REPUBLIC OF SOUTH AFRICA

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

CASE NO: 7809/17

In the matter between:

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

17/4/2019 R Keightley
DATE SIGNATURE

SANDRA SCHOEMAN Plaintiff

and

ROAD ACCIDENT FUND Defendant

JUDGMENT

KEIGHTLEY, J:

INTRODUCTION

1. The plaintiff has instituted a claim against the defendant, the Road Accident Fund, for personal injuries sustained by her in a motor vehicle collision. The collision occurred at approximately 7h30 on 24 February 2014 in Reynolds Street, Falcon Ridge, Vereeniging. The plaintiff was the driver of one of the vehicles involved in the collision, a Mercedes Benz. The driver of the other vehicle involved, an Audi, was Ms Leboko, who was the insured driver.

2. At the commencement of the proceedings I was requested by the parties to order a separation between the liability or merits aspect of the case, and that of quantum. A provision to this effect is contained in the order I make at the end of the judgment.

3. As to the merits aspect, this essentially revolves around the question of contributory negligence. The defendant's stance is that the plaintiff's negligence was the sole cause of the collision, and that there was no contributory negligence on the part of the insured driver. Plaintiff, on the other hand, contends that the insured driver's negligence was a major contributor to the collision, and submits that I should rule in plaintiff's favour with a 20% (plaintiff) and 80% (insured driver) split between them.

FACTS

4. The layout of the road in the vicinity of the scene of the collision is common cause. It occurred on the south bound section of Reynolds Street, opposite the sports gate of Overvaal High School. There are two south bound lanes in this part of Reynolds Street. The north bound section of Reynolds Street is separated from the south bound section by a grass island. Directly opposite the sports gate, is a gap in the island allowing traffic to exit the south bound carriageway, and turn right into the north bound carriageway.

5. The plaintiff was driving her daughter to the school when the collision occurred. She had come up the northbound carriage way, past the gap in the island and had turned right at the intersection to access the south bound carriageway. As she was running a little late, she did not enter the main gate of the school, which was already closed. She instead proceeded down the south bound carriageway

towards the sports gate entrance. Her intention had been to drop off her daughter at the sports gate entrance as usually this closes a little later than the main school gate. However, when they got there, they saw that the sports gate entrance had also been locked. This meant that the plaintiff had to go back up the north bound carriageway to the main school gate again. She intended to accompany her daughter into the school premises because as the school bell had already rung, she would have to report at the office and fill in a late slip.

6. In order to do this, plaintiff had to drive from where she had parked at the sports gate, directly across the two lanes of south bound carriageway of Reynolds Street, and through the gap in the island to turn into the north bound carriageway, back to the school.

7. It is common cause that the collision occurred after the plaintiff had proceeded across the first traffic lane and had just entered the second lane. The insured driver was proceeding south in the second lane of Reynolds Street when the cars collided.

8. The speed limit in the area is 60kph. Reynolds Street follows a straight path from before the main gate of the school down to the area where the incident occurred. Photographs show that approaching the school from the north along the south bound carriageway (i.e. the direction in which the insured driver travelled) there is a 60kph traffic sign, with a speed camera warning below. A second warning sign is located closer to the school just before the main gate. This is a caution: children crossing sign.

SUMMARY OF THE CASE FOR EACH PARTY

9. The plaintiff accepts that the insured driver had right of way, and that the collision occurred in the insured driver's lane of travel. However, the plaintiff's case is that the insured driver was travelling at an excessive speed, and that she failed to keep a proper lookout, both of which acts of negligence were causally connected to the collision. The plaintiff also contends that the insured driver could, and should, have avoided the collision through the exercise of reasonable care. According to the plaintiff, the negligence of the insured driver substantially exceeded that of the plaintiff.

10. As I have indicated, the defendant's case is that the plaintiff's negligence was solely to blame for the collision. It was the insured driver that had right of way, and plaintiff was driving in the insured driver's lane when the collision occurred. She failed to keep a proper lookout in that had she done so, she would have seen the insured driver coming towards her, and would not have proceeded into the insured driver's path of travel. Instead, the plaintiff swerved into the insured driver's lane without any warning.

EVIDENCE FOR THE PLAINTIFF

11. I will not set out in detail the evidence of the plaintiff's witnesses, as this is unnecessary. As far as the plaintiff herself is concerned, apart from the facts set out earlier, she testified that she had initially parked off the road, in the entrance way to the sports gate, parallel to Reynolds Road, facing south. When she realised that she would have to cross over the road as the gate was locked, she turned her vehicle so that it was now facing in a westerly direction, i.e. facing across Reynolds Road towards the gap in the island. While in this stationary

position, she looked to her left and right and, seeing no cars approaching, she proceeded to cross the road towards the gap in the island. Towards the right (i.e. the direction from which the insured driver drove) she could see school busses parked off the road beyond the school main gate. She had observed no vehicles approaching when she put her car in motion and proceeded to cross Reynolds Street.

12. The plaintiff crossed over the first (left-hand lane) without incident. However, while she was crossing the second (right-hand lane) she felt what she described as a blinding impact. This was the Audi hitting her driver's door and front right wheel of her vehicle. It forced her vehicle's nose to face left (i.e. towards the south). There was then a second impact after the Audi hit the verge of the island and again hit into her vehicle. The vehicles stopped about 30 metres down the road.

13. The plaintiff was adamant that she had looked properly before proceeding to cross Reynolds street, and when she set the car in motion before crossing. She had moved her vehicle forward before she set off so that she could see beyond some trees along the road. Having done so she could see up to the buses parked beyond the main gate of the school. She never saw the insured driver's vehicle until the impact. Under cross-examination, she said that the Audi came from nowhere. She stated that the only rational explanation as to why she had not seen the Audi before then was because it was driving at an excessive speed.

14. She could not recall whether she had put on her indicators, but said that her normal pattern of driving is to indicate before turning.

15. As her second witness the plaintiff called an accident reconstruction expert, Mr Grobbelaar, who is a mechanical engineer by training, although most of his work

at present is on accident reconstructions. His evidence is set out in full in his expert report. He went through his report in some detail, explaining the various technicalities and methodologies involved. His opinion was based on the many photographs that were taken of the scene of the collision shortly thereafter. These were exhibits handed in at the trial. He also visited the accident scene subsequently and made a number of measurements consistent with, among other things, the tyre marks on the road from the photographs, and the position of the vehicles post-accident. Using these measurements and the gross mass of each of the vehicles, he formed an opinion on, among other things, how the accident occurred, the speed of each vehicle at the time of the impact, and the probable distance between the two vehicles when the plaintiff's vehicle started to cross Reynolds street. He examined the damage to each vehicle, as was evidenced in the photographs, to assist him in determining how the accident occurred.

16. The salient points from Mr Grobbelaar's evidence were that in his view:

16.1. The plaintiff's vehicle was going at a speed of approximately 8 or 9 kph at the time of the collision.

16.2. The insured driver's vehicle was going at a speed of between 83 and 95kph at that time.

16.3. When the plaintiff's vehicle pulled away from its position in front of the sports gate to cross Reynolds Street, the Audi driven by the insured driver was between 103 and 118 metres away from the point of impact.

16.4. Using a perception/reaction time of 1,5 seconds, if the insured driver was travelling at 80kph she required 69,3 metres to stop her vehicle.

16.5. Using the same perception/reaction time, she would have needed 45,2 metres to stop if she was driving 60kph. At this speed, she would have been 76 metres from the point of impact when the Mercedes pulled into Reynolds Street.

16.6. Consequently, the insured driver could have avoided the collision.

16.7. Based on his calculations, he did not agree with the insured driver's version that she was travelling within the speed limit at the time of the collision.

16.8. From the damage to the vehicles, the front of the Mercedes was in front of the Audi when they collided. The Audi collided into the Mercedes, driven by the plaintiff, rather than the insured driver's version, which was that the Mercedes collided with the Audi in a side-on, glancing manner. This was particularly so with reference to the damage to the Audi's left front wheel, which was pushed backwards into the wheel arch, indicating a front-on collision by the Audi into the Mercedes.

DEFENDANT'S EVIDENCE

17. The insured driver, Ms Lebogo, was the only witness for the defendant. In her evidence, she restated the defendant's case that the plaintiff had caused the collision by swerving into her lane of traffic while crossing over Reynolds Street, and that she had done so without any warning.

18. Ms Lebogo testified that she was on her way to work. She was not in a hurry and was only travelling at about 55kph. There were no school children or cars in the area, as school had already started.

19. She saw the Mercedes standing next to what was referred to in the trial as the sports gate. Her version was that it was parked parallel with the road, and with two wheels parked on the road. This was contrary to the plaintiff's version. Ms Lebogo described what happened: according to her, as she came close to the Mercedes, it curved towards her as if it wanted to go straight through the gap in the island. The right front wheel and door of the Mercedes hit her Audi's left front bumper. After the first impact, Ms Lebogo tried to avoid the car by swerving to the right, but the Mercedes pushed her car into the island, whereafter the Audi bumped back into the Mercedes.

20. Ms Lebogo's version was that the Mercedes was speeding when it swerved into her vehicle: it hit the Audi because it was going too fast, and made a sudden swerve into her car. The plaintiff had not given any indication that she was going to move into the stream of traffic. Ms Lebogo said that there was nothing more she could have done to avoid the collision because it happened so fast.

21. Under cross examination Ms Lebogo accepted that there is greater foot traffic, and vehicle traffic around schools, and that children can be expected to be dropped off late at school. She also accepted that drivers must anticipate unexpected events near schools. However, she was adamant that she had had a good view down the road. She also indicated that all drivers must be vigilant, not only drivers in her position. She said she was driving within the speed limit.

22. She confirmed that she did not apply her brakes, and that the only evasive action she took was to swerve to the right after the first impact. When she saw the Mercedes it was standing still. The accident happened very fast and she didn't have time to brake. It happened in the blink of an eye. All she saw was the Mercedes out the corner of her eye. She could not estimate how fast the

Mercedes was going. In her view, she could not have done anything more to avoid the collision.

23. As to how the accident occurred, under cross-examination Ms Lebogo was asked to give a more detailed explanation for this. She stuck to her version that the Mercedes had come across the road and then turned or swerved into her vehicle at an angle of over 90 degrees. It swerved very fast. Ms Lebogo was asked to provide more details on exactly what had happened. She tried to indicate with her hands how the vehicles had collided. At one point, this appeared to be a L-shaped collision, and later a V-shaped collision.

24. Ms Lebogo did not dispute Mr Grobbelaar's explanations as to which tyres had caused which marks on the road. However, she disputed that this indicated that it was her car that hit the Mercedes. In her view, the same marks would have been made if, as she said, the Mercedes hit the Audi. She did not dispute Mr Grobbelaar's opinion that the front of the Mercedes was in front of the Audi when the collision occurred. She also did not dispute that Mr Grobbelaar also explained, as she had with her hands, that the cars were in a V-shaped position when they collided.

25. Ms Lebogo was referred to the speed calculation tables compiled by Mr Grobbelaar, and in particular, his calculation as to her speed and the distance she would have needed to stop. She disputed that she had been travelling in the vicinity of 80kph.

26. In an effort to understand her explanation as to how the Mercedes had moved before the collision, I asked Ms Lebogo whether she had seen the Mercedes pulling away from where it had parked at the sports gate. She said she had not.

When it was later put to her in cross-examination that she could not testify as to the position the Mercedes had been in when the plaintiff pulled away as she had not seen it pulling away, she was reluctant to concede this. It was only after she had been reminded that she had testified that she had not seen the plaintiff's vehicle pulling away that she eventually conceded the point: she accepted that she could not say what it had done as it pulled away and what path it had taken. Her testimony was therefore limited to the instance immediately before the collision occurred. Further, she had not had regard to the vehicle between the time she saw it parked at the sports gate, and the collision.

27. Ms Lebogo displayed a defensive demeanour as a witness. She tended to be argumentative and evasive under cross-examination. She struggled to give a clear explanation of how, on her version, the plaintiff's vehicle collided with hers. I gained the impression that she had settled in her mind on a set explanation for how the collision occurred, and that she was unwilling or unable under cross-examination to give consideration to anything beyond this.

DISCUSSION OF THE EVIDENCE AND APPLICATION TO THE ISSUES IN DISPUTE

28. My task is to determine whether the plaintiff has established that there was any negligent conduct on the part of the insured driver that was causally connected to the collision. As I have indicated, the plaintiff accepts that the insured driver's negligence is only contributory, although the plaintiff says that the insured driver's negligence was a far greater cause of the collision than any negligence that can be attributed to the plaintiff: in other words, that the insured driver was far more at fault than the plaintiff.

29. This requires me to determine the respective degrees of negligence of each party that combined to bring about the damage, i.e. how far the acts or omissions of each party deviated for the norm of the *bonus paterfamilias*, thus contributing to the collision.[1]

30. Plaintiff accepts that it is inherently dangerous to move across a line of traffic and that she has a stringent duty to satisfy herself that it is safe and opportune to do so.[2] She had a duty to signal her intent, and to satisfy herself by full and careful personal observation that it was an opportune time to cross. She ought not to have crossed at an inopportune time.[3] She also accepts that it is the duty of all drivers to keep a proper lookout, including the duty to look out for approaching vehicles,[4] and the duty to be aware of what is happening in one's own surroundings.[5] The plaintiff also accepts that although she was entitled to expect that other drivers would not act recklessly,[6] she was required to guard against traffic that could be reasonably expected,[7] and that she was required to allow for unlawful conduct of other vehicles, if this was reasonably foreseeable.[8]

31. The failure to keep a proper lookout must be causally connected to the collision. This means that a driver ought reasonably to have become of the impending collision at a stage when avoiding action could still be taken.[9]

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[1] *South British Insurance Co Ltd v Smit* 1962 (3) SA 826 (A) at 836C-D
[2] *AA Mutual Insurance Association Ltd v Nomeka* 1976 (3) SA 45 (A) at 52E-F
[3] *Bata Shoe Company Limited v Moss* 1977 (4) SA 16 (W)
[4] *Harrington NO v Transnet Ltd* 2007 (2) SA 228 (C)
[5] *Diale v Commercial Union Ass Co of SA Ltd* 1975 (4) SA 572 (A)
[6] *Griffiths v Netherlands Insurance of SA Ltd* 1976 (4) SA 691 (AD) at 695H
[7] *Rondalia Versekeringskorporasie SA Bpk v De Beer* 1976 (4) SA 707 (AD) at 711E
[8] *Marine & Trade Co Ltd v Singh* 1980 (1) SA 5 (A)
[9] *Employers General Insurance Co Ltd v Sullivan* 1988 (1) SA 27 (AD)

32. It goes without saying that where appropriate, the same principles apply to the insured driver.

33. In my view, the case before me is a classic case where the principles of contributory negligence ought to be applied. From the evidence it is clear to me that both drivers conducted themselves negligently, and it was their combined negligence that led to the collision.

34. The defendant's case was that the insured driver was not negligent at all. To accept this proposition, I would have to accept the version of Ms Lebogo and more. I cannot do so. On Ms Lebogo's own evidence, she did not see the plaintiff's vehicle pulling away from where it was parked. This means she could not testify as to the path the Mercedes took before she saw it, as she says, out the corner of her eye, an instant before the collision. She could not dispute the plaintiff's version that she had turned the nose of her vehicle to face Reynolds Street, and had checked for traffic before she proceeded to put the car in motion to cross.

35. I must at least accept that the plaintiff positioned her vehicle facing Reynolds Street; that she moved the vehicle a little bit forward so that she could see to her right up Reynolds Street unobstructed by the trees on the pavement towards the buses parked beyond the main school gate; and that she looked both left and right for approaching vehicles before she proceeded to cross the road. The defendant was not able to offer any evidence to gainsay this.

36. This being the case, I accept that the plaintiff did not recklessly cross the road in defiance of her duties as a driver crossing a stream of traffic. I accept that she made an effort to determine whether it was opportune to do so before she

proceeded to cross the road. This does not mean that there was no negligence on the part of the plaintiff. However, it does mean that something more contributed to the accident than her actions in crossing the stream of traffic.

37. This requires me to consider the evidence of the plaintiff and that of the defendant. The plaintiff says that she looked up to where the school buses were parked and saw no approaching vehicles. It was accepted between the parties at the trial that it was a distance of approximately 110 metres from the buses to the sports gate, opposite which the collision took place. Mr Grobbelaar estimated, based on his calculations described earlier, that when the plaintiff moved to cross Reynolds Street, and based on his estimate of her speed at the time, the insured driver would have been between 103 and 118 metres from the point of impact. This would have placed the insured driver either a few metres to the north, or a few metres to the south of the buses, i.e. being the point to which the plaintiff focused her observations.

38. Mr Grobbelaar calculated further that if the insured driver had been going at 60kph she would have been 76 meters from the point of impact when the Mercedes pulled away, i.e. she would have been within the plaintiff's field of vision.

39. This raises the critical element of speed. Whose version is more probable: that of the plaintiff's expert witness, who testified that the insured driver was speeding, or that of the insured driver, who says that she was driving within the speed limit?

40. The defendant argued that the plaintiff's approach in appointing an expert to explain the accident was a novel one, particularly in view of the fact that the plaintiff did not see the Audi until the accident. I do not agree with this submission. The fact of the matter is that both drivers testified and neither had seen the other

vehicle moving until an instant before the impact (in the case of the insured driver), or until the actual collision (in the case of the plaintiff). Thus, neither of the drivers was able to give evidence as to the path of the other until, at the very earliest, the instant before the collision. Neither driver was able to say how fast the other driver was going, although both put the collision down to the perceived excessive speed of the other driver (even though they had not had an opportunity to observe the other vehicle in order to estimate speed).

41. In my view, it is precisely in cases such as this that accident reconstruction experts can be of assistance to the court. In the present case, the evidence of Mr Grobbelaar was patently relevant and of appreciable assistance to me in determining the issues in dispute. Without his evidence, the court would have been in the dark as to the probable explanations for the collision.[10]

42. Mr Grobbelaar's evidence was clearly presented. He outlined his methodology which, by all accounts was very thorough and based on what seemed to me to be the logical laws of physics as applied to moving objects, in this case motor vehicles. He was not a witness to the collision, but his skills enabled him to roll back time, as it were, and to reconstruct, via empirical science, how the events unfolded. There was no countervailing expert evidence to contradict his explanations. There was no reason to doubt the accuracy or objectivity of his evidence, and the opinions that he gave. I accept his evidence as having probative value for purposes of assisting me in determining the respective contributory negligence of the two drivers.

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[10] *Gentiruco AG v Firestone SA (Pty) Ltd* 1972 (1) SA 589 (A); *S v The State* [2011] ZASCA 214 SCA at 19; *Ruto Flour Mills Ltd v Adelson* (1) 1958 (4) SA 235 (T) at 237B; *R v Vilbro and Anthoer* 1957 (3) SA 223 (A)

43. Having said this, I return to the question of the speed at which the vehicles were travelling. Mr Grobbelaar's calculations in this regard were persuasive. They were based on a careful measurements taken on a reconstruction of the collision. The tyre marks on the road, which he used as markers, together with the contemporaneous photographs were still visible when he did his reconstruction. It cannot seriously be said that the marks were not caused by the collision in question. In addition to this, Mr Grobbelaar's analysis of the damage to each vehicle is persuasive in explaining the mechanics of the collision.

44. Scientifically, based on Mr Grobbelaar's calculations, Ms Lebogo's version that she was travelling within the speed limit, is placed in doubt and is improbable. So too is her version that it was the plaintiff's vehicle that swerved into hers at speed. The damage to the vehicles clearly indicates that it was the Audi that collided with the Mercedes.

45. Ms Lebogo did not give any explanation as to how she remembers what speed she was travelling before the collision. It was only belatedly in cross examination that she gave evidence that at that point she would have been driving slowly because of the stop street ahead. Importantly, on the evidence before the court the defendant cannot dispute that the plaintiff positioned herself to observe northwards for oncoming traffic, that she had a clear view, and that she indeed looked for oncoming vehicles and saw none before she proceeded to cross the road.

46. All of these factors persuade me that it is probable that the insured driver was not, as she claims, travelling within the speed limit. In all probability, she was exceeding the speed limit quite substantially. This is the more probable

explanation for why the plaintiff did not see the insured driver coming before she moved into the road.

47. Even if this were not so, on Mr Grobbelaar's evidence, had the insured driver been travelling at 60kph, she would have had time to stop before colliding with the Mercedes. This raises the issue of the respective duties on both drivers to keep a proper lookout.

48. I start with the plaintiff. As I have said, I accept her evidence that she looked both left and right before she proceeded to cross Reynolds Street. Not only was there no evidence to contradict her on this, but in addition I found her to be a credible witness. She was not shaken in cross-examination, her answers were calm and logical, and she did not hesitate to give answers that were not necessarily in her favour. For example, she accepted that she was late getting her daughter to school and thus was not in a completely calm state of mind. She also admitted that she could not recall activating her indicators before she moved across the road. I have no reason to doubt her when she says she looked right up Reynolds Street and that she did not see the insured driver before she proceeded to cross the road.

49. However, this does not absolve her of negligent conduct. For one thing, she ought to have indicated her intention to cross. There is no evidence that she did so, and the insured driver says she didn't (although the latter evidence must be confined to the period when the Mercedes was still parked, not when it started to move). This is a breach of a clear duty on her as a motorist crossing a stream of traffic.

50. In my view, the plaintiff was also negligent in that although she says that she looked left and right before she moved into the stream of traffic, this was not

sufficient to comply with her duties as a motorist in this situation. The reasonable motorist crossing a line of traffic would have continued to keep a proper look-out throughout the crossing. Motorists have a duty to anticipate that other drivers may breach their duties as drivers by, for example, traveling at an excessive speed. The reasonable driver in the plaintiff's position would have anticipated that a driver who was speeding might only come into her field of vision after she had proceeded to cross the road, and thus would have kept a lookout throughout the period that they were in both lanes of Reynolds Street. This would have permitted the reasonable driver to take evasive action on seeing a car coming at speed towards her in the south bound lane by, for example, either braking, and thus not entering the right hand lane at all, or speeding up to enter the gap in the island, out of the way of the speeding vehicle. Thus, even if the insured driver was speeding, this did not exonerate the plaintiff from continuing to keep a proper lookout. That she failed to do so is evidenced by the fact that she did not see the Audi until she felt the impact.

51. For these reasons, there was negligence on the part of the plaintiff.

52. As to the defendant, this depends on the negligence of the insured driver. By driving at an excessive speed, she was breaching her duty as a motorist. This was particularly so in that the collision occurred in a clearly demarcated school area, with more than one traffic warning signal on site. Although school had already started, and regular school traffic had ceased, this would not remove the duty on the reasonable motorist driving in a school area shortly after the school bell has rung from proceeding with caution, and reducing their speed. It was clearly negligent of the insured driver to be driving at an excessive speed in the area of the collision.

53. As the defendant pointed out, on Mr Grobbelaar's evidence, even if the insured driver was driving at an excessive speed, she would still have had time to stop before the point of the collision. The implication here is that the excessive speed was not casually linked to the collision. Regardless of whether this is so or not, the evidence clearly indicates in my view, that the insured driver did not keep a proper lookout at all. Her speed may have contributed to this in that it evidenced that she was not driving with the kind of caution that prods a driver to keep a lookout for what is happening around them. In this sense, it could be said that there was a link between the speed and the failure to keep a proper lookout. But it is not necessary even to make this link.

54. This is because on the insured driver's own evidence, she only saw the plaintiff's vehicle when it was parked. She did not see it start to move into the road. Why not? The only reasonable inference to draw is that it is because she failed to keep an eye on the vehicle after she had first seen it. She failed to anticipate that it might be dropping a child off at the school, and that it might then pull into the traffic. She was familiar with the road and she ought to have anticipated that the vehicle might want to make use of the gap in the island to cross the line of traffic to enter the north bound lane. Ms Lebogo accepted under cross-examination that she was required to expect the unexpected particularly in the area of a school.

55. In short, it is clear to me on the evidence that the insured driver did not keep a proper lookout. Had she acted as the reasonable driver would have done in her situation, she would have kept an eye on the Mercedes, and she would have seen it maneuvering to face Reynold's street, providing a clear indication to the approaching reasonable driver that the Mercedes driver intended to cross the line of traffic to make use of the gap in the island. Whether the insured driver was

driving at the speed limit, or at 80kph, had she kept a proper lookout and kept her eye on the Mercedes, she could easily have taken evasive action and prevented the collision. As Mr Grobbelaar's evidence demonstrated, she could have applied her brakes with enough time to come to a stop before the point of collision.

56. I am therefore satisfied that there was negligent conduct on the part of the insured driver that contributed to the collision.

57. The remaining question is what are the appropriate degrees of negligence to apportion to each driver. In this regard, while I have found negligence on the part of the plaintiff, it is in my view not equal to that of the insured driver. In my view, the insured driver was, as the plaintiff submitted, of a substantially greater degree than that of the plaintiff.

58. It is important to reiterate my finding that the evidence shows that the plaintiff duly carried out her duty to look left and right immediately before moving across Reynolds Street. I have accepted the plaintiff's evidence that the insured driver was driving at an excessive speed, and that the probability is that she was out of, or at best, on the margins of the line of sight of the plaintiff when the plaintiff proceeded to cross the street. Thus, plaintiff's degree of negligence is reduced to her failure to keep a proper lookout only throughout the time that she was actually proceeding to cross Reynolds Street, and of failing to indicate before she drove off. On the other hand, despite her admittedly clear field of vision, and despite having seen the parked Mercedes, the insured driver then ignored it until it was too late to brake or to take any other effective evasive action. By far the degree of fault must lie with the insured driver.

59. I conclude that an appropriate split between the contributory negligence of each of the drivers is as follows: the degree of negligence of the plaintiff is 30% and the degree of negligence of the insured driver is 70%.

CONCLUSION AND ORDER

60. I make the following order:

1. The defendant is liable to compensate the plaintiff for 70% of the damages to be proven and resulting from the collision which occurred on 24 February 2014.

2. The determination of the quantum of damages is separated from liability and postponed *sine die*.

3. The defendant is liable for 70% of the plaintiff's High Court costs on a party and party scale, inclusive of the costs to date of the reconstruction expert and counsel.

R M KEIGHTLEY
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

Date Heard	: **28 February 2019; 6 March 2019**
Date of Judgment	: **19 April 2019**
Counsel for the Applicants	: **Adv P. Uys**
Instructed by	: **Mayat, Nurick Lange Inc.**
Counsel for Respondents	: **Adv J. Khan**
Instructed by	: **Mills & Groenewald**