

REPUBLIC OF SOUTH AFRICA



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

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

19/02/14

DATE

[Signature]
 SIGNATURE

CASE NO: 33687/12

In the matter between:

20/2/2014

TAWANYANA PIETER SEKWATI

Plaintiff

And

ROAD ACCIDENT FUND

Defendant

JUDGMENT

KGANYAGO AJ

- [1] The plaintiff in this matter is claiming damages for bodily injuries arising out of a motor vehicle accident. It is common cause that the accident occurred on the 15th August 2009. At the time of the accident, the plaintiff was a driver of a motor vehicle with registration number MTG 178 GP. The insured driver was driving motor vehicle with registration number WXZ 368 GP.
- [2] The plaintiff alleges that the insured driver was the sole cause of the collision. The insured driver denies the allegations levelled against him.
- [3] At the commencement of trial, the parties agreed to separation of the issue of merits and quantum of damages of the plaintiff's claim. I ruled that the matter proceed on the issue of merits of the claim only.
- [4] The plaintiff was the only witness to testify in his case. He testified that he was driving from east to west on Church Street. At the intersection of Church and Hill Streets he found the insured vehicle which was stationery indicating to turn right into Hill Street. When he was about 3 metres from the insured vehicle, the insured driver turned into Hill Street, and that is when the collision occurred. He tried to apply brakes but as the insured vehicle was too close, he could not succeed.
- [5] The whole front portion of his (plaintiff) vehicle was damaged. He was taken to hospital.

- [6] Under cross-examination the plaintiff stated that the point of impact was on the lane in which he was travelling. He denied that initially he was indicating to turn left into Hill Street. He denied that he collided with the insured vehicle which was stationery, but that at the time of the collision it was turning into Hill Street. He could not state where on the body was the insured vehicle damaged.
- [7] The insured driver testified. He testified that he was travelling from west to east on Church Street. At corner Church and Hill, he stopped and indicated to turn right into Hill Street. The plaintiff was travelling from east to west on Church Street and was indicating to turn left into Hill Street. The plaintiff did not turn into Hill Street, but proceeded straight on Church Street and he collided with his stationery vehicle.
- [8] His vehicle was damaged on the right front corner. He could not avoid the collision as his vehicle was stationery.
- [9] The insured driver was cross-examined and he denied that he was the sole cause of the accident.
- [10] It is common cause that both vehicles were travelling in opposite directions. No sketch plan of the scene of the accident was presented during the trial. It was the insured driver who drafted his own sketch plan during cross-examination. There is a dispute in relation to where the point of impact occurred.

[11] The court is confronted with two mutually destructive versions of how the accident occurred. I must decide on a balance of probabilities, whether the plaintiff's version, that the insured driver was turning into Hill Street when the collision occurred, is more probable than the insured driver's version that he was stationary when the collision occurred.

[12] In the case of Stellenbosch Farmers Winery Group Ltd and another v Martell & Cie and others (427/10) [2002] ZASCA 98, at paragraph 5, the court said the following:

“On the central issue, as to what the parties actually decided, there are two irreconcilable versions. So, too, on a number of I peripheral areas of dispute which may have a bearing on the probabilities. The technique generally employed by 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 the various factual witnesses; (b) their reliability; and (c) the probabilities. As to (a), the court's finding on the credibility of a particular witness 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 extracurial 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' 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 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 will be the latter. But when all factors are equipoised probabilities prevail."

- [13] The facts of how the collision occurred are in dispute. However, both parties contend that their vehicles were damaged on the front portion of which in my view will now look like a head on collision.
- [14] If I were to take the plaintiff's version that the collision occurred when the insured vehicle was in the process of turning into Hill Street, the plaintiff's vehicle would have been damaged on the front portion whilst the insured vehicle would have been damaged on the left passenger side.
- [15] If both vehicles are damaged on the front portion, that support the version of the insured driver that the plaintiff collided with him whilst he was stationery facing to the east and indicating to turn right to Hill Street.
- [16] The plaintiff has failed to submit a sketch plan or photos of the scene which shows the point of impact. The sketch plan drawn by the insured driver support his version.
- [17] The plaintiff testified that there was a combi which was driving on the extreme lane and he was driving on the right lane. According to the plaintiff, he and the said combi were travelling in the same direction. The impression created is that he would not swerve to the left lane because of the combi. However, he could not tell what happened to that combi. The insured driver denies that there was

any combi. Therefore, in my view, the version that there was a combi, I find to be improbable.

[18] In my view, it is highly improbable that the insured vehicle can be damaged in the front portion if indeed it was already in the process of turning right into Hill Street. The probable version is that the plaintiff collided with the insured vehicle which was stationery facing east, hence both vehicles were damaged in front. I therefore, find that on a balance of probabilities, the collision occurred in the insured driver's lane and that at the time of the collision, the insured vehicle was stationery. Therefore, there is no negligence that can be attributed to the insured driver.

[19] Under the circumstances, the plaintiff's claim is dismissed with costs.



M F KGANYAGO)

ACTING JUDGE OF THE HIGH COURT