

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

24/5/2016

Not reportable

Not of interest to other judges

Revised.

Case number: 67971/2011

IN THE MATTER BETWEEN:

Tiny Malapane Shabangu obo T S

Plaintiff

And

Road Accident Fund

Respondent

JUDGMENT

MOSEAMO AJ

[1] This is an action for loss of support brought by the plaintiff on behalf of a minor child following a collision that took place on the 23 August 2010. The minor child's mother, Khethiwe Charmaine Shabangu, died as a result of the accident.

[2] At the commencement of the trial the parties applied for the separation of merits and quantum in the matter. I granted the order and postponed the issue of quantum sine die. The matter proceeded on merits only. The issue before me is whether the insured drivers were negligent.

[3] The only witness who testified was Maria Mathie, who testified for the plaintiff. Her testimony was as follows: She was travelling from Sandton to Hammanskraal along the R101 road. As she was approaching Petronella she saw two citi golf vehicles that were travelling at a high speed. She was travelling behind a bus and behind her was a combi. There was a cuNe, a long barrier line and trees on the side of the road. The vehicles overtook the combi, her vehicle and the bus travelling at a high speed. She saw a cloud of dust a few metres ahead of her.

[4] She could not see far ahead because of the curve and the trees. She then saw a citi golf (deceased's vehicle) travelling on the gravel on the side of the road towards them. She reduced the speed and got off the road to avoid a collision. The deceased's vehicle went back to the road towards them and collided with the bus, the combi also collided into the bus. She alighted from her vehicle, other people were alighting from the bus and the combi also. She went to the deceased's vehicle and found her trapped as the whole front part of her vehicle was damaged. She called for help and waited for help to arrive. The deceased was conscious and she spoke to her assuring her that help was coming.

[5] During cross-examination she denied that the deceased's vehicle could have been one of the vehicles that overtook her as during her conversation with the deceased, she said that she was travelling from Hammanskraal. Ms Mathie indicated that skidmarks on the road also confirmed that the deceased was travelling from north to south. She said that the deceased must have been travelling at 60 km per hour.

[6] After closure of the plaintiff's case, defendant closed its case without leading any evidence.

[7] It is alleged that the collision occurred as a result of the negligence of the insured drivers - who were negligent in one or more of the following respects,

"7.1 They drove the insured vehicles at an excessive speed or alternatively at an excessive speed in the circumstances;

7.2 They drove the insured vehicles without due and proper regard to other road users in particular the Deceased;

7.3 They failed to keep a proper look out;

7.4 They failed to avoid the collision when by exercise of reasonable care/ or diligence they could or should have done so.

7.5 They failed to keep the insured vehicles under proper control;

7.6 They failed to react timeously and/or adequately as reasonable persons in the circumstances would have done so;

7.7 They failed to familiarise themselves with the area of the accident before driving into the area thus causing the accident;

7.8 They failed to obey the road signs and/or road markings and thus causing the accident.

[8] The defendant denied negligence on the part of the insured drivers and put plaintiff to the proof thereof. In the alternative the defendant pleaded that the collision was caused by the sole negligence of the deceased who was negligent in one or more of the following respects:

"4.21 She failed to keep a proper look out;

4.22 She failed to keep the insured vehicle under proper control;

4.23 She failed to apply brakes timeously, effectively or at all; alternatively, she drove her vehicle while the braking system thereof was defective;

4.24 She drove her vehicle at an excessive speed in the circumstances;

4.25 She failed to have due regard to the presence and rights of other road users, more in particular that of the insured driver; and/or

4.26 She failed to avoid the collision when by the exercise of reasonable care and skill she could have done so. Ms Mathie denied the two when it was put to her as being probable."

[9] I am required to decide whether the insured drivers were negligent. The plaintiff needs to prove only 1% negligence on the part of the insured drivers to succeed.

[10] It is common cause that (a) the collision occurred at a curve where there is a long barrier line; (b) it was not possible to see oncoming traffic as the view was obstructed by the trees and the fact that they were driving on a curve; (c) the insured drivers overtook the combi, Ms Mathie's vehicle and the bus on that barrier line.

[11] It is clear from Ms Mathie's evidence that because of the obstructed view, she did not see what happened when the deceased's vehicle veered off the road. There is no direct evidence in this regard. The evidence regarding how the deceased's vehicle ended up on the gravel on the side of the road is circumstantial and therefore inferences have to be drawn from the evidence.

[12] The inference sought to be drawn must be consistent with all the proven facts, but need not be the only reasonable inference, it is sufficient if she can convince the court that the inference she advocates is the most readily apparent and acceptable inference from a number of possible inferences. See *AA Onderlinge Bpk v De Beer* 1982 (2) 603 (A)

[13] It was submitted on behalf of the defendant that from the evidence of Ms Mathie it is not clear whether the deceased's vehicle is one of the vehicles that overtook over the barrier line. It was further submitted that if it was indeed from north to south then the deceased could have been driving at a high speed considering the skidmarks on the road. Counsel for the defendant contended that there is no evidence showing negligence on the part of the insured drivers.

[14] The plaintiff submitted that the insured drivers were negligent in that they overtook while their view was obstructed by the trees and the fact that they were driving at a curve.

[15] In coming to a decision I must consider the evidence as a whole, taking into account the probabilities, the reliability and opportunity for observation of the respective witnesses, the absence of interest and bias, the intrinsic merits or demerits of the testimony itself and inconsistencies or contradictions, corroboration and all other relevant factors.

[16] Ms Mathie testified in a cogent and satisfactory manner. She made concessions where necessary. I found her to be a reliable witness. It is clear from her evidence that the insured drivers overtook 3 vehicles which includes a bus and a combi when their view was obstructed. She immediately afterwards saw a cloud of dust ahead. She then saw the deceased vehicle which appeared to have lost control, coming from the gravel

travelling towards them.

[17] She concluded that the deceased must have lost control while trying to avoid colliding head-on with the insured drivers. It was put to her that the deceased could have been one of the drivers that overtook her, she denied it and said that the deceased told her she was from Hammanskraal. She further stated that it was clear from the skid marks on the road that the deceased was coming from north to south. I accept the evidence of Ms Mathie in this regard.

[18] The question is whether the proven facts support the inference sought to be drawn. The defendant submitted that the deceased's vehicle might have been one of the vehicles that overtook the three vehicles alternatively if indeed the deceased was travelling from north to south she might have been travelling at a high speed. Ms Mathie denied the two scenarios were probable. It is not clear on which facts the defendant bases its inferences as there was no evidence to gainsay Ms Mathie's evidence. In the absence of positive facts from which the inference can be drawn, the method of inference fails and what is left is mere conjecture and speculation. See *De Wet v President Versekeringsmaatskappy Bpk* 1978 (3) SA 495 (C) 500

[19] In my view the version put forth by the plaintiff seems most readily apparent and acceptable inference from a number of possible inferences. From the evidence it is reasonably probable that the deceased was travelling from north to south, she veered *off* the road while trying to avoid colliding with the insured drivers that had come onto her lane of travel. This is supported by Ms Mathie's evidence that the deceased confirmed to her that she was from Hammanskraal. It is further supported by the evidence that there were skidmarks from which Ms Mathie confirmed that the deceased was travelling from north to south.

[20] It was also not in dispute that the insured drivers were travelling at a high speed, they overtook three vehicles while their view was obstructed. In my view the plaintiff has proved that the insured drivers were negligent.

[21] With regards to costs counsel for the plaintiff prayed for costs including her costs, costs of Ms Mathie, costs of the curator ad litem. I am of the view that the costs ought to

be granted.

In the result I make the following order:

1. The insured drivers were negligent.
2. The defendant is liable to pay 100% of the plaintiff's proven or agreed damages.
3. The defendant is ordered to pay plaintiff's costs, including:
 - 3.1. Costs of Ms Mathie
 - 3.2. Costs of Adv Mthembu
 - 3.3. Costs of Plaintiffs Counsel
4. The determination of quantum is postponed *sine die*.

P D MOSEAMO
ACTING JUDGE OF THE HIGH COURT