



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

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES / NO.	
(2) OF INTEREST TO OTHER JUDGES: YES / NO.	
(3) REVISED.	
DATE 17/3/2014	SIGNATURE

CASE NO: 53528/2009

DATE: 20 | 3 | 14

IN THE MATTER BETWEEN:

WILLIAM HENRY BEACH

PLAINTIFF

AND

THE ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

KOLLAPEN J:

1. In this action the plaintiff sues the defendant for damages resulting from a collision that occurred on 25 November 2005 at the corner of Beaconsfield Street and Violet Street in Primrose, Germiston.

2. At the commencement of the trial, the merits and quantum were separated in terms of Rule 33(4) and the matter proceeded on the merits only. An order was made postponing *sine die* the claim in respect of quantum. The Court was called upon to determine the liability of the parties and whether there should be any apportionment thereof.
3. The plaintiff testified on his own behalf and his evidence was briefly as follows: On the day in question at approximately 16H00 the plaintiff was the driver of a motorcycle travelling in a west-to-east direction on Beaconsfield Avenue. He was travelling with his female companion who was a passenger on the motorcycle. It was drizzling and the road surface was wet but visibility was good. The lights of the motorcycle were on. He slowed down to go over a speed hump and then accelerated to a speed of approximately 40 km/h towards the intersection of Beaconsfield Street and Violet Street where the collision occurred. The motorcycle was heavy, not easy to manoeuvre and was also not capable of travelling at high speed.
4. The plaintiff testified that there is a stop sign in Violet Street at its intersection with Beaconsfield Street. The stop sign is intended for traffic travelling on Violet Street. Traffic travelling on Beaconsfield Street has the right of way. He testified that as he was approximately 12 to 15 meters from the intersection he noticed a bakkie on Violet Street approaching the intersection. The bakkie was driven by the insured driver, Ms Cindy De Smidt. He first noticed the bakkie when it was behind the stop line. The bakkie was travelling slowly and he assumed that it was going to stop before entering the intersection.
5. His evidence was that after making this assumption he proceeded without giving the matter a second thought. The bakkie did not stop, it entered the intersection and he collided with it as it made a right turn into Beaconsfield Street. He testified

that he was too close to the bakkie when it entered the intersection and he could not do anything at that stage to avoid the collision. He neither applied his brakes nor attempted to swerve. He hit the bakkie on the right hand side towards its rear end. The damage to the bakkie and the motorcycle was minimal. The plaintiff and the motorcycle slid along the road surface and the plaintiff sustained injuries as a result.

6. Ms Cindy De Smidt testified on behalf of the defendant. She testified that she was travelling on Violet Street. She came to the intersection of Violet Street and Beaconsfield Street and stopped at the stop sign. She then slowly moved forward to get a better view of the traffic on Beaconsfield Street because of the angle of the road which makes it difficult to see oncoming traffic. The road was not busy at the time. She satisfied herself that the road was clear and that it was safe to enter the intersection. She then entered the intersection to turn right into Beaconsfield Street. She had almost completed the turn when she heard a bang resulting from the plaintiff's motorcycle colliding with the bakkie.
7. She testified that she was travelling slowly and that she did not see the plaintiff approaching at any time prior to the collision including up to the point of impact and as a result could not do anything to avoid the collision. She suggested that the plaintiff could have avoided the collision by swerving. The damage to the bakkie was minimal and was just behind the petrol cap.
8. It is common cause that the plaintiff and the insured driver were travelling slowly prior to the collision, which was conceded by counsel for the defendant. This conclusion is also supported by the fact that damage to the bakkie and the motorcycle was minimal. It is further common cause that the insured driver entered the intersection and that the plaintiff had the right of way.

9. Both drivers are required to keep a proper lookout and a general lookout throughout the course of their driving. Whilst the plaintiff had a right of way and was entitled to assume that the insured driver would timeously heed the stop sign, that did not give him an unconditional right of way. He was still required to keep a proper lookout and to take reasonable steps to avoid the collision.
10. The insured driver could enter the intersection only when it was safe to do so. She was not entitled to assume that the plaintiff had observed that she was about to make a sudden turn across his path.

(See *SIERBORGER v SOUTH AFRICAN RAILWAYS AND HARBOURS* 1961 (1) 498 (AD) and *COETZEE v VAN RENSBURG* 1954 (4) SA 616 (AD).

11. It is clear from the evidence that the insured driver's negligence was the main cause of the accident as she did not see the plaintiff before the collision notwithstanding her assertions that she had satisfied herself that it was safe to enter the intersection. In my view, the insured driver would have seen the plaintiff if she was travelling slowly, which must have been the case, and if she had kept a proper lookout she could have avoided causing the accident.
12. The plaintiff is not without blemish. His evidence is that he saw that the insured driver did not stop at the stop line but still assumed that she was not going to enter the intersection anyway. The plaintiff should have exercised caution the moment he noticed the insured driver going over the stop line without stopping.
13. The evidence is that the road was not busy and that the plaintiff hit the bakkie at the back just behind its petrol cap. The plaintiff was travelling slowly, and in my view, could have avoided the collision by taking evasive action such as swerving or applying brakes. He could also have hooted to warn the insured driver of his

presence. The plaintiff failed to avoid the collision as he also did not keep a proper lookout.

14. In *NATIONAL EMPLOYERS GENERAL INSURANCE CO LTD v SULLIVAN* 1988 (1) SA 27 the court stated as follows:

'The driver in a through street, while being required to keep a general look-out, is entitled to assume, in the absence of indications to the contrary, that a driver approaching from a stop street will heed the stop sign operating against him and bring his vehicle to a stop. It is only when it would become apparent to a reasonable man in the position of the driver in the through street that the driver in the stop street does not intend to stop, or will not be able to stop in time, that the duty rests on the through street driver to take appropriate avoiding action. Until that stage is reached it is not incumbent upon him, under normal conditions, to regulate his driving on the assumption that the driver in the stop street may not stop'. (at 36D-F)

15. I find that the insured driver was the substantial cause of the accident but the plaintiff also contributed to causing the accident.

In the circumstances I find that it would be just and equitable that the insured driver is held to be 80% liable for the cause of the accident and that the plaintiff contributed 20% in causing the accident.

ORDER

16. I accordingly make the following order:

- i. The defendant is liable to pay the plaintiff 80% of the plaintiff's proven or agreed damages.

- ii. The defendant is ordered to pay the plaintiff's costs regarding the merits of the plaintiff's claim.

N KOLLAPEN
JUDGE OF THE NORTH GAUTENG HIGH COURT

53528/2009

HEARD ON: 28 FEBRUARY 2014

FOR THE PLAINTIFF: ADV P. M. VAN RYNEVELD

INSTRUCTED BY: PIETER MOOLMAN ATTORNEYS (ref: Moolman/B0046/ae)

FOR THE DEFENDANT: ADV MOTSHWANE

INSTRUCTED BY: MASHAZI & MATHIBELA INC (ref: MOKGADI/TP.476)