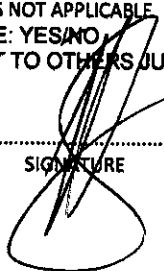


**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES/NO	
(2) OF INTEREST TO OTHERS JUDGES: YES/NO	
(3) REVISED	
3/6/2014	
DATE	SIGNATURE

3/6/2014

CASE NUMBER: 37360/2012

In the matter between:

LOUIS ALMERO FRANCOIS DE LANGE

Plaintiff

And

ROAD ACCIDENT FUND

Defendant

HEARD ON: 2 JUNE 2014
DELIVERED: 3 JUNE 2014

JUDGMENT

STRAUSS, AJ:

1. These are civil proceedings. The plaintiff instituted action against the defendant in terms of Section 17 of the Road Accident Fund Act 56/1996. He seeks to recover damages he suffered as result of bodily injuries he sustained in a collision on 19 December 2009, at the intersection of Lynwood and Jacobson road, Pretoria.

2. The parties agreed that the adjudication of the quantum should be kept in abeyance and that the merits should be adjudicated first. I did so in terms of Rule 33(4) of the Uniform Rules of Court.
3. The defendant also moved for an amendment in terms of Rule 28 of the Uniform Rules of Court in so doing, including in their plea, a ground of negligence being "that the plaintiff did not stop at a red traffic light".
4. I allowed the amendment in terms of Rule 28(10) and the pleadings therefore as amended placed two mutually destructive versions before court, as to which driver adhered to the red traffic light or not, as both parties averred in their pleadings that the other party failed to stop at a red traffic light.
5. I heard evidence to determine the relative negligence of the insured driver and that of the plaintiff, if any, seeing that the defendant had pleaded contributory negligence on the part of the plaintiff.
6. Two persons testified on behalf of the plaintiff, Mr. S M Crawford an independent eye witness, the driver of a red Honda Ballade sedan, and the plaintiff Mr. L A F de Lange, the driver of a Honda motor cycle, and the defendant's insured driver, Mr M M Maluleke, the driver of a white minibus taxi testified for the defendant. After hearing evidence both parties addressed me as to the evidence and I reserved judgement to the following day.
7. Now turning to the evidence, Mr Crawford testified that on 19 December 2009 he was driving in Lynwood road in a red Honda Ballade, he was on

his way to *The Grove* shopping centre. He was driving in the middle lane of a three lane road approaching the intersection of Lynwood and Jacobson street, as he was approaching the traffic light controlled intersection, he noticed the traffic light was green but turned amber and as he was too far from the intersection to make the amber light, he slowed down and eventually braked when the light turned red and stopped at the intersection. As he stopped, a white minibus taxi travelled past him on his left hand side, and also on the most left hand lane of Lynwood road, and proceeded to cross into the intersection when the light was red. At the intersection of Jacobson and Lynwood road, on his left hand side, he saw a motor cycle which was stationary at the red light, and who in turn proceeded to drive from a stationary position into the intersection, when the lights turned green. At that time the taxi crossed the intersection and collided with the motor cycle. The witness stopped his vehicle behind the motor cycle to prevent that any traffic from behind could collide with the plaintiff lying on the ground, he said the taxi stopped 80 – 100m further up in Lynwood road, on the built up middle man. He did not know the plaintiff or insured driver and he gave his details to the plaintiff's father who had arrived on the accident scene. From his home he could not use Jacobson road to get to *The Grove* shopping centre and had to use Lynwood road.

8. The plaintiff testified that it was in the afternoon, he was the driver of a motor cycle 125cc Honda, he was returning from weekend work, it was a Saturday and he was on his way home. He was in grade 11 scholar at the time. He was driving in Jacobson road in a southerly direction. He

approached the intersection and stopped at the red light, he saw two vehicles on his right hand side proceeding from Lynwood road, a red Honda Ballade in the middle lane, and a taxi approximately 20- 30 metres behind the Honda, in the left hand lane. The Honda braked approaching the intersection as the vehicle's "nose dipped" and he also saw the taxi reducing speed and its "nose dipping", he accepted after noticing this that both vehicles would indeed stop at the intersection. The traffic light turned green for him and he proceeded forward into the intersection, to turn right into Lynwood road, the next moment everything became dark and he had no further recollection of the accident.

9. All the witnesses made use of a sketch plan marked "A18" which emanated from an investigation undertaken by the defendant. The plan depicted Lynwood and Jacobson road and the intersection and depicted one vehicle marked "A" in Lynwood road, and a motor cycle "B" in Jacobson road and one unmarked vehicle next to "B" in Jacobson road. Counsel for both parties informed me that there was a dispute as to the positions of the vehicles prior to and after the collision as depicted on the sketch plan, but they agreed that it correctly depicted the road and the intersection at which the collision took place.
10. Mr Crawford indicated his position on the road prior to the accident as "1" the middle lane in Lynwood road, and the insured driver as "2" also in Lynwood road but on the far left lane, the lane to his left. The plaintiff was depicted as "3" in the right hand side of a two lane road in Jacobson road.

The plaintiff thus being on northern side of the intersection and on the left hand side of both Mr Crawford and the insured driver.

11. In cross examination the following was put to the witnesses who testified in the plaintiffs case:

That Mr. Crawford was not in Lynwood road but stationary in Jacobson road at position "3" (the right hand lane of Jacobson street).

There were only three parties in the intersection, at the time of the collision, being the red Honda, the motorcycle and the taxi and no other vehicles.

The insured driver did not brake approaching the intersection as the light was green for him and he proceeded to drive into the intersection.

The red Honda of Mr. Crawford was in Jacobson street stationary at the intersection, and the motor cycle (plaintiff) came from the same direction.

The insured would testify that the plaintiff did not stop at the red traffic light.

12. The insured driver Mr Maluleke testified that he was travelling on Lynwood road from west to east, he was in the middle lane there were no vehicles in front of him in Lynwood road. He approached the intersection and he saw the red Honda ballade stationary in Jacobson road at position "B" being the left hand lane of the two lane road. As he entered the intersection the light turned amber, only in the intersection he saw the motor cycle next to him, he swerved to the right but collided with the

motor cycle, he ended up further in Lynwood road on the pavement. He had one passenger in the taxi. He did not know where the motor cycle came from as he first observed it when he was already in the intersection. After the collision he went to see if the plaintiff was injured and a while later the father of the plaintiff arrived and grabbed him by the clothes and threatened him. The father of the plaintiff provided him with his own cell phone number and his id number.

13. In cross examination it came to the fore that his passenger had a clear view to the front of the road, but that the passenger immediately left after the accident and hailed another taxi and that he did not think it necessary to obtain the passenger's details.

He made a sworn affidavit at the police station but none was provided to the parties and subsequently did not form part of the trial bundle.

He had never consulted with the attorney or counsel appointed by the defendant prior to the trial date, and he has no knowledge of the averments in the pleadings.

He can only recall speaking to the investigators appointed by the defendant and he did give them certain factual information but he denied having seen the sketch plan "A18" prior to trial.

He did not inform the police in his brief statement on the accident plan, that there was a stationary Honda, that it might have obscured his view, and that the light had turned amber for him in the intersection.

He never saw the motor cycle either behind the Honda ballade or next to it, although he had a proper look out towards Jacobson street and observed the red Honda of Mr. Crawford, and he only saw the plaintiffs motor cycle when it was already in the intersection,

He stuck to the version that the traffic light was green for him.

He did reduce speed when approaching the intersection but did not brake.

He denies that Mr. Crawford was travelling in Lynwood road and insisted that Mr. Crawford was in position "3" on the sketch plan.

14. Question from the court brought the following to the fore:

The plaintiff had a learner's license to drive the motor cycle and had been driving it for a year when the collision occurred.

The sketch plan and report completed by the investigator who interviewed the insured driver, was incorrect according to the insured driver on three crucial aspects:

a) he did not state that he had three passengers in his vehicle, b) he had not hooted to the motor cycle prior to the collision to warn him, c) he had not applied his brakes to prevent the accident, the balance of the factual content of the report was correct.

He also disagreed with the sketch plan and insisted that the red Honda was at the left hand lane of Jacobson road and not as drawn on the sketch plan being on the right hand lane.

15. When faced with two mutually destructive and irreconcilable versions, in **Stellenbosch Farmers' Winery Group Ltd & Another v Martel et cie & Others 2003 (1) SA 11 (SCA)** the test is set out:

"To come to a conclusion on disputed issues the Court must make findings on –

(a) the credibility of 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 of the veracity of the witness. That in turn will depend on the variety of subsidiary factors such as (i) the witness' candour and demeanour, (ii) his bias, latent and blatant, (iii) internal contradictions in his evidence, (iv) external contradictions, 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 and (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 facts as mentioned under (a) (ii), (iv) and (v) on (i) the opportunities he had to experience and observe the events 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 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 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 equipoise probabilities prevail."

*In **Selamolele v Makhado** 1988 (2) SA 372 (V) the court reconfirmed the principle that where there are two mutually destructive version in a civil trial, the correct approach to be adopted in deciding the issue, is to determine which of the two version is more probable than the other."*

16. This court when having regard to the credibility of the witnesses was impressed by the demeanour of the plaintiff's witnesses, they were concise, to the point, and testified to the facts in a sequenced fashion, they did not contradict each other on any material aspect and the independent witness Mr. Crawford had no motive or bias to testify in favour of the plaintiff. Both witnesses corroborated each other as to the position of their vehicles prior to the accident, and the position of the insured driver prior the accident, as well as the point of impact indicated by them on the sketch plan.

17. The insured driver however was not a very impressive witness, his version of the events were inconsistent, differed from the version put to

the witnesses by counsel, and was also in contrast to the information he provided to the investigator appointed by the defendant. The only person who could have provided the investigators with the information in their report was the insured driver, but the information mention in a, b and c supra contradicted his testimony on material issues, this points to his credibility as a witness having regards to previous statements made by him, being inconsistent with his testimony.

18. This court however will not consider the contradictions contained in his version to the investigators or his evidence in court, to determine the probabilities in this matter or to determine his negligence.

19. Having regard to the totality of the evidence, I can find no reason not to believe the independent witness, Mr. Crawford, he testified that he stopped at the intersection, but that the insured driver came from behind him, and proceeded to drive through the red traffic light and collided with the plaintiff in the intersection. The insured driver testified that he saw the independent witness Honda vehicle at point B, **the left hand lane** of Jacobson street, even though it was put to the witnesses by his counsel, in total contradiction, that he, the insured driver will testify that the red Honda was on **the right hand lane** of Jacobson street, bring me to the conclusion that the insured driver adapted his version through the trial in order to make himself less blame worthy.

20. It was also put to the witnesses that the plaintiff failed to stop at the red traffic light but the insured driver did not testify to this event as on his version he did not see the motor cycle, and the first time he was aware of

the motor cycle was when it was already in the intersection. The insured driver also failed to keep a proper look out having regard to his evidence on this point. At the end the court was left with the evidence of the independent witness, and having regard to the mutually destructive versions of the plaintiff and insured driver, the independent witness corroborated the version of the plaintiff in every material aspect and swayed the probabilities in his favour.

21. I thus find on the probabilities and credibility of the two witnesses who testified on behalf of the plaintiff that the insured driver was the sole cause of the collision.

22. I can find no contributory negligence against the plaintiffs as his evidence that he had a proper look out and saw both vehicles slow down remained undisputed and is somewhat confirmed by the insured driver himself who admitted that he slowed down when approaching the intersection.

23. Also having regard to the case law as argued by counsel for the plaintiff in the matter of *Netherlands Co V Bruwer 1978 (4) SA 824 (A)* I can find no negligence on the part of the plaintiff.

Accordingly I make the following order:

- 1. The defendant is liable for 100% of the plaintiff's proven or agreed damages.**
- 2. The defendant is liable for the plaintiff's costs to date.**



S STRAUSS

**ACTING JUDGE OF THE
HIGH COURT, PRETORIA**

Counsel for the Applicant: ADV.: J A DU PLESSIS

Attorney for the Plaintiff: RIETTE OOSTHUIZEN PROKUREURS

Counsel for the Defendant: ADV.: W BINASE

Attorney for the Respondent: MOTHLE JOOMA SABDIA INC