



IN THE REPUBLIC OF SOUTH AFRICA  
GAUTENG DIVISION PRETORIA

12/12/2014

CASE NO: 64252/11

(1)	REPORTABLE: <del>YES</del> / NO
(2)	OF INTEREST TO OTHER JUDGES: <del>YES</del> / NO
(3)	REVISED ✓
12.12.2014 DATE	
SIGNATURE	

In the matter between:

SHOPRITE CHECKERS (PTY) LTD

And

MR LUCAS RIBA

BARNETT MOKABANE

PLAINTIFF

1<sup>ST</sup> DEFENDANT

2<sup>ND</sup> DEFENDANT

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JUDGMENT

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**MSIMEKI J:**

**INTRODUCTION**

- [1] The plaintiff instituted an action for damages pursuant to damage to its truck with registration number XXZ 386 GP, arising from a collision between the truck and a motor vehicle, at the time, driven by the second defendant, bearing registration number BHL 996 L on 23 December 2010. The collision took place on the R25 West in the district of Bapsfontein.

- [2] At the outset of the trial advocate H J Strydom (Ms Strydom), for the plaintiff, advised the court that the second defendant whose attorneys had withdrawn as his attorneys of record, was present at court. The position of the second defendant who could not be left out of the proceedings impelled the plaintiff to withdraw the case against him. This then paved the plaintiff's way to proceed with the matter.
- [3] I need to point out that the plaintiff amended its particulars of claim to, inter alia, substitute the registration number of the plaintiff's truck with the correct registration number. The amendment, as the documents demonstrate, was not opposed.

### **BRIEF FACTS**

- [4] The first defendant is a taxi owner who resides at stand 178, Dipakapakeng, Tafelkop. The second defendant was employed by the first defendant as a taxi driver. On 23 December 2010, on the R25 West, Mr Thomas Baloyi (Baloyi) was the driver of the plaintiff's truck when it collided with the first defendant's taxi which, at the time, was driven by the second defendant. To prove its case the plaintiff called the driver of the truck, Baloyi, as its witness.

Neither the first defendant nor his legal representatives were present at court. This, despite the fact that the notice of set down had duly been served on the parties. The first defendant's name was called three times before the trial started. He was absent. The plaintiff then withdrew the case against the second defendant who confirmed that the first defendant, who was well known to him, indeed, had been absent from court.

Baloyi's evidence was briefly that he, on the day in question, as the driver of the truck, had been travelling from the direction of Bapsfontein towards Kempton Park. The direction was from East to West. The motor vehicles used a road which has

one lane in each direction. Baloyi, while so travelling, noticed the motor vehicles which were coming from the opposite direction. Unexpectedly, he noticed the taxi which was veering to his lane. There was nothing that he could do to avoid the accident. The collision took place with the left side of the taxi hitting the left side of the truck. The collision, according to Baloyi, occurred on his correct side of the road i.e. in his lane. Baloyi testified that the taxi driver admitted that he had caused the accident. It is indeed noteworthy that the driver of the taxi, the second defendant, in his plea, also made such an admission. It was Baloyi's testimony that the taxi, had the second defendant so elected, could have been swerved to the left. The second defendant failed to do this resulting in the collision that ensued. The evidence at the disposal of the court, therefore, demonstrates that the taxi driver, the second defendant, indeed, caused the collision.

### **LIABILITY**

- [5] It is noteworthy that the second defendant, at the time of the accident, was duly employed by the first defendant. This appears to be common cause because the second defendant in his plea admitted this. The first defendant, instead of denying, noted the allegation. It is also noteworthy that the second defendant at the time, acted in the course and scope of his employment with the first defendant. The second defendant has also furnished an affidavit confirming this. The first defendant is therefore liable for the actions of the second defendant and is, therefore, liable for the damages which flow from the collision that the second defendant is responsible for. The plaintiff, on the merits, must succeed. The evidence is overwhelming and uncontroverted.

**QUANTUM**

- [6] Notice in terms of Rule 36 (a) (b) was duly given relating to an expert witness Tyrone Rhoan Gardiner. His expertise is not challenged. He has also furnished an affidavit of damages which clearly establishes his expertise and demonstrates how the amount claimed is arrived at. The affidavit is satisfactory. It indeed serves the purpose for which it was meant. I am therefore happy therewith.
- [7] Gardiner, on 13 January 2011 inspected a 2009 Nissan UD 390 motor vehicle bearing registration number XXZ 386 GP. He was satisfied that the damages to the vehicle was occasioned by a collision and that the fair and reasonable cost of repair necessary to restore the vehicle to its pre-collision condition is an amount of R278.178.12. This amount, according to him, does not exceed the pre-collision market value of the vehicle. The plaintiff, according to him, had suffered further damages in the amount of R3 796.20 which represents the fair and reasonable cost of towing the motor vehicle as evidenced by Annexure "A" to his affidavit. His assessor's report is annexure "B" to his affidavit. As already alluded to above, I am happy and satisfied with his evidence which is also uncontroverted. The amount claimed, in my view, has been properly determined and appear reasonable. The plaintiff therefore has properly proved the quantum it is, in the circumstances of the matter, entitled to. The claim should succeed.
- [8] **The following order is, accordingly, made.**
- Judgment, in favour of the plaintiff, is granted against the defendant for:
1. Payment of the sum of R281 974.82
  2. Interest on the aforesaid amount at the rate of 15.5% per annum from date of issue of summons to date of final payment; and

3. Costs of suit.



**M.W. MSIMEKI**  
**JUDGE OF GAUTENG DIVISION**  
**PRETORIA**

**COUNSEL FOR THE PLAINTIFF: ADV H. STRYDOM**  
**INSTRUCTED BY: SAVAGE JOOSTE & ADAMS**

**COUNSEL FOR THE DEFENDANT:**  
**INSTRUCTED BY: NETSHINOMBELO ATTORNEYS**

**DATE OF HEARING: 31 OCTOBER 2014**  
**DATE OF JUDGMENT:**