

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

CASE NUMBER: 67156/13

DATE: 4 NOVEMBER 2014

In the matter between:

BUTHELEZI F M

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

TLHAPI J

[1] The plaintiff instituted action for damages suffered in a motor vehicle accident which took place on the 14 July 2012 on the N12 Highway involving a motor vehicle with unknown registration numbers and letters, driven by an unknown person and a motor vehicle with registration numbers D[...] driven by the plaintiff. The defendant denied liability as outlined in its pleadings

It was agreed at commencement of the trial that the court had to determine the issue of liability only. It was also indicated that each party would call a single witness.

[2] The plaintiff testified that it was a Saturday afternoon and the road was not busy, though cloudy the visibility was good and the tarmac was dry. He was travelling from Germiston to his workplace in Mpumalanga and that he was in the company of his apprentice.

The road consisted of four lanes, that is, two lanes in the direction of Mpumalanga and two lanes in the direction of Johannesburg. These four lanes were divided into two lanes each by a two meter wide patch of

gravel and grass. In turn the lanes on which the plaintiff was travelling were divided by a broken white line in the middle. On both extreme ends of such lane was a yellow line, usually referred to as the emergency lane. Beyond the right emergency lane was a strip of a concrete mound bordering the gravel and grass patch and beyond the left emergency lane was veld, , what plaintiff referred to in his testimony as farm land. Photographs of the road were annexed to the papers.

[3] At some point as he was driving at a speed of between 120km - 130km per hour and in the fast lane he saw two vehicles a white vehicle and grey vehicle travelling in the same direction as he was, but in the left lane. He overtook the white vehicle comfortably. As he approached the grey vehicle it suddenly veered out of its left lane onto the right lane, at a distance of about two meters from his vehicle. He saw the said grey vehicle through the left side of his windscreen. He did not apply his breaks because the only manner in which he could avoid a collision was to have swerved to his right. In doing so his vehicle went across the right emergency lane onto the gravel and grass. He manoeuvred the vehicle back onto the road, it hit the mound first and when it got onto the tarmac he lost control and the vehicle overturned and rolled several times. He could not give count.

[4] The vehicle came to a standstill beyond the tarmac on the left hand side. He could not estimate the distance from the road. He was assisted out of the vehicle by a passerby who feared that the vehicle would catch fire after seeing sparks flying from the engine. His passenger remained trapped in the vehicle and he had died. The plaintiff testified that he was aware that the police had arrived on the scene and that questions were posed to him.

[5] During cross-examination he was referred his affidavit of the 18 September 2012 while admitted at the Unitas Hospital in Centurion. In particular, paragraphs 2, 3 and 4 of such affidavit differed with the content of his testimony regarding the positions of the white and grey vehicle just prior to the accident occurring. He was also taken to task about the absence of mention of the two vehicles in the left lane in the accident report compiled by the police.

He believed that he had given an account of how the accident occurred and could not explain why the police officer had omitted from the Accident Report and from the sketch plan accompanying such report, his version about the two vehicles which were in his left lane. He testified that the interview with the police had occurred at the scene shortly after he had suffered severe trauma. He had sustained severe injuries and was in a lot of pain. Again while detained in hospital he was constantly under strong medication

[6] Mr Peteke testified on behalf of the defendant. He is a warrant officer attached to the Delmas SAPS. He arrived on the scene after the accident and found the plaintiff lying outside the wreck of his vehicle. He assumed that during the accident the plaintiff was flung out of the vehicle through the windscreen. He

observed that the plaintiff had sustained serious injuries and that he was in a lot of pain. The passenger remained trapped in the vehicle and had died. Mr Peteke had a very brief interview with the plaintiff in which he recorded plaintiff's account of the accident. He recorded the interview in his diary and later at the police station he completed an Accident Report. He did not bring his diary to court. He also drew up a sketch plan and a key to such plan. He was aware that photographs were taken of the scene and of the vehicle wreck on the same day by one officer Ras. Ras was not called to testify.

[7] In determining liability the court was faced with only the plaintiff's version of how the accident occurred.

It was submitted for the defendant that the plaintiff was not a credible witness in that the affidavit contradicted his testimony regarding the positions of the two vehicle before the accident and because the alleged statement to Mr Peteke and the sketch plan did not record the presence of the two vehicles and how one of these caused the accident. It was also argued that the plaintiff was negligent in that he had exceeded the speed limit and that he could have avoided the accident if he had applied his breaks.

[8] I am agreement with the submissions on behalf of the plaintiff that he gave his testimony in a clear and credible manner. While it was against the law to exceed the speed limit one cannot impute negligence when the reason for increasing speed was acceptable. The plaintiff explained the reason why he at some point exceeded the 120km speed limit. It was probable that the two vehicles in the left lane were travelling at the same speed as he was and that in order to overtake them he was required to increase his speed in the fast lane.

Furthermore, the grey vehicle veered off the left lane into the right late and had left just two metres between the two vehicles. Failure to apply breaks did not in my view constitute negligence on his part because in order to avoid a collision he manoeuvred his vehicle to his right hand side and off the tarmac and not in the direction of any oncoming traffic. In the circumstances of this case, veering off the road towards the right was equivalent to the plaintiff having taken such necessary measures to avoid a collision. I am also of the view that the manoeuvre back inot the road where the plaintiff lost control of his vehicle cannot be attributed to negligence on his part.

[9] Mr Peteke's statement in the report does not take the matter any further in that the veracity thereof could not be tested by cross examination due the unavailability of the recordings his pocket book. Besides he conceded that his interview was very brief and that on his own observations plaintiff had suffered severe trauma and that the possibility existed that he would not have been in a position to give detailed and clearer information on the accident. I therefore conclude that on the versions no negligence can be imputed on the part of the plaintiff and that the insured driver was solely responsible for the accident.

[10] In the result I give the following order:

The insured driver was 100% responsible for the accident.

TLHAPI V.V

(JUDGE OF THE HIGH COURT)

MATTER HEARD ON : 03 NOVEMBER 2014

JUDGMENT RESERVED ON :03 NOVEMBER 2014

ATTORNEYS FOR THE PLAINTIFF : EHLERS ATT.

ATTORNEYS FOR THE DEFENDANT : TAU PHALANE ATT.