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**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG PROVINCIAL DIVISION, PRETORIA**

21/12/2016

CASE NO: 51894/2014

NOT REPORTABLE

NOT OF INTEREST TO OTHER JUDGES

REVISED

In the matter between:

SELLO SAMUEL MOITSI

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

MPHAHLELE J

[1] At the commencement of the trial I was informed that the parties had agreed to separate the issue of merits and quantum in terms of rule 33 (4) of the Uniform Rules of the High Court. I accordingly granted an order in the matter then proceeded in respect of the merits of liability only and the issue of quantum was postponed *sine die*.

[2] The plaintiff called four witnesses in support of his case. The defendant called two witnesses, namely, the insured driver as well as his passenger.

[3] The evidence of the plaintiff is briefly as follows: On 29 July 2012 and at approximately 01h50am the plaintiff was driving from Temba to Makapanstad. The road carries single lane traffic in both directions. Whilst driving he noticed a motor vehicle approaching in the opposite direction and then encroaching into his lane of travel. He noticed the car after driving past a curve on the road. He tried to avoid this vehicle by swerving to his left and taking his foot from the accelerator pedal but unfortunately couldn't avoid the accident. The accident happened so fast that he did not have the opportunity to apply the brakes of his motor vehicle. He denied that he overtook any motor vehicles immediately before the accident took place. The collision took place in his lane of travel and both motor vehicles, after the impact, landed in his lane of travel. He confirmed the point of impact as indicated on the sketch plan prepared by the police officials. The point of impact is indicated to be on his lane of travel.

[4] Constable Hloriso Oriel Digasho confirmed that he took down the statement from the insured driver. He also interviewed the plaintiff.

[5] Constable Jimmy Mokopa Ngwane testified that he attended the scene of the accident and drew the plan of the scene of the accident and the key thereto. He observed a car battery, water-like substance on the ground and debris at the point of impact. The plaintiff was in the right lane of travel. It was impossible for the point of impact to be in the other lane of travel. He confirmed that he attended the scene of the accident with Constable Sietei.

[6] Constable Betty Sietei testified that she attended the scene of the accident with Constable Ngwane and thereafter completed the accident report form on 29 July 2012. At the scene of the accident she observed two cars in the lane of travel from south to north. Both cars were damaged and there was glass on the road between the two cars. The cars were facing opposite directions. The insured driver's car was in the wrong lane of travel. The plaintiff's car was facing the direction towards Makapanstad. She confirmed the point of impact as indicated on the accident report form.

[7] Mr. B. Grobler, a mechanical engineer testified that he attended to the reconstruction of the accident. He visited the accident scene on 22 July 2015 and took photographs and measurements. In compiling his report, he also had regard of the following documents: the accident report form; colour copies of six photographs of the damaged Toyota Corolla; the

police sketch plan and key thereto; the affidavit and warning statement of the plaintiff; the warning statement of the insured driver; and the statement of Mr. V. Mavasa (the passenger in the insured vehicle). The approximate location of the area where the accident occurred which was pointed out to him by the plaintiff during the inspection.

[8] The photographs of the damaged motor vehicle of the plaintiff showed damage to virtually the full front of the vehicle with there having been more severe damage to the right front of the vehicle than the left front. The right front wheel of the vehicle had also been forced rearwards to an extent.

[9] There are no photographs of the damaged insured vehicle. The accident report form however indicates the damage to the insured vehicle to have been to the right front, right mid-front, left mid front, left front, front centre and bonnet.

[10] When comparing these respective damage profiles, it is probable that the vehicles collided with a frontal impact with most of the fronts of the vehicles overlapping at impact, though the absence of the impact damage to the plaintiffs vehicle in the vicinity of the left front headlamp position indicates the probability that there was a small bias to the right front at impact.

[11] When considering the almost full frontal impact between the vehicles, it is clear that the combined bias is more towards the plaintiff's side of the road. This bias towards the plaintiff's side of the road would be consistent with the collision having occurred more on the plaintiff's side of the road, with the insured driver having swerved or moved to its right into the plaintiffs lane prior to the collision. This would also especially be so for the vehicles having come to rest at the area of impact as indicated in the police sketch plan, therefore having been little post-impact movement.

[12] The positions of the rest of the vehicles in the police sketch plan also support the collision having occurred on the plaintiff's side of the road, and especially when considering that the vehicles came to rest essentially at the area of impact. There was little movement of the vehicles post-impact.

[13] It is improbable that it was the plaintiff that moved/swerved into the insured driver's lane prior to the collision as, for this to have occurred, it is probable that the vehicles would have come to rest more on the insured driver's side of the road due to the lateral

component of momentum of the plaintiffs vehicle in this direction.

[14] The resting positions of the vehicles therefore support the version of the plaintiff that the insured vehicle came into his lane prior to the collision and that collision occurred in the plaintiff's lane of travel.

[15] Mr. Christopher Vusi Mavasa testified that on 29 July 2012 he was travelling from Dannhaus to Majaneng in the insured vehicle. He noticed that there were cars approaching from the opposite direction. The third car, which was travelling at high speed, overtook the other 2 cars in front and thereby entered into their lane of travel. He warned the insured driver but unfortunately the vehicles collided. The collision took place in their lane of travel but both vehicles ended up in the lane travelling in the opposite direction. The debris may have been found in the plaintiff's lane of travel because after the collision the motor vehicles moved to the insured driver's lane of travel. He maintained that there was no debris at the point where the vehicles collided.

[16] Mr. Jerry Buta Manganye testified that on 29 July 2012 he was travelling from Dannhaus to Majaneng in the company of his cousin, Mr. Mavasa. At the Bosplaas he noticed a vehicle travelling in the opposite direction, approaching in his lane of travel. This vehicle was overtaking other vehicles. He first noticed this approaching vehicle when it was about 7 to 8 metres away from him. The accident was very sudden. He could not remember Mr. Mavasa ever warning him about the approaching car. He maintained that the accident took place in his lane of travel.

[17] It is clear from the evidence that the accident happened very suddenly and the insured driver had no opportunity to do anything to avoid the accident. The defence version that the plaintiff was trying to overtake other vehicles in his lane of travel at the time of the accident was never put to any of the plaintiff's witnesses. Further, this overtaking manoeuvre was never mentioned in any of the statements made to the police. This version of overtaking was also not pleaded by the defence.

[18] The expert witness based his opinion, among others, on the point of impact as pointed out in the sketch plan drafted by the police. This evidence was submitted by the two police officers who testified before this court. It is uncontested evidence that the debris as well as the engine belonging to one of the vehicles involved in the accident were found at the

scene of the accident. The evidence for the plaintiff indicates that this point where the debris was found is the point of impact.

[19] Mr. Mavasa, the witness for the defence, maintained that the collision took place in the lane of travel of the insured driver and that the vehicles eventually rested in the plaintiff's lane of travel. According to Grobbelaar, the expert witness, the almost full frontal impact between the vehicles and the positions of the rest of the vehicles after the accident clearly indicates that the combined bias is more towards the plaintiff's side of the road.

[20] This bias towards the plaintiff's side of the road would be consistent with collision having occurred more on the plaintiff's side of the road, with the insured driver having swerved or moved to the right into the plaintiff's lane prior to the collision. This would also especially, be so for the vehicles having come to rest at the area of impact established by the plaintiff, with there having been little post-impact movement.

[21] The evidence before me supports the version that the collision occurred on the plaintiff's side of the road. I am satisfied that the vehicles came to rest essentially at the area of impact. There was definitely little movement of the vehicles post-impact.

[22] The defence version that the collision took place in the insured driver's lane of travel therefore is not probable. The expert testimony is supported by objective and oral evidence and therefore must be given precedence.

[23] In the result, I hereby make the draft order marked annexed hereto an order of court.

MPHAHLELE J
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

Counsel for the Plaintiff: Adv R Ferguson
Instructed by: Erasmus-Scheepers Attorneys
Counsel for the Defendant: Adv W Binase
Instructed by: Tau Phalane Inc
Date of Judgment: 21 December 2016

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

HELD AT PRETORIA ON THIS THE 10th, 11th AND 12th DAY OF MAY 2016 AT COURT 6
D BEFORE THE HONOURABLE MADAM JUSTICE MPHAHLELE

Case number: 51894/2014

In the matter between:

S S MOITSI

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

DRAFT ORDER

HAVING HEARD COUNSEL FOR THE PARTIES, the Court orders that:

1. The Defendant is liable for 100% of the Plaintiff's proven or agreed damages resulting from a motor vehicle collision that occurred on 29 July 2012.
2. The Defendant must make payment of the Plaintiff's taxed or agreed party-and- party costs on the High Court scale, which costs shall include the following:
 - 2.1 The full reasonable day fees of Senior-Junior Counsel on the High Court scale for 10, 11 and 12 May 2016, including the costs of preparation of the Plaintiff's heads of argument;
 - 2.2. The reasonable taxable costs of obtaining the report by Mr. B Grobbelaar which was furnished to the Defendant in terms of Rule 36(9) (b);
 - 2.3 The reasonable taxable fees for the preparation, reservation and attendance of Mr. B Grobbelaar for 10, 11 and 12 May 2016 of whom notice have been given in

terms of Rule 36(9)(b);

2.4. The costs of any assessor(s) appointed by the Plaintiff;

2.5. The reasonable taxable transportation and subsistence costs incurred by the Plaintiff in attending the trial;

2.6 The reasonable taxable costs of preparing six trial bundles as per the directive issued by Van der Merwe (DJP);

2.7 The costs of the Plaintiff's attorney, which includes traveling costs to pre-trial conferences and to Court, attendance to Court, all costs for preparation of the pre-trial conferences, formulation of pre-trial minutes and costs for actual attendance of the pre-trial conferences.

2.8 Cost for all consultations with the Plaintiff, witnesses and experts;

2.9. All costs of the Plaintiff's attorney for preparation for trial;

2.10 Reservation fees for the attorney and counsel for 10 May 2016, 11 May 2016 and 12 May 2016.

3. The aforementioned taxed or agreed party and party costs, once determined, must be paid to the Plaintiff's Attorneys, Erasmus Scheepers by direct transfer into their trust account, details of which are as follows:

Bank:	ABSA BANK, LYNWOOD ROAD
Account holder:	Erasmus Scheepers Attorneys
Account number:	[...]
Reference:	M1657/12

4. The following provisions will apply with regards to the determination of the aforementioned taxed or agreed costs:

4.1. The Plaintiff shall serve the Notice of Taxation on the Defendant's attorneys of

record;

4.2. The Plaintiff shall allow the Defendant 7 (seven) court days to make payment of the taxed costs from date of settlement or taxation thereof;

4.3. Should payment not be effected timeously, Plaintiff will be entitled to recover interest at the rate of 10.25 % on the taxed or agreed costs from date of allocator to date of final payment

5 It is recorded that no contingency fee agreement exists between Plaintiff and his attorney.

BY ORDER

REGISTRAR OF THE HIGH COURT

Ref: M1657/12