

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



CASE NO: 2016/07258

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

20 June 2017

JS NYATHI

In the matter between

MATSATSELA KLEINBOOI APHANE

PLAINTIFF

And

ROAD ACCIDENT FUND

DEFENDANT

J U D G M E N T

NYATHI AJ:

A. INTRODUCTION AND BACKGROUND

- (1) The plaintiff instituted an action against the Road Accident Fund for damages in the sum of R550 000.00 arising out of a collision between a mini bus taxi with registration particulars [...] GP, there and then being driven by one Sipho Zwane (insured driver") and a motor vehicle with registration particulars [...] GP, then and there being driven by the plaintiff.
- (2) The collision occurred on or about the 29th June 2012 at approximately 07h00 at an intersection between Holfontein and Main Street in Benoni.
- (3) The plaintiff sustained head injuries and multiple rib fractures as a result of the collision.
- (4) Plaintiff alleges that the Road Accident Fund, a juristic person established in terms of section 2(1) of the Road Accident Fund Act 56 of 1996 ("the Act") as amended, is liable to compensate him for the aforesaid injuries and subsequent damages, due to the negligent driving of a motor vehicle.
- (5) The plaintiff further alleges that the collision was caused solely by the negligent driving of the insured driver, who was negligent in one or more or all of the following respects:
 - 5.1 He was over-speeding in an area where over-speeding is prohibited.
 - 5.2 He failed to keep his vehicle under proper control;
 - 5.3 He failed to apply brakes timeously, adequately or at all;

5.4 He failed to avoid the collision when, by exercise of reasonable care, he could and/or should have done so; and

5.5 He failed to keep a proper lookout.

- (6) The parties submitted prior to the commencement of the trial that only the merits of the matter, i.e. negligence, remained in dispute between the parties.
- (7) A paginated trial bundle was handed in by agreement of the parties in the trial. It contains *inter alia* police and witness' statements as well as photographs taken at the scene after the collision. Of these, the most pertinent to this case were court exhibit "A" to "D".

B. EVIDENCE ON THE MERITS

- (8) Plaintiff testified that on the morning of the 29th June 2012 around 6h30 he was driving on Main Road in Daveyton. He reached a stop sign and came to a standstill. He was about to turn right to join Holfontein Road.
- (9) He saw a taxi which came from the right side and stopped some distance away and dropped off a passenger.
- (10) He saw the taxi's indicators flickering to the left. The road lane at which the taxi had stopped has a shoulder that leads to the left. The plaintiff was then referred to Exhibit "A". This is a photograph of the accident scene after the collision.
- (11) As he was entering the intersection the taxi crossed the yellow "barrier lines" and collided with the plaintiff's bakkie on the driver's side.

- (12) The plaintiff lost consciousness. He only regained consciousness later when he heard the sounds of approaching sirens.
- (13) Plaintiff describes the layout of Holfontein road as sloping down towards where his bakkie was struck, and that the taxi was driven at a high speed.
- (14) Plaintiff made a statement to the police the next day. That was admitted as Exhibit "C".
- (15) Exhibit "D" was handed in, it is a statement made by Morake Bookholane a Metro police officer. He is an accident investigator, draughtsman and photographer. The statement was admitted by consent of both parties. In it the deponent describes the scene of collision. He took the photographs. Furthermore, he gives an opinion that he suspects that the driver of the bakkie did not stop at the stop sign.
- (16) That concluded the plaintiff's evidence.
- (17) The plaintiff was cross examined at length and replied to questions. At some stage he volunteered to draw a sketch in which he endeavoured to describe the scene of the collision, the slipway and the yellow "barrier lines". I found him to be a reliable witness, who gave concessions where necessary. His evidence was satisfactory.
- (18) No witnesses were called to testify on behalf of the insured driver.
- (19) The court had sight of a photograph at page 57 of the bundle. This depicts the junction and the two vehicles as they rested after the collision. The yellow barrier lines are clearly visible. It is apparent from the position of the two vehicles that the minibus taxi could have been driven across the "barrier lines" prior to the collision. Counsel for the insured could not comment on the court's observations.

A. THE LAW APPLIED TO THE FACTS

- (20) The law imposes a duty on the driver of a motor vehicle to drive it so as to avoid causing harm to others.¹ He is obliged *inter alia*, to keep a proper lookout and to drive at a reasonable speed.
- (21) In *Rathebe v. Road Accident Fund*², Sithole AJ, held that "Keeping a proper look-out means "more than looking straight ahead - it includes an awareness of what is happening in one's immediate vicinity". He (the driver) should have a view of the whole road from side to side and in the case of a road passing through a built-up area, of the pavement on the side of the road as well. (See *Neuhaus v Bastion Ins* [1968 1 SA 398](#) (A).) The duty to drive at a reasonable speed and the duty to keep a proper look-out are, in my view, two sides of the same coin."
- (22) Having regard to the plaintiff's version of events, he saw how the insured taxi pulled off the road to drop off a passenger and how its indicators were flickering a left turn.
- (23) The plaintiff could have avoided the collision by carefully observing the actions of the insured driver as opposed to proceeding to enter the junction and turning right assuming that the insured driver would proceed left on the slipway.
- (24) Having said that, the insured driver conducted himself in a grossly negligent manner by re-entering Holfontein Road at a high speed, crossing through the yellow "barrier lines" when it was clearly not safe for him to undertake such an unsafe abrupt manoeuvre without indicating his intentions to turn right onto Holfontein Road.

¹R v. De Swardt 1949 (1) SA 516 (N)

² 2013 ZAGPPHC 22 Delivered on 5 February 2013.

- (25) From the photographs depicting the vehicles after the collision, it is inevitable that a clear application of the *res ipsa loquitur* doctrine bears out the conclusion that the defendant drove at a disproportionately high speed, crossed the yellow barrier lines without exercising the requisite care to other road users. The point of impact and the position of both cars post collision clearly indicate the direction in which the taxi was travelling.
- (26) There was no evidence led by the defence to gainsay the plaintiff's version of events.
- (27) Consequently the balances of probabilities are indicative of the veracity of the plaintiff's version.
- (28) I have thus reached a conclusion that total causative negligence can be attributed the insured driver on the day of the collision.

B. CONCLUSION

- (29) In the premises the following order is made:
- a. That the insured driver was causally negligent;
 - b. That the defendant is liable for the plaintiff's damages.
 - c. The defendant to pay plaintiff's costs.

JS Nyathi

Acting Judge of the High Court

Date of Hearing: 19 May 2017

Judgment Delivered: 20 June 2017

APPEARANCES

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