



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

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

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DATE SIGNATURE

CASE NUMBER: 15/01693  
HEARD: 15 MARCH 2016  
DELIVERED: 18 MARCH 2016

In the matter between:-

NTOKOZOYAMASWAZI HLATSHWAYO

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

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JUDGMENT

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HERTENBERGER, AJ:

[1] This is an action instituted against the Defendant by the Plaintiff as a result of a motor vehicle collision which resulted in the Plaintiff suffering injuries. The parties have agreed to separate quantum and merits and accordingly the matter now before me deals only with the merits. The parties have agreed that the Defendant would not pursue the Special Plea of Jurisdiction and as such the trial in the matter commenced before me.

[2] The common cause facts in this matter are briefly as follows: The Plaintiff was travelling on a rural road, a double carriageway, from Dundee to Nqutu at 17:00 on the 30<sup>th</sup> of September 2011. It was raining. The Plaintiff was driving a Toyota Siyaya carrying passengers. He was driving behind a Hyundai truck, in front of which a Corsa bakkie was travelling. A Mercedes Benz vehicle overtook all three of the aforesaid vehicles (thus driving in the oncoming lane), but due to an oncoming vehicle, the Mercedes Benz had to re-enter the lane in which the three vehicles it had overtaken were travelling, causing the Plaintiff's vehicle to collide with the Hyundai. The Plaintiff was injured as a result of the collision and taken to hospital. The identity of the driver of the Mercedes Benz is unknown.

[3] I am tasked with determining whether the Plaintiff acted negligently and either caused the collision, whether he contributed to the causing of the collision or not.

[4] The Plaintiff was the only witness who testified in this matter. He was a reliable witness and described the incident with sufficient detail to the court. He told the court that it was raining, but that he was still able to see clearly. The speed limit on that road was 100 km/h yet he was travelling at 60 km/h. He was wearing a seatbelt. A Mercedes Benz motor vehicle came from behind him at high speed, overtaking him and both the Hyundai and the Corsa that were driving in front of the Plaintiff. The Mercedes Benz was in the process of overtaking the Corsa, when an oncoming vehicle caused the Mercedes Benz to swerve in front of the Corsa. Seeing the Corsa brake suddenly, the Plaintiff attempted to apply his brakes, but the Hyundai was too close and the three

vehicles collided. The Plaintiff also testified that there was a donga on the side of the road and that he thus had to take evasive action to not swerve off the road as this would have caused his vehicle to roll, injuring the passengers that he was transporting. He further confirmed that there was an estimated two car lengths travelling distance between his vehicle and the Hyundai. The road was wet, not allowing him to travel at a high speed. He estimates the speed of the vehicles in front of him to be 60 to 65 km/h. In his view the sole cause of the collision is the driver of the Mercedes Benz.

[5] Under cross examination the Defendant's counsel attempted to get the Plaintiff to admit that he did not keep a proper lookout and in summary that he should have anticipated the collision which resulted. There is much made of the photographs contained in the bundle handed up to me, which do not depict the road from both directions of travel. It is clear that the perspective of the photographs caused some confusion to the legal representatives, as well as the witness. Once it had been clarified that the photographs were taken from the front of the road such that the Plaintiff was travelling from the top to the bottom of the photograph, the Plaintiff could point out the scene of the accident. What was not borne out by the photographs is the existence or lack thereof of the incline, which the Plaintiff testified obscured the view and thus also led to the fact that he noticed the oncoming vehicle at a very late stage.

[6] In evaluating the Plaintiff's evidence as a whole, the Defendant did not in my view succeed in getting the Plaintiff to concede that he did not do everything in his power to avoid a collision.

[7] The test for negligence is summarized by the court in the matter of JONES NO v SANTAM BPK 1965 (2) SA 542 (A) as follows:

"A person is guilty of *culpa* if his conduct falls short of that of the standard of the *diligens paterfamilias* – a standard that is always objective and which varies only in regard to the exigencies arising in any particular circumstances."

It is trite that the criterion of the reasonable person is central to the determination of negligence.<sup>1</sup> The question then arises whether the reasonable person would have foreseen the harm and secondly whether the harm could have been prevented by taking reasonable steps.<sup>2</sup>

[8] I cannot find any evidence that supports a view that the Plaintiff ought to have anticipated the actions of all the other vehicles involved in the collision as well as the Mercedes Benz and the vehicles travelling behind him. In my view the fact that the Plaintiff cannot remember the exact sequence in which the Corsa, the Hyundai and his own vehicle collided with each other, is not surprising as the collision occurred very quickly. The Plaintiff was mindful of the safety of the passengers seated in his vehicle and took evasive action to prevent a more serious situation – in other words prevented the vehicle from rolling into the donga. It is evident that the negligent driving of the Mercedes Benz driver is the sole cause of the collision that resulted in the injury of the Plaintiff. The Mercedes Benz driver was driving at a high speed in the oncoming lane. It was raining and he or she was negligent in attempting to overtake three vehicles, and possibly more than three, under such conditions. The aforesaid conduct cannot be considered reasonable.

[9] Accordingly, I find that the Plaintiff's claim on the merits must succeed.

[10] In the result the following order is made:

(1) The Plaintiff's claim in respect of the merits succeeds;

(2) Costs of suit, including the cost of the interpreter.

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<sup>1</sup> Neethling, Potgieter and Visser *Law of Delict* 7<sup>th</sup> Edition p 141

<sup>2</sup> Neethling, Potgieter and Visser *Law of Delict* 7<sup>th</sup> Edition p 150 to 151

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R HERTENBERGER

ACTING JUDGE OF THE  
HIGH COURT OF SOUTH  
AFRICA –JOHANNESBURG

APPEARANCES

COUNSEL FOR PLAINTIFF:

ADV. LATIB

PLAINTIFF’S ATTORNEYS:

MATODZI NELUHENI ATTORNEYS

COUNSEL FOR DEFENDANT:

ADV. ADAM

DEFENDANT’S ATTORNEYS:

SARAS SAGATHEVAN ATTORNEYS