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REPUBLIC OF SOUTH AFRICA



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

CASE NO: 24845/18

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

21 JUNE 2019
DATE

.....
SIGNATURE

MOLEFE: TUMELO

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

J U D G M E N T

MAHALELO, J:

INTRODUCTION

[1] The plaintiff herein, an adult male of 37 years, instituted action against the defendant for damages suffered arising from the injuries sustained as a result of a motor vehicle collision which occurred on 18 September 2016.

[2] The matter was set down for hearing in respect of the merits and quantum. Accordingly, the trial proceeded in respect of defendant's liability and quantum. The plaintiff's counsel placed on record that he is ready to proceed on both issues of merits and quantum, however the parties are not far apart with regards to the determination of quantum and the issue that required detailed adjudication is that of the merits.

[3] The defendant's counsel confirmed the submissions made by the plaintiff's counsel however he was of the view that the matter should be postponed in order for him to appoint a Forensic Investigator with regards to the issue of merits.

[4] It was further placed on record that the application for a postponed was canvassed at roll call and duly dismissed by my sister, Victor J.

[5] Plaintiff's counsel advised that he had only one witness on the issue of merits, the witness being the plaintiff himself.

COMMON CAUSE FACTS

[6] The plaintiff's identity as alleged in paragraph 1 of the plaintiff's particulars of claim and the Defendant's citation are admitted as well as the jurisdiction of this court to adjudicate the plaintiff's action.

ISSUES IN DISPUTE

[7] The negligence of the insured driver as set out in the plaintiff's particulars of claim, as to whether or not the driver of the insured motor vehicle was solely negligent in one or more of the following ways:

7.1 failing to keep a proper lookout;

7.2 failing to exercise the necessary control of the insured vehicle;

7.3 driving the insured vehicle at an excessive speed under the circumstances;

7.4 failing to take steps to guard against the accident occurring which, by the exercise of reasonable care and caution, the insured driver could have and ought to have avoided;

7.5 driving the insured vehicle without due regard and consideration for the safety of other road users and pedestrians, specifically those of the plaintiff;

7.6 failing to exercise a level of care becoming of a reasonable person in the circumstances;

7.7 driving into the direction of oncoming traffic;

7.8 failing to use his breaks timeously; and

7.9 causing the vehicle he was driving to swerve into the plaintiff's lane of travel.

[8] In essence, the plaintiff alleges from the pleadings that the collision was caused solely by the negligence of the driver of the insured vehicle. The defendant disputes the aforementioned allegations and the plaintiff is accordingly called upon to prove all the aspects of the collision.

[9] In order to determine whether the plaintiff succeeded in discharging the onus, it is apposite to consider the factual matrix upon which the matter is predicated. The plaintiff is the only witness who testified in the trial.

MERITS/NEGLIGENCE/LIABILITY

[10] PLAINTIFF'S VERSION

10.1 The plaintiff testified that he is currently 31 years old and was the driver of a motor vehicle bearing registration letters and numbers [...] GP,

on 18 September 2016 at approximately 17h00 at or near the M7 freeway just after Winston Churchill Drive on ramp between Durban and Pinetown.

10.2 The plaintiff's evidence is that he was travelling at 80km/h when he changed lanes to proceed on the right lane, with the intention of giving way to the motor vehicles coming to onramp into the M7 road.

10.3 He further confirmed that he had a seatbelt on and it was raining, however the weather conditions did not affect his control over the motor vehicle that he was driving.

10.4 He changed lanes and drove on the right lane, as he was on the right lane, an unidentified motor vehicle ("insured vehicle"), there and then being driven by an unknown person ("insured driver"), coming on to the left lane in the same direction as his, collided into the left front fender of his motor vehicle causing his motor vehicle to go off the road and in an attempt to swerve back onto the road, he lost control and his motor vehicle overturned. After a few minutes he lost his consciousness and regained it 21 days after the accident.

10.5 According to the plaintiff, the insured driver was the sole cause of the collision in that he/she collided with the motor vehicle driven by him and due to that act of negligence on the part of the insured driver, the collision occurred.

[11] DEFENDANT'S VERSION

11.1 The defendant raised a few concerns in its Heads of Argument which were not put to the witness during cross examination, therefore I am of the opinion that they are not for adjudication by this court.

11.2 The defendant does not dispute the existence of the insured motor vehicle on the scene however the defendant is of the opinion that the plaintiff was contributory negligent.

11.3 The defendant contends that due to the condition of the weather on the day, the plaintiff might have lost control of the vehicle prior to the collision with the insured driver.

11.4 The defendant further contends that, due to the hospital records which state that the plaintiff was "unrestrained ejected" from a motor vehicle, it is possible that the plaintiff was not wearing a seatbelt meaning that he did not take precaution therefore placing his life and the life of others at risk.

[12] It is trite that the onus rests squarely upon the plaintiff to prove that the insured driver's negligent conduct caused the harm giving rise to the claim. In this regard, it is clear that the only evidence that this court has to solely rely upon is that of the plaintiff, regarding the accident and the negligence of the insured driver. The plaintiff is a single witness and accordingly the necessary caution must be applied, as I am required to,

when evaluating the evidence of a single witness. For judgment to be given for the plaintiff the court must be satisfied that sufficient reliance can be placed on his story for there to exist a strong possibility that his version is the true one.

[13] In matters against the Road Accident Fund, liability generally depends on the negligence or any other wrongful act of a third party in causing a collision.

ANALYSIS OF THE EVIDENCE

[14] The plaintiff was a consistent witness who gave his best account of the events leading to the collision and did not seem to be untruthful. His evidence is accepted as being a true reflection of the events and remains uncontested.

[15] As already indicated, the defendant did not call any witnesses. The only evidence before court that might support its version is that found in the hospital records, where the author and his/her capacity have not been clearly established and neither has the author been called as a witness.

[16] I am satisfied that the plaintiff's version as to the events leading to the insured vehicle colliding with him is the only version before court more probable and I accept it and reject the defendant's counsel attempt to place on record a version through the back door.

[17] Further, I am satisfied that the plaintiff has discharged the burden of proving that he was not contributory negligent and the insured driver was the sole cause of the collision.

[18] As a result I make the following order:

1. The defendant is liable to pay 100% of the plaintiff's proven damages.
2. Costs is in the cause.

M B MAHALELO
JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG

APPEARANCES

FOR THE PLAINTIFF: ADV MASHABANE
INSTRUCTED BY: TEMBA AND ASSOCIATES INC

FOR THE DEFENDANT: ADV MOODLEY
INSTRUCTED BY: TASNEEM MOOSA INCORPORATED

DATE OF HEARING: 07 JUNE 2019
DATE OF JUDGMENT: 21 JUNE 2019