

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

25/4/2016.

Case Number: 64982/2014

In the matter between:

MOOLMAN, NM

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

CORAM: VAN ROOYEN, AJ

1. The Plaintiff (who was born on 1 April 1963) sues the Defendant for damages sustained in a motor vehicle collision which occurred on 10 November 2012.
2. At the outset of the hearing, I was informed that the parties agreed to separate the issue of liability from the issue of quantum. I was requested by counsel for Plaintiff to order a separation in terms of Rule 33(4) and to postpone the issue of quantum. This order was granted.
3. Before I deal with the facts in this matter, I intend to first deal with an issue pertaining to the necessity of calling the expert witness, Mr Grobbelaar

(Plaintiff's Accident Reconstruction Expert) and with the costs incurred by calling his evidence.

4. I was referred to the pre-trial minutes, dated 26 March 2015 (although it appears that this date is incorrect) and more specifically to paragraph 2 thereof. In this paragraph the Plaintiff requested the Defendant to set out clearly and concisely the version of the Insured Driver or any other witnesses of how the collision occurred which gave rise to the Plaintiff's claim. The Defendant's reply was the following:

"The Defendant does not have a version of the insured driver. The Defendant is relying on the report of the Plaintiff's reconstruction expert, but reserves its rights to amend or supplement your version."

5. Plaintiff's counsel submitted in her opening address that this could mean nothing other than the admission of the report of the expert and she was of the view that it was not necessary to call the evidence of Mr Grobbelaar. However, after discussion with counsel for Defendant, she was informed that the report was not admitted and that it was necessary to still call the evidence of Mr Grobbelaar.
6. When asked what the Defendant's reply in the pre-trial minutes meant, counsel for Defendant indicated that the report was indeed not admitted and that he was of the view that Mr Grobbelaar's evidence should still be heard.
7. I deal with the evidence of Mr Grobbelaar and the costs occurred later herein.

8. On behalf of the Plaintiff, he himself testified, his son, Mr Connie Moolman and Mr Grobbelaar.
9. The Plaintiff's evidence can be summarised as follows:
 - 9.1 He testified that he was involved in a motor vehicle collision on 10 November 2012. He was riding a motor cycle and his son was a passenger on the back of the motor cycle.
 - 9.2 He travelled from South to North in Steve Biko Road (the old Voortrekker Road) in Gezina when he approached the intersection with Annie Botha Street.
 - 9.3 Steve Biko road has five lanes in a Northern direction and he was travelling in the middle lane, i.e the third lane from the left. (I was referred to the Merits Bundle, p 33 - 36 where the road and area of collision are depicted on several photographs).
 - 9.4 As he approached the robot controlled intersection, he noticed that the traffic lights were red. His evidence was that he decelerated and also noticed three stationary motor vehicles in the 4th lane, i.e the lane to his right.
 - 9.5 As he was still approaching, the traffic lights turned green. He then noticed a golden golf approaching from the opposite side turning to its right into Annie Botha Street. (See photograph 6 on p 35)
 - 9.6 The golf then stopped in the intersection. The Plaintiff assumed that the driver of the golf saw him and accelerated. At that moment, the golf started moving forward again.
 - 9.7 The Plaintiff then applied his brakes, swerved to his left to prevent a collision with the golf, put the motor cycle down and kicked it away from him. The motor

cycle ended up against a pole as indicated with the red arrow in photograph 3, page 34.

9.8 He and his son were lying on the tar surface across the intersection in the second lane when he saw that the golf stopped (again) and then continued to drive off. There was no contact between the motor cycle and the golf.

9.9 On specific questioning as to how far he was from the golf when it turned in front of him, he answered that he was at the horizontal stop line (as depicted in photograph 4 on page 34).

9.10 According to his evidence, he travelled less than 60 kph as he was coming from Soutpansberg Road (a block away) before he turned into Steve Biko Road.

9.11 The Plaintiff testified that there was nothing else he could have done.

10. In cross examination, the Plaintiff was questioned about his speed, the time when the traffic light turned green, and also when he observed that the golf started moving.

11. The Plaintiff testified that he was quite a distance from the intersection when the light turned green. By that time his speed was less than 60 kph. He observed the golf at the time when the light turned green and the golf was stationary at the time. He saw that the golf started to move into the intersection, but then stopped. The Plaintiff then accelerated and as he was at the horizontal line he noticed that the golf started to move again. He took the evasive steps as indicated above.

12. On the Court's questioning, the Plaintiff testified that he did not see the golf when it was stationary (as he focussed on the traffic lights) but only saw it when it was moving into the intersection – at the point when the traffic lights turned green.
13. The Plaintiff's son also testified. He was at the back of the motor cycle and he testified that he could not see past his father. He felt the motor cycle decelerate and then accelerate. The next moment he felt that his father swerved to the left, put the motor cycle down and kicked it away from them. After he made sure that his father was breathing, he looked around and saw the golf stationary in the intersection. As he approached the golf, he saw a woman inside the vehicle just before it sped off in a Westerly direction in Annie Botha Street.
14. Mr Grobbelaar was called as an expert to give evidence. He confirmed the contents of his report and his opinion. He was also present in court when the Plaintiff and his son gave evidence.
15. In cross-examination he confirmed that he cannot say whether there was another vehicle on the scene. On the question whether it was possible that the Plaintiff could have lost control over his motor cycle for other reasons, he conceded that many possibilities exist for a person to lose control over a vehicle. He however referred to the facts provided and found it to be consistent with the end position of the motor cycle and the version that the Plaintiff swerved to his left to avoid the collision. According to Mr Grobbelaar's

evidence, it is a natural reaction to swerve away from the danger and not towards it. He confirmed that the insured driver had unrestricted visibility for traffic approaching in the manner of the Plaintiff.

16. No witnesses were called on behalf of the Defendant as this is an identified claim.
17. The Court was referred to case law pertaining to the discharging of a party's onus. The Court has to evaluate the evidence before it on a balance of probabilities.
18. It is noted in the report of Mr Grobbelaar (paragraph 7) that no mention was made in the affidavit by the Plaintiff that the insured driver, after proceeding to enter the intersection, first stopped before it proceeded to turn to its right in front of the Plaintiff. Neither does it seem as if this was conveyed to Mr Grobbelaar at the scene during the interview.
19. The court heard the *viva voce* evidence of the Plaintiff when he testified that as he approached the intersection, he saw the golf turning in front of him and then it stopped. He (Plaintiff) assumed that it saw him and he accelerated. At that point, the golf started moving again and to prevent a collision, he swerved to his left.
20. This issue has, unfortunately, not been taken up in cross-examination. The evidence that the insured driver entered the intersection and then stopped before it proceeded again, is in my view an important factor to be taken into consideration.

21. It is trite that a driver who approaches an intersection must keep a proper look out, not only for traffic already in the intersection, but also for vehicles that are being driven in a negligent manner.
22. It is not quite clear to the court when did the Plaintiff decelerate and the reason for the deceleration. Was it because the traffic lights were red as he approached and he anticipated stopping, or was it when he saw the golf entering the intersection and he was not certain whether this person saw him?
23. Plaintiff's evidence was that he assumed that the insured driver saw him (because the insured driver stopped) and then he accelerated. He was already at the horizontal stop lines when the insured driver started to move again and he had to take evasive action.
24. The court finds it strange that the insured driver, who must have had an unobstructed view, and who probably stopped because she saw the Plaintiff approaching on his motor cycle, would suddenly proceed to turn in front of Plaintiff.
25. The Court finds that the undisputed evidence of Mr Connie Moolman placed the (unidentified) insured vehicle on the scene of the accident.
26. I am of the view that on the evidence of the Plaintiff himself he did not keep a proper look-out – if he had done so he would probably have seen the golf, more in particular the fact that this vehicle may create a dangerous situation at an earlier stage. He would then probably have been in a better position to

take evasive action that could prevent the putting down of the motor cycle and the damages resulting from this action.

27. The driver of the golf was obviously negligent and in my view the main cause of the accident.
28. After considering the issues carefully I have come to the conclusion that the negligent conduct of both parties contributed to the accident and the damages suffered.
29. The apportionment that I deem appropriate, is that the negligent conduct of the driver of the insured driver contributed 80% and that of the Plaintiff, 20%.
30. This brings me to the question of the necessity to call Mr Grobbelaar and the request for a punitive costs order against the Defendant.
31. Whatever the meaning of the answer in paragraph 2.1 of the pre-trial minutes is, the Defendant made it clear that that it did not admit the report of Mr Grobbelaar.
32. The Plaintiff is *dominis litis* and he is at liberty to adduce any admissible evidence to prove his case. Although the Court has great regard to the expertise and opinions of expert witnesses, a party must carefully consider the necessity of calling the evidence of such expert witness.
33. In this instance, the Court is of the view that neither the report, nor the evidence of Mr Grobbelaar could assist the court from an expert point of view. As Mr Grobbelaar correctly pointed out in his report and during his testimony,

it is not possible to establish whether or not the insured vehicle was at the scene or what its movements were. This would be a matter of evidence. In this regard, the Plaintiff and his son placed the insured driver on the scene and their evidence in this regard, stands undisputed.

34. I am of the view that there was no real justification to call the evidence of Mr Grobbelaar. However, in view of the fact that counsel on behalf of Defendant persisted in him being called as a witness, I will allow the costs. I am however not of the view that the situation justifies any punitive cost order.

35. I make the draft order, marked "X", an order of Court.



VAN ROOYEN, AJ
25 APRIL 2016