IN THE HIGH COURT OF SOUTH AFRICA

(NORTH GAUTENG HIGH COURT)

Case number: 25659/2011

Date: 17 August 2012

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: ~~YES~~/NO
(2) OF INTEREST TO OTHERS JUDGES: ~~YES~~/NO
(3) REVISED ✓

17/8/2012 Pretorius
DATE SIGNATURE

In the matter between:

SIPHO MBUNYUZA Plaintiff

And

ROAD ACCIDENT FUND Defendant

JUDGMENT

PRETORIUS J.

[1] In this action the plaintiff is claiming damages from the Road Accident Fund as result of injuries sustained during a collision that took place on 25 April 2009.

[2] At the outset the court ordered that the question of merits and quantum must be separated in terms of the Rule 33 (4).

[3] The plaintiff called three witnesses whose evidence was that on 25 April 2009 the plaintiff was travelling on the tar road from Nqamakwe in the direction of Butterworth. He was the driver of his vehicle. The plaintiff intended turning right at the T-junction in the direction of Nqileni village. He stopped after indicating that he intended turning right. He was waiting for oncoming traffic to pass to enable him to turn right. There was a stationary vehicle at the T-junction waiting to turn onto the main road which was driven by Mr Lulama. He saw the collision occurring. His evidence was that the plaintiff had indicated his intention of turning right and was stationary waiting to turn. He saw a vehicle approaching from behind the plaintiff's vehicle, travelling in excess of the 80km per hour speed limit. He heard the screech of tyres and this vehicle collided with the rear corner on the left hand side of the plaintiff's vehicle, which caused the plaintiff's vehicle to slide into the incoming vehicle on the opposite side of the road and ultimately to collide with the witness's vehicle.

[4] The witness was adamant that the plaintiff was in no way negligent and to blame for the collision. Although counsel for the defence intimated that the witness was lying as he had known the plaintiff prior to the collision, the court can find no evidence of any dishonesty on the

witness' part. He was an honest witness who did not embellish his testimony, but only told the court what he had seen. His evidence was corroborated in all respects by Mr L Nxusani who was the driver of the oncoming car from Butterworth on the tar road. His car was also involved in the collision. He corroborated the evidence of Mr Lulama regarding the screeching of the tyres as he alighted from his car as he saw skid marks which had been caused by the insured driver's vehicle.

[5] The plaintiff testified and confirmed the evidence of the previous two witnesses. He could not recall what had happened after the vehicle collided with his vehicle as he was unconscious.

[6] The defence had no witnesses. Counsel for the defence referred the court to **R v Miller 1957 (3) SA 44 (TPD)**. This was a criminal case where the accused had been charged with the statutory offence of driving a car recklessly and negligently on a public road. The facts differ from the present circumstances. The plaintiff had looked in his left and right hand mirrors as well as the rearview mirror before coming to a standstill to turn. There were no cars behind him at that stage. This evidence accords with the two witnesses' evidence that the vehicle which collided with the plaintiff's vehicle was travelling at an excessive speed coming round the curve in the road.

[7] The court has only the plaintiff's version of how the collision had occurred. I accept this version as all three witnesses impressed the court as honest witnesses who testified as to what they had seen. I cannot find any negligence on the part of the plaintiff. The plaintiff has proved the case on a balance of probabilities. I find that the defendant is liable for all the damages the plaintiff has suffered and can prove.

[8] Counsel for the plaintiff requested the court to grant punitive costs against the defendant. The reason being that the defendant had pleaded that the plaintiff had been negligent, but no evidence whatsoever was lead. It is clear that the defendant had no defence; or if the defendant had a defence, nothing was done to put such a defence before court since the summons was served on 10 May 2011. The defendant thus had one year and three months to investigate the merits and to deal with the merits. The defendant did not tender any version during the trial. There was thus only the plaintiff's uncontroverted evidence.

[9] In these circumstances I agree with the plaintiff that there is no reason for plaintiff to be out of pocket due to defendant's tardiness in dealing with the merits of the matter.

[10] The order:

1. The defendant is liable for 100% of the proven damages of plaintiff;

2. The defendant to pay the plaintiff's costs on an attorney and client scale;
3. The determination of quantum is postponed *sine die*.

Judge Pretorius

Case number	: 25659/2011
Heard on	: 14 August 2012
For the Applicant / Plaintiff	: Adv. Kunju
Instructed by	: Chaza Sotshintshi
For the Defendant	: Adv. Kokela
Instructed by	: AP Ledwaba INC
Date of Judgment	: 17 August 2012