrain from doing so.
- [19] Ultimately, the evidence of this witness, like the evidence of the Plaintiff, takes this matter no further.

**Morake Zabulon Bookholane**

- [20] This witness, in his capacity as an Inspector of the Ekurhuleni Metropolitan Police, Accident Unit, Eastern Region, attended the scene of the collision and drew a Sketch Plan with a key thereto which appears at pages 12 to 14 of exhibit “B”.
- [21] He also took the photographs which are at pages 42 to 54 of the same exhibit.
- [22] The witness testified on various aspects pertaining to the scene of the collision; the compilation of his Sketch Plan and the key thereto. Most importantly, he testified in respect of the area of impact as depicted on the Sketch Plan. In this regard he ascertained

the area of impact by way of liquid deposits; gouge marks and debris on the road surface.

[23] Miss Maisela, who appears on behalf of the Defendant, has submitted to this court that no reliance should be placed upon the evidence of this witness.

[24] It is true that criticism may be levelled at certain aspects of the Sketch Plan and key thereto compiled by this witness. In this regard, certain important aspects were either not dealt with in a satisfactory manner or not dealt with at all. However, the evidence given by this witness as to the area of impact which is depicted as point C on the Sketch Plan at page 13 of exhibit “B” was not disputed by the Defendant. In fact, this aspect of his evidence was confirmed by the insured driver under cross-examination.

[25] In addition to the foregoing the witness, by way of reference to, *inter alia*, the photographs at page 53 of exhibit “B”, testified that the damage to the insured vehicle was to the right rear.

[26] This evidence was also confirmed by the insured driver and was not disputed on behalf of the Defendant.

[27] In the premises, whether or not any other aspects of his evidence should be accepted by this court plays no role whatsoever in the assessment of the evidence upon which I must decide this matter.

**Roedolf Opperman (Accident Reconstruction Expert)**

[28] The expertise of this witness was not put into dispute by the Defendant and it is accordingly accepted that he is a suitably qualified expert to provide evidence on the reconstruction of the collision.

[29] This witness testified that the insured vehicle must have been in the process of turning to the right when the impact occurred.

[30] The reasons for this opinion were the following, namely:-

[a] the fact that the insured vehicle was facing back the way from which it had come;

[b] where the insured vehicle came to rest following the collision; and

[c] the fact that the insured vehicle had completed a clockwise rotation after impact was compatible with the rest position of the insured vehicle.

[31] The witness further testified that he was of the opinion that it was probable that the insured vehicle was travelling in the left hand lane of Fifth Avenue (Fifth Avenue being a one - way street with two (2) lanes) prior to turning right for the following reasons:-

[a] the primary point of impact in relation to the damage to the insured vehicle and as testified to by BOOKHOLANE (as depicted in the photographs at page 53 of exhibit "B") was at the right rear end of the

insured vehicle, between the number plate and the right rear light; and

[b] as the area of impact was close to the centre line of Fifth Avenue the insured vehicle must have been partially on the left-hand side of the centre line and partially on the right. If this was not the case the damage to the insured vehicle would have been more to the left of that vehicle.

[32] This witness further testified that the area of impact on the road surface and the resting position of the insured vehicle following the collision are compatible with one another and that the latter supports the area of impact. In this regard he testified that the area of impact had to be close to the centre line to cause the insured vehicle to rotate and come to a standstill as depicted in the photographs (exhibit “B”).

[33] The witness was asked to express an opinion as to whether the insured vehicle would have come to the same rest position as depicted in the photographs (exhibit “B”) if both the insured vehicle and the Plaintiff’s motor cycle had been travelling in the right hand lane of Fifth Avenue prior to the collision and the insured vehicle had intended to turn to the right when the impact occurred.

[34] In response thereto the witness testified that it would not, as the insured vehicle would have come to rest further South, that is, further into Tenth Street and effectively out of the intersection.

- [35] He also stated that if the collision had occurred in the right hand lane the insured vehicle would not have been able to turn on its axis and come to rest where it did as depicted in the photographs.
- [36] In light of the foregoing the expert witness was of the opinion that the collision could not have occurred with both vehicles travelling in the right hand lane.

**Angelique Strydom (the insured driver)**

- [37] The insured driver testified that on the day of the collision she was the driver of the insured vehicle travelling from a flea market in Boksburg towards home in Heidelberg. Her mother and young cousin were passengers in the insured vehicle.
- [38] She travelled along Main Road with the intention of turning right into Tom Jones Street where Main Road intersects with Great North Road (to the left) and Tom Jones Street (to the right).
- [39] She missed that turn-off and proceeded across the intersection where Main Road “becomes” Fifth Avenue. Fifth Avenue is a one-way street which has two lanes.
- [40] As soon as she had crossed the said intersection she indicated to turn right as it was her intention to take the next road to her right, being Tenth Street.

- [41] She remained in the right hand lane of Fifth Avenue and never travelled in the left hand lane.
- [42] As she commenced her right turn from Fifth Avenue into Tenth Street she looked into her rear view mirror. She did not see the Plaintiff's motor cycle when she did so. She did not testify as to whether or not any other motor vehicle was behind her when she commenced her turn.
- [43] She suddenly felt a bump to the rear of the insured vehicle which caused her vehicle to spin and come to a resting position in the opposite direction from which she was travelling.
- [44] She agreed with the evidence given by Opperman that the distance between the first intersection which she crossed and the second intersection where she intended turning was approximately 200 metres.
- [45] The insured driver further agreed that the area of impact was as depicted by Bookholane on his Sketch Plan and key thereto (pages 13 and 14 of exhibit "B").
- [46] This witness also agreed with the evidence given by both Bookholane and Opperman that the damage to the insured vehicle was to the rear right hand side of that vehicle.
- [47] Under cross-examination the insured driver was unable to provide any explanation as to why, if both the insured vehicle and the Plaintiff's motor cycle had been travelling in the right hand lane of

Fifth Avenue and the motor cycle had collided with the rear of the insured vehicle, she had not seen the Plaintiff's motor cycle when she looked into her rear view mirror whilst executing a right turn from Fifth Avenue into Tenth Street. It was not her evidence that she also looked into her right side mirror.

### **The salient facts**

- [48] The salient facts upon which I am able to decide this matter and which are common cause or not in dispute are as set out hereunder.
- [49] From the evidence and the relevant exhibits in this matter it is clear that Fifth Avenue is a straight and level one-way road consisting of two (2) lanes divided by a broken white line separating those lanes.
- [50] Fifth Avenue intersects with Tenth Street and to enter Tenth Street in the direction in which both the insured vehicle and the Plaintiff's motor cycle were travelling it is necessary to execute a right turn.
- [51] At the time when the collision took place the road surface was dry and visibility was good. The collision took place at approximately 14h54 and hence during the afternoon of the 16<sup>th</sup> of June 2010. The speed limit in the area where the collision took place is 60 kilometres per hour.
- [51] Both the insured vehicle and the Plaintiff's motor cycle were travelling in the same (easterly) direction along Fifth Avenue and the Plaintiff's motor cycle was travelling behind the insured

vehicle before colliding with the right hand rear of the insured vehicle.

[52] The insured driver attempted to execute a right hand turn from Fifth Avenue into Tenth Street when the Plaintiff's motor cycle collided with the rear of the insured vehicle as aforesaid. This caused the insured vehicle to rotate on its axis and come to rest as depicted in the various photographs in exhibit "B".

[53] The area of impact was near the centre line of Fifth Avenue and as marked on the Sketch Plan (page 13 of exhibit "B"). The area of impact was clearly visible as a result of liquid deposits; gouge marks and debris on the road surface (page 42 of exhibit "B" refers).

[54] The distance between the intersection of Fifth Avenue and Tom Jones Street and the intersection of Fifth Avenue and Tenth Street is approximately 200 metres.

[55] The insured driver did not see the Plaintiff's motor cycle when she looked in her rear view mirror as she commenced the right hand turn from Fifth Avenue intending to enter Tenth Street. She did not look into her right side mirror.

### **The Law**

[56] In the matter of **A A Onderlinge Assuransie – Assosiasie Bpk v De Beer 1982 (2) SA 603 (AD)** it was held, *inter alia*, that in collision cases the bare opinion of an experienced policeman as to

the point of collision is usually allowed in our courts as *prima facie* proof which naturally becomes conclusive proof if it is not challenged.

- [57] It is trite that it is the duty of all users of the road at all times to keep a proper lookout so as to avoid colliding with other road users.

**Butt and Another v Van Den Camp 1982 (3) SA 819 (AD)**

- [58] To keep a proper lookout includes the obligation of a driver to look in his rear-view mirror from time to time. The frequency with which he should do so naturally depends on the circumstances of each case. One look may not be good enough or again the circumstances may call for no more than an occasional glance in the mirror.

**Butt and Another v Van Den Camp (*supra*)**

**Brown v Santam Insurance Co Limited 1979 (4) SA 370 (WLD)**

- [59] To turn across the line of oncoming or following traffic is an inherently dangerous manoeuvre and there is a stringent duty upon a driver who intends executing such a manoeuvre to do so by

properly satisfying himself that it is safe and choosing the opportune moment to do so.

**AA Mutual Insurance Associated Limited v Nomeka  
1976 (3) SA 45 (AD)**

[60] In the matter of **Bata Shoe Co. Limited (South Africa) v Moss 1977 (4) SA 16 (WLD)** it was held, *inter alia*, that when the driver of a motor vehicle wishes to turn across an adjoining carriageway at right angles to his previous line of travel, his proposed action is pregnant with danger. He is about to do something which is inherently hazardous and is therefore fixed with certain important obligations. The first of those is that he must signal clearly his intention to make the turn and do so in such a manner as to warn approaching drivers, drivers following him and the driver of any vehicle who may be seeking to overtake him, of the intended change of direction. It is not sufficient, however, that the driver of the vehicle which is about to turn signals his intention to do so, even if the signal is given in good time. His further obligation is to refrain from making the turn until an opportune time. An opportune time in that context is a time when the motorist who wishes to turn can carry out his intention without endangering or even materially impeding the progress of any other person or vehicle lawfully on the road. It is the duty of the driver who wishes to make the turn to satisfy himself by full and careful personal observation that the time is opportune in the sense indicated above.

**Judgment**

- [61] Following a proper consideration of all the evidence in this matter and most importantly the salient facts which are either common cause or cannot be disputed, it must be found that the most probable version of how this collision occurred, is as set out hereunder.
- [62] The insured driver must have been travelling in the left hand lane of Fifth Avenue prior to executing a right hand turn in an attempt to exit Fifth Avenue and enter Tenth Street.
- [63] This must be so because of the area of impact which is near the centre line of Fifth Avenue; the damage to the rear of the insured vehicle and the position where the insured vehicle came to rest.
- [64] In this regard the evidence of the expert witness Opperman is accepted by this court. Not only was such evidence logical but was based on facts which were common cause, namely the area of impact; the damage to the insured vehicle and the position where the insured vehicle came to rest.
- [65] It follows thereon that, on a balance of probabilities, the Plaintiff was travelling in the right hand lane of Fifth Avenue before colliding with the rear of the insured vehicle. This must be so in light of the area of impact and the damage to the right rear of the insured vehicle.
- [66] Hence, on a balance of probabilities, the collision occurred when the insured vehicle left its path of travel in the left hand lane and

entered the right hand lane of Fifth Avenue when the insured driver was attempting to execute a right hand turn into Tenth Street.

[67] On the insured driver's own version she only looked in her rear view mirror and not in her side mirror. This creates two problems for the insured driver. Firstly, this confirms that she was travelling in the left hand lane of Fifth Avenue because if she looked in her rear view mirror she would not (as she testified) have seen the Plaintiff's motor cycle since (as set out above) the Plaintiff had to be travelling in the right hand lane. Secondly, if she indeed did look in her rear view mirror and was travelling in the right hand lane of Fifth Avenue there is no reasonable explanation as to why she would not have seen the Plaintiff's motor cycle which had to be travelling behind the insured vehicle.

[68] I find it improbable that the insured driver indicated her intention to turn to the right. I say this because it is improbable that a driver would commence indicating to execute a right turn some 200 metres prior to the intersection where that driver intended to turn.

[69] Even if I am wrong in this regard and the insured driver did indicate her intention to turn from the left hand lane of Fifth Avenue across the right hand lane of Fifth Avenue in order to enter Tenth Street, this does not alter the fact that the insured driver did not keep a proper lookout and did not take all reasonable precautions whilst executing this inherently dangerous manoeuvre.

[70] I thus find that the insured driver was negligent and that her negligence was a cause of the collision.

- [71] The question then arises as to whether the negligence of the insured driver was the sole cause of the collision or whether any negligence can be apportioned to the Plaintiff.
- [72] As dealt with above the Plaintiff did not, as a result of the head injury sustained by him in the collision, testify before me as to what caused the collision. He has no direct recollection thereof. Arising therefrom, any assessment of whether the Plaintiff was negligent and that his negligence contributed to the cause of the collision must be based upon the salient facts of this matter as available to me and dealt with herein.
- [73] Arising therefrom, there is no evidence before this court of any negligence whatsoever on behalf of the Plaintiff. Further, simply because the Plaintiff collided with the rear of the insured vehicle does not, to my mind, draw the sole inference that the Plaintiff must have been, to one degree or another, negligent.
- [74] On the same facts the exact opposite inference may be drawn, namely that the insured driver turned suddenly from the left hand lane into the right hand lane of Fifth Avenue directly into the Plaintiff's path of travel causing the collision. On the facts of this matter and the probabilities arising therefrom I am satisfied that this is the probable cause of the collision and that no negligence can be attributed for the cause of that collision to the Plaintiff.
- [75] Under the circumstances, I come to the finding that the negligence of the insured driver was the sole cause of the collision.

**Order**

[76] In the premises, I make the following Order, namely:-

- [a] the Defendant is liable to compensate the Plaintiff in respect of all of his agreed or proven damages arising from the collision which took place on the 16<sup>th</sup> of June 2010;
- [b] the Defendant is to pay the costs of the Plaintiff in respect of the issue of liability, to date.

---

**B.C WANLESS**  
**ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA**  
**GAUTENG LOCAL DIVISION, JOHANNESBURG**

DATE OF HEARING: 25 AUGUST 2015

DATE OF JUDGMENT: 11 September 2015

COUNSEL FOR THE PLAINTIFF: Adv. H. Schouten

INSTRUCTED BY: Wim Krynauw Attorneys  
REFERENCE 6<sup>th</sup> Floor Marble Towers  
208 – 2012 Jeppe Street  
Johannesburg

COUNSEL FOR THE DEFENDANT: Adv. J. Maisela

INSTRUCTED BY: Z & Z Ngogodo Attorneys  
REFERENCE Suite 7, First Floor  
Waterfall View, Waterfall Park  
Bekker Road  
Midrand