REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG, PRETORIA)

Case no: A546/11

In the matter between:

9/2/2012

Sipho Petrus Manganye — Appellant

And

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

09/02/2012
Date — Signature

Solly Gezane Ngobeni — First Respondent

William Mahlangu — Second Respondent

Judgment

Baqwa A.J

1.

This is an appeal against the judgement of the Magistrate's Court Soshanguve delivered on 26 April 2011.

2.

The appeal arises out if an accident which occurred on 28 November 2009 and at Eersterus.

3.

Ex facie the record of evidence the following facts are common cause:

3.1. The collision occurred between motor vehicle with registration number FJN 692 NW driven by William Mahlangu (Second Respondent) and motor vehicle with registration number TYL 755 GP driven by Appellant.
3.2. Motor vehicle with registration number FJN 692 NM belonged to the First Respondent.
3.3. The collision took place at night on a slight bend on a road which carried on one lane in each direction.
3.4. The two vehicles involved were travelling in opposite directions at the time of the collision.

4.

According to the Second Respondent the cause of the accident was Appellant's vehicle which crossed the centre line and collided with his vehicle on the right hand side.

5.

According to the Appellant the Second Respondent overtook another vehicle and nearly caused a head on collision with his vehicle. He swerved to the left to avoid a collision but the other vehicle collided with the right hand side of his vehicle.

6.

The Second Respondent also gave evidence about the ownership and damage to his vehicle. He did not throw any light on the accident itself because he was not at the scene.

7.

According to the finding of the Magistrate ''the evidence of the Plaintiff's driver and that of the defendant is mutually destructive in that each blames the other as to what happened on the day of the collision''.

8.

It is at the time of reaching this conclusion that the magistrate ought to have been guided by the law as clearly enunciated in the case of
National Employers General Insurance Co. Ltd v Jagers 1984(4) SA 437 at 440 D to G where the law is stated as follows: '' It seems to me, with respect, that in any civil case, as in any criminal case, the onus can ordinarily only be discharged by adducing credible evidence to support the case of the party on whom the onus rests. In a civil case the onus is obviously not as heavy as it is in a criminal case, but nevertheless where the onus rests on the plaintiff as in the present case, and where there are two mutually destructive stories, he can only succeed if he satisfies the court on a preponderance of probabilities that his version is true and accurate and therefore acceptable, and that the other version advance by the defendant is therefore false or mistaken and falls to be rejected. In deciding whether that evidence is true or not the court will weigh up and test the plaintiff's allegation against the general probabilities. The estimate of credibility of a witness will therefore be inextricably bound up with a consideration of the probabilities of a case and, if the balance of probabilities favours the plaintiff then the court will accept his version as being probably true. If however the probabilities are evenly balanced in the sense that they do not favour the plaintiff's case any more than they do the defendant's, the plaintiff can only succeed if the court nonetheless believes him and is satisfied that his evidence is true and that the defendant's version is false''.

9.

In *casu*, the Magistrate did not find the Appellant's version false in which event he would then have been justified to prefer the Respondents version. He states as follows '' the difficulty the court faces is that there is no reason to disbelieve either version of the plaintiff's driver and that of the defendant's because of the manner in which the collision occurred which seems to be consistent with the damages on both vehicles''.

10.

After making this very clear and correct summation of the facts the magistrate appears to take what can only be described as an inexplicable leap of faith and apportions liability between the two drivers on a fifty percent basis.

11.

On this basis he orders the Appellant to pay ten thousand nine hundred and four rand (R10 904, 00), and costs to the Respondent. He dismisses the second claim by First Respondent for loss of earnings on the basis that the First Respondent did not produce proof of his claim.

12.

In my view the magistrate clearly misdirected himself in coming to this conclusion and giving the judgment I have referred to. He misdirected himself because after finding that the two versions were evenly balanced there is no basis in which he could prefer one of the two versions.

13.

The magistrate further misdirected himself by purporting to apply the maxim ''*res ipsa loquitur*'' which could clearly not be applied in *casu*. 'For example, if a swab is left in a person's body after an operation, or an unattended car runs down a hill, or a lorry suddenly swerves to the wrong side of the road the court, in the absence of some explanation, is entitled to infer negligence from the common knowledge that such events do not usually happen unless someone has been negligent''.

See Hoffman & Zeffert on Evidence 2nd edition pp218-219.

The learned authors go on to explain the maxim as follows: '' this kind of reasoning does not depend upon any rule of law, it is simply an exercise of common sense. *Res ipsa loquitur* is therefore not a presumption of law. It is merely a permissible inference which the court may employ if upon all the facts it appears to be justified''.

14.

In this case, with two mutually destructive versions, and no finding of fact *prima facie* pointing to negligence on the part of either driver, such an inference could clearly not be made.

15.

The final misdirection by the magistrate was when he awarded damages to the First Respondent. Counsel for the Appellant correctly summarised the requirements to be met for such an award to be made.

15.1. The plaintiff has to prove that the repairs to his motor vehicle were necessary, fair and reasonable.

See *Heath v Legrange 1974(2) SA 262* at p263.

15.2. A plaintiff is obliged to adduce evidence of the necessity of the repairs and the reasonableness of the costs.

See *Joubert v Santam Versekeringsmaatskappy Beperk 1978(3) SA 328(T)* at pp333.

15.3. The mere production of an account or quotation is not sufficient and the person who effected the repairs should testify as to the work done by him.

See *Scrooby v Engelbrecht 1940 TPD* pp100;

Hugo v Rossouw 1946 CPD 54.

None of these requirements were satisfied by the First Respondent.

16.

In the result I propose that the following order is made:

16.1. The appeal succeeds with costs.

16.2. The orders made by the learned magistrate are set aside and the following substituted in the place thereof:

''16.2.1. Plaintiff's first claim against defendant is dismissed with costs.

16.2.2. Plaintiff's second claim against defendant is dismissed with costs''

I agree

S.A.M Baqwa

Acting Judge of the

High Court

I agree, it is so ordered.

W.R.C Prinsloo

Judge of the High Court