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

26/10/2016

Date of hearing: 18 October 2016

Case number: 26227/2015

NOT REPORTABLE

NOT OF INTEREST TO OTHER JUDGES

REVISED

In the matter between:

J. D. S.

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

BRENNER AJ

1. The plaintiff, J. D. S. ("S.") was involved in a motor vehicle accident on Saturday, 6 April 2013, at about 11h30, in a residential suburb in Huguenot Street, Vanderbijlpark, resulting in his sustaining severe bodily injuries, including a head injury, fracture of the right humerus, pelvic fracture to the left acetabulum, left knee injury at the patella femoral joint and numerous abrasions and bruises. He was 53 at the time, his date of birth being [...] 1960.

2. At the time, S. was driving a motorbike, and one Kirsten Venter ("Venter"), was driving a VW Polo with registration number BH[...]GP ("the Polo").

3. The defendant, the Road Accident Fund, ("the RAF"), repudiated liability on the merits, and the case proceeded on the issue of merits only. The issue of quantum was reserved for determination by another Court in due course.

4. I interpose to mention that the papers in this case cited S. as represented by a curator, namely, advocate Mart-Marie Tromp N.O., acting as curator for S.. A curatorship application was heard before the Honourable Mr. Justice Tuchten on 17 October 2016 and dismissed. I was placed in possession of a copy of this order. I am entitled to act on the premise that Mr. Justice Tuchten was satisfied that there was no basis for S. being considered as *non-compos mentis* and unable to manage his own affairs. I was assured by Counsel for S. that he was in a position to give a coherent account of the events which culminated in the collision.

5. For the plaintiff, S., evidence was adduced by S. and his daughter, Candice Wytrykowski ("Candice"). For the defendant, the RAF, evidence was advanced by Venter, the driver of the vehicle which collided with the motorbike driven by S..

6. S. testified that he had expertise in boilermaking, welding and steel erection. On the morning in question, he had left his home in Sasolburg to visit the home of his daughter situate at Huguenot Street in Vanderbijlpark. (S. mentioned that it was the home of his granddaughter but it appears that he was mistaken in this regard). He said that his son in law had asked him to set the carburetor of his motorbike. S. did so and then took the motorbike for a test drive about 20 to 30 metres along Huguenot Street. He testified that he would not have driven the motorcycle without first having tested its brakes, lights and indicators to ensure they were in working order. He wore an old German made helmet which could not be found after the collision.

7. The street was smooth, and tarred, and it was a sunny day with good visibility. It merits mention that this street was double-laned to accommodate traffic in each lane travelling in opposite directions. S. said he was about 10 metres away from turning left into the driveway to his daughter's home, after indicating to do so. He was driving at a speed of between 40 to 50 km per hour. Then a Polo, travelling in an opposite direction, in the same street, stopped and indicated to turn right to cross the lane in which he was

travelling, into her mother's driveway. So S. proceeded on the assumption that Venter would give him right of way. S. was about ten metres away from the Polo when he saw her indicating to turn. He said it looked to him as if she was speaking on her cellphone. In his view, there were vehicles behind the Polo and vehicles behind him.

8. A plan of the accident revealed that the homes of the parties were all on the same side of Huguenot Street. Venter's mother's home was north, then there was an unidentified neighbour's home south of this, and then contiguous to this home, the home of S.'s daughter.

9. S. testified about the evasive steps which were taken to avoid the collision. He braked and hooted. There appeared to be brake marks on several of the photographs. He said that he could not turn right because of cars behind the Polo. He could not turn left because of a small concrete wall which abounded the outside perimeter of the home belonging to Venter's mother. The photographs revealed a small green wall of about thirty centimetres in height. His motorbike collided with the left front fender of the Polo. On impact, his body flew off the motorbike and he hit the roof with the back of his head landing on the bonnet of the Polo. The motorbike was not badly damaged other than for bent forks, and its handles, lights and seat being damaged. This is consistent with the photographs handed in to Court.

10. Venter ran away into her mother's house but returned to the scene a short while later with her mother. S. did not have an opportunity to speak to her. He was taken to Sasol Hospital, then Kroonstad, then to Bloemfontein Hospital where he underwent traction for one month and thereafter, he had a series of operations.

11. S. was aware that Venter was subsequently prosecuted for reckless and negligent driving but that the case was mediated. An extract from the criminal docket corroborates this fact.

12. S. testified that, although he had a learner's licence for driving a motorbike at the time, he had driven motorbikes for about 35 years without any prior accidents.

13. S.'s daughter, Candice, arrived at her sister's home in Huguenot Street on 6 April

2013 to find S. tuning her sister's husband's motorbike. She stood on the pavement outside the neighbour's house which was between her sister's house and Venter's mother's house in Huguenot Street to watch S.. She saw him drive down the road then turn back to return to their house. He was not driving fast. There was a car behind S. and a car behind Venter. She observed the Polo stopping outside Venter's mother's home to turn into the driveway. The driver of the Polo suddenly turned in front of S.'s motorcycle and S. flew over the vehicle and hit the ground. S. appeared to start losing consciousness. The driver, Venter, ran into her mother's home.

14. Venter testified that she had received her driver's licence in 2007. She was travelling along Huguenot Street on 6 April 2013 when she turned left into the driveway of her mother's home. The visibility was good, although there was shade from trees near the street. She indicated to turn across the side of the street for oncoming traffic but she did not stop. To use her expression, she turned *"in one motion"* because she saw *"no reason to stop"*. She had seen no car behind or in front of her. She had seen no cars behind the motorcycle or behind the Polo. She conceded that this was wrong for not stopping when she was about to cross a lane for traffic coming in the opposite direction. She admitted that she failed to look out for other vehicles in the side of the road over which she intended to cross. She denied that she was speaking on her cellphone at the time.

15. She said that the first time she saw S. was when the collision occurred and he landed on the bonnet of her Polo. She testified that she *"did not see him at all."* This is consistent with her statement to the SAPS Vanderbijlpark on 19 April 2013 in which she said *"I did not see the bike at all, it was a total shock to me when I heard the bang."*

16. She conceded that she should have been *"a bit more vigilant"*. She proffered a suggestion that S. was speeding, and said that she had heard no braking or hooting. She conceded under cross examination that if she did not see the motorcycle she could not have known if it was speeding. She could not controvert S.'s evidence that, under the given circumstances, he was unable to take evasive action to avoid the collision. She said that she ran into her mother's home after the collision because members of S.'s family had started to scream and swear at her.

17. Venter said that she was criminally prosecuted but negotiated an admission of guilt fine of R1 000, 00 to avoid a criminal record.

18. A similar set of circumstances occurred in Sierborger v South African Railways and Harbours 1961(1) SA 498 (A) the only difference being that, in Sierborger, the driver in the position of S. did not see the driver in the position of Venter indicating. In Sierborger, Sierborger was travelling from east to west in Cape Road intending to cross into 7th Avenue, a road running from south to north, where the roads intersected. Sierborger allowed a small car to cross Cape Road into 7th Avenue. But behind this small car in 7th Avenue was one du Preez, the driver of a railway vehicle comprising a hauler and pantechicon. Sierborger put out his right hand and turned across Cape Road into 7th Avenue, whereupon his vehicle collided with the railway vehicle.

19. In Sierborger at page 504 to 505, the Court said:

"Du Preez was in the circumstances of the particular case entitled to expect that appellant (Sierborger) would, in relation to the motor vehicle, choose an opportune moment to cross in front of it, and would do so in a reasonable manner. He was thus entitled to expect that appellant would not suddenly and at the last moment dart across the line of hi travel. See Milton's case (Milton v Vacuum Oil Co of SA Ltd 1932 AD 197), Martindale v Wolfaardt 1940AD 235 at p244, Roux N.O. v Osgood and Another 140 AD 139 at p144.

To return to the enquiry as to whether, if du Preez had seen the signal, any action was at that stage required of him, the answer seems to be 'none other than to continue to keep a look-out'. There was no obligation upon him to stop or even slow down because of having seen the signal.

And further at p 505:

"Such signal is of course a notification to following and oncoming traffic that the driver intends to turn across the line of traffic, but equally implicit in it is that he intends to do so at an opportune moment and in a reasonable manner..... A driver of a vehicle proceeding in this latter direction does not, with reference to a vehicle whose driver has signalled an intention to turn across his path and who is directing his vehicle towards the middle of the road preparatory to doing so, incur

an obligation to stop or slow down. Certainly, he must keep such vehicle under observation and as soon as it is clear that, despite the inopportuneness of the moment, it intends to cross in front of him, he must take all reasonable steps that may be necessary to avoid colliding with it."

20. In Southern Insurance Association Ltd v Cogill and another 1978 (4) SA 128 (A), paraphrasing the headnote, the driver of a Toyota, one B, had approached a double laned dual main thoroughfare to intend to turn right. He made his turn at the intersection without stopping. He collided with driver A's vehicle, travelling from the opposite direction in his own, that is, A's lane. When A became aware that B was not going to stop, A braked and swerved slightly to the left in his own lane. He said he could not swerve to the right as another car was on his right. The court on appeal held that the plaintiff, relying on B, had not discharged its onus in establishing negligence on the part of A in failing to take appropriate evasive action.

21. In neither Sierborger nor Southern Life was there an apportionment of blame for negligent driving on the part of the driver in a similar position to S..

22. In casu, it is common cause that both S. and Venter indicated their intention to turn, S. to the left whilst in his lane of traffic and Venter to her right across S.'s path. In the result, Venter, in not even observing S.'s motorbike, failed to exercise reasonable vigilance in ensuring that no traffic was coming from the opposite direction towards her. In admitting that she never saw the motorbike, she conceded that she acted unreasonably in failing to maintain a proper lookout when she could and should have done so. In admitting that she should have looked out for oncoming traffic, she accepted 'blameworthiness.

23. S. proved that he was unable to avoid the collision because of the obstruction of the green wall on his left and because of vehicles behind him and behind Venter. On his version, he was faced with a sudden emergency. S.'s version is corroborated in all material respects by his daughter, Candice, who confirmed that he was not driving fast and that Venter's turn across his path was sudden. S. said he applied his brakes and hooted. This was not seriously challenged in evidence. I am inclined to prefer S.'s version over that of Venter who said that she saw no vehicles behind either the bike or

the Polo because it was plain from her own version that she did not see S.'s motorbike and was not keeping a proper lookout and was patently intent on crossing the road to turn into her mother's driveway, in one movement. Moreover, assuming there were vehicles behind both parties, it is not inherently improbable for such vehicles to proceed without stopping, notwithstanding the drivers witnessing a collision.

24. The plaintiff discharged its onus of proving on a balance of probabilities that Venter was 100% to blame for causing the collision.

25. On 18 October 2016, while indicating that a written judgment on the merits would be handed down thereafter, I accordingly make an order in the following terms, namely:

- a. The defendant was found liable for 100% of the plaintiffs proven or agreed claim;
- b. The defendant was directed to pay the costs of the action in respect of the merits.

26. On 19/10/2016 based on my ruling on the merits, the terms of a consent order on quantum was made an order of court.

T BRENNER

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

24 October 2016

Appearances

For the Plaintiff:

Advocate J Bisschoff

Instructed by:

Kritzinger Attorneys

Counsel for Defendant:

Adv N D van der Walt

Instructed by:

Marivate Attorneys