

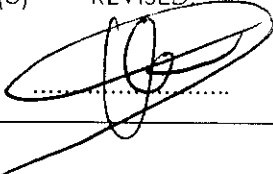
REPUBLIC OF SOUTH AFRICA



GAUTENG HIGH COURT DIVISION, PRETORIA

8/4/2014

Appeal Case No.: A457/13

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED
	
04/04/2014	

In the matter between:

HARRY RANKUWE

1st Appellant

HARRY RANKUWE

2nd Appellant

(obo MPYE KARABO)

and

ROAD ACCIDENT FUND

Respondent

JUDGMENT

MNGQIBISA-THUSI, J

1. The appellant (first plaintiff in the court *a quo*) is appealing against the whole judgment of Magistrate Louw, granting absolution from the instance against the appellants' claim for damages from the respondent. In these appeal proceedings I will refer to the parties as in convention.
2. The plaintiff instituted a claim for damages in his personal capacity and in a representative capacity on behalf of his minor daughter, Mpye Karabo Rankuwe ("Karabo"), against the respondent for the loss suffered as a result of injuries he and Karabo sustained in a motor vehicle collision that occurred on 14 May 2007. The collision occurred between a motor vehicle bearing registration number FMJ 603 NW, driven by the plaintiff and motor vehicle bearing registration number KHZ 214GP, driven by the insured driver.
3. By agreement, the claims of the plaintiff and Karabo were consolidated.

4. At the beginning of the trial proceedings the Magistrate was informed by counsel for the plaintiff that there was agreement between the parties on the point of impact as indicated by an "X" on the rough sketch plan of the accident scene, drawn by Constable Ngwako Johannes Mnisi ("Mnisi"). Mnisi was the first police official to arrive at the accident scene. The respondent's counsel did not dispute this assertion and it was accepted as such by the court. The "X", as the point of impact is indicated on the correct driving lane on which the plaintiff was driving.
5. In brief the plaintiff's evidence was that on the morning of 7 May 2007, he was driving with Karabo as his passenger along an unnamed road in Ga-Rankuwa. He was driving in an east-westerly direction towards a T-junction where there is a stop sign. At the T-junction he stopped and when it was safe for him to enter the road, going from south to north, he turned right towards the northerly direction, driving at approximately 20km per hour. After making a complete right turn he saw the insured driver's car coming from a sharp curve on the road, travelling from north to south. He testified that the insured driver was travelling at an estimated speed of 80-100 km and appeared to be losing control of his vehicle. The insured driver swerved to the right

towards his lane, colliding with him just inside his correct driving lane, at the point of impact agreed upon.

6. As a result of the collision he and Karabo, including the insured driver sustained injuries. The plaintiff's vehicle's front portion was damaged and that of the insured driver in the middle of the left side. Further, it was the plaintiff's evidence that as a result of the collision, his car spun around and ended up facing in a westerly direction.
7. During cross-examination the plaintiff did not deviate from his evidence in chief. The version put to the plaintiff was that the insured driver would testify that at the time of the accident, he was driving at 60km per hour that the plaintiff turned right at a high speed without stopping at the stop sign, driving onto the incorrect lane after cutting across the T-junction and collided with the insured driver. However, the point of impact as described above was not disputed.
8. Constable Mnisi also testified. Mnisi corroborated the plaintiff's evidence as to the point of impact. His evidence was that when he arrived at the scene of the accident for the purpose of drawing a sketch plan of the accident, both drivers involved indicated to him the point of impact, being "X" on the sketch plan. He further testified that around the point of impact, being "X", he found debris which appeared

to be that of a motor vehicles lights, strewn around. He also checked the damage to both vehicles which was on the right front part of the plaintiff's vehicle and on the mid-left of the insured driver's vehicle. During cross examination Mnisi conceded that the sketch plan does not reflect a curve on the road. Mnisi confirmed that on the road where the road travels from north to south, the direction in which the insured driver was travelling, there is a sharp curve which is about 24m from the stop sign at the T-junction. However, he did concede that the sharp curve he alludes to is not depicted in the sketch plan he drew.

9. The insured driver's testified as follows. He was driving at 60km per hour, in a North-Southerly direction when he suddenly saw the plaintiff's vehicle cutting across the T-junction without stopping at the stop sign and coming on his correct driving lane,. In order to avoid colliding with the plaintiff's vehicle, he swerved to the right, towards the centre lane and the plaintiff collided with the left middle side of his vehicle. He described the curve on the road as being gentle.
10. During cross-examination the insured driver put the point of impact on his travelling lane. He testified that the plaintiff was travelling very fast when he made the right turn, straddling the lanes and ending on his correct lane of travel.

11. The court *a quo* came to the conclusion that, even though there were two mutually destructive versions as to how the collision occurred, all the witnesses who testified were credible witnesses. However, the court surprisingly went on to criticize the plaintiff for not disclosing to Mnisi and other police officers investigating the accident that he was a police officer, his failure to pursue the speedy investigation of the collision to its conclusion and the possible prosecution of the insured driver for reckless driving. The court *a quo* concluded that the plaintiff's lack of motivation for the investigation into the causes of the collision was indicative of his lack of confidence in his own case and as a result casts doubts on his credibility.
12. The court *a quo* is clearly wrong and misplaced in its criticism of the plaintiff. The fact that the plaintiff is a police officer is irrelevant to the determination of where fault resides. Had the plaintiff interfered with the investigations, a perception would have been created that he was trying to influence the outcome of such an investigation. I am of the view that the plaintiff conducted himself with honesty and integrity. It is inexplicable why the Magistrate would make a finding that the plaintiff was a credible witness and at the same time find his version incredible on facts totally irrelevant to the issue to be determined.

13. The court went on to conclude that the plaintiff's version was improbable merely because he could not explain why the insured driver would "suddenly at the very convenient moment lose control to come into a collision with the plaintiff's vehicle if there was no obvious cause as he was going around a curve."
14. The court a quo was faced with two mutually destructive versions as to how the collision occurred. In *Stellenbosch Farmers Winery Group Ltd and another v Martell et Cie and others* 2003 (1) SA 11 (SCA), Nienaber JA stated that:

"The technique generally employed by the courts in resolving factual disputes of this nature may conveniently be summarised as follows. To come to a conclusion on the disputed issues a court must make findings on (a) the credibility of various factual witnesses; (b) their reliability and (c) the probabilities. As to (a), the court will depend on its impression about the veracity of the witness. That in turn will depend on a variety of subsidiary factors, not necessarily in order of importance, such as (i) the witness' candour and demeanour in the witness-box, (ii) his bias, latent and blatant, (iii) internal contradictions in his evidence, (iv) external contradictions with what was pleaded or put on his behalf, or with established fact or with his own extra curial statements or actions, (v) the probability or improbability of particular aspects of his version, (vi) the calibre and cogency of his performance compared to that of other witnesses testifying about the same incident or events. As to (b), a witness's reliability will depend, apart from the factors mentioned under (a) (ii), (iv) and (v) above, on (i) the opportunities he had to experience or observe the event in question and (ii) the quality, integrity and independence of his recall thereof. As to (c), this necessitates an analysis and evaluation of the probability or the improbability of each party's version on each of the disputed issues. In the light of its assessment of (a), (b) and (c) the court will then, as a final step, determine whether the party burdened with the

onus of proof has succeeded in discharging it. The hard case, which will doubtless be the rare one, occurs when a court's credibility findings compel it in one direction and its evaluation of the general probabilities in another. The more convincing the former, the less convincing the latter. But when all factors are equipoised probabilities prevail."

15. At the start of the proceedings it was common cause that the point of impact was where Constable Mnisi put an "X" on the sketch plan. Furthermore, the location of the point of impact was never put in dispute during the cross-examination of the plaintiff and Constable Mnisi. There is no explanation why only when the insured driver testified that a dispute on this point arose. I am of the view that the evidence of the insured driver with regard to the point of impact ought to be rejected as that was not the version the plaintiff expected to dispute. If it is taken that the point of impact is where the parties had agreed it was and also taking into account where both vehicles ended after the collision, I am satisfied that the version of the plaintiff is more probable,. I am of the view that the insured driver changed his version with regard to the point of impact in order to align it with his version that the plaintiff made a sharp right turn onto his lane. It is particularly so if one takes into account the following:

- 15.1 the evidence of the insured driver that in order to avoid the collision he swerved to the right. Since the insured driver was travelling in a North-Southerly direction, swerving to the right

would have landed him on the centre line and most probably on the wrong lane, which was the plaintiff's correct lane of travel.

15.2 the testimony of Constable Mnisi was that, the point of impact was as indicated to him by both drivers and that he found glass debris around the area of impact, is indicative of the place where the two vehicles collided.

15.3 the position in which the two motor vehicles landed after the collision. It was the plaintiff's testimony that after the collision occurred, his car spun around and landed on a westerly direction close to the point of impact. On the other hand, the insured driver was travelling in a Southerly direction and his vehicle landed on the South-Westerly direction of the road.

15.4 There is also no explanation why the insured driver did not timeously apply his brakes when he saw the plaintiff making a right turn onto his lane.

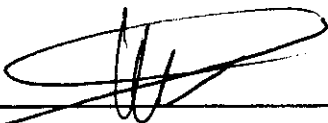
16. I am satisfied, taken into account all the evidence before the Court, that the Court *a quo* misdirected itself in granting absolution from the instance in the face of clear evidence that the version of the plaintiff, corroborated by the evidence of Constable Mnisi in as far as the point

of impact and the debris found at the scene and the position of the respective vehicles after the collision, was more probable than that of the insured driver. Furthermore, the court *a quo* erred and misdirected itself in taking into account irrelevant factors pertaining to the plaintiff being a police officer and his failure to pursue the investigation. I am of the view that the plaintiff proved its case on a balance of probabilities and that the appeal ought to succeed.

17. Accordingly the following order is made:

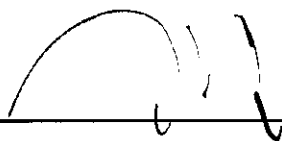
ORDER:

1. The appeal is upheld with costs.
2. The order of the court below is set aside and replaced by the following:
 - 2.1 The defendant is liable to pay damages to first and second plaintiff.
 - 2.2 Costs are reserved until final determination of the action.



NP MNGQIBISA-THUSI
Judge of the High Court

I agree



GC MULLER
Acting Judge of the High Court

Appearances:

For Appellants: Adv L Bolt

Instructed by: Searle Attorneys

For Respondent: Adv J A Kloppers

Instructed by: T M Chauke incorporated