



IN THE NORTH GAUTENG HIGH COURT, PRETORIA

[REPUBLIC OF SOUTH AFRICA]

27/7/2016

CASE NUMBER: 87122/14

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED.
27 / 07 / 2016	
DATE	SIGNATURE

IN THE MATTER BETWEEN:

JABULANI ISAAC MASILELA

PLAINTIFF

And

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

MAKAMU AJ;

- [1] The plaintiff was involved in a motor vehicle collision on the 4th of February 2012, when his vehicle collided with the vehicle ahead of him which was being towed. He suffered some injuries and claimed compensation from the defendant for the injuries sustained as a result of the accident.
- [2] The parties agreed that the issue to be adjudicated upon at this stage is whether the plaintiff was involved in an accident through the negligence of the other driver and the issue of quantum shall be postponed sine die.
- [3] The issue to be determined is on the issue of negligence, and particularly on who was to blame for the collision.
- [4] The onus of proof rested on the Plaintiff to show on the balance of probabilities, that the insured driver was negligent on one or more of the grounds set in the particulars of claim. The question is whether the plaintiff managed to discharge the onus of proof, and the assessment of credibility of the witnesses will be bound up with the consideration of probabilities of the case and if the balance of probabilities favours the plaintiff then the court will be inclined to accept his version as being probably true.

- [5] In this case there are two mutual destructive versions, and the correct approach will be to decide as to which version is more probable than the other.
- [6] The crux of the plaintiff's case was that the insured driver was towing another vehicle and decided to turn into the Meyer's off ramp without signalling to the towed vehicle about his intention to turn or to take that off ramp and this resulted in the chain used to tow the vehicle breaking and the towed vehicle veered to the other lanes towards the right and collided with the plaintiff's vehicle, and the plaintiff lost control of his vehicle and overturned when it hit the drain.
- [7] The plaintiff avers that had it not been for the insured driver he would not have been involved in the collision as such he claims for damages as a result of injuries suffered, past medical and hospital expenses, estimated future medical expenses, past loss of earnings, future loss of earnings/earning capacity and general damages.
- [8] The Defendant through the insured driver denies any wrong doing as far as his driving is concerned. The insured driver admit that he was driving along N4 High way when the vehicle driven by the Plaintiff collided with his vehicle and as a result it overturned but it was not due to his negligence that the Plaintiff's vehicle overturned. He admit that he had silent intention to take Meyer off ramp but changed his mind and he did not communicate his intention to take Meyer off ramp or his decision to continue to the next off ramp however he was driving on the extreme left lane.

[9] He changed the lane to the inner lane and he had seen the Plaintiff's vehicle in his rear from a distance but he all of a sudden whilst in the lane that he took heard a bang and when he looked he saw Plaintiff's vehicle overturning to the side of the High way.

[10] He spoke to the Plaintiff when he was lying on the ambulance stretcher asking for his cell phone numbers when the Plaintiff said his vehicle was not insured and he was unemployed and the insured driver promised to help him repair his car out of the goodness of his heart which he fulfilled but he never saw the Plaintiff again but requested his cousin Justice to interact with the Plaintiff by taking him to the police station the next day to sign the statement which the insured driver had signed and the accident report which the insured driver had already made at the police station and signed. He further asked his cousin Justice to be a go between in order to arrange the repairs of the Plaintiff's car as he lives in the Free State province. The insured driver also mentioned that Justice only came to the scene of accident after he phoned him and the Plaintiff had already been taken to hospital so he was never the driver or at the scene of accident.

[11] Both the defendant's witnesses were reliable and corroborated each other and the Court will find that their version is more probable than the version of the plaintiff. The insured driver denied being towed at any stage at the time of the accident and that his motor vehicle was in a good condition at the time. [8]The only motor vehicles

involved in the collision was his and that of the plaintiff, yet the insured driver testified that there were many vehicles on the road at the time after 15h00 on a Saturday afternoon. The plaintiff was driving behind the defendant, and the defendant saw the plaintiff's motor vehicle at a distance. There is no evidence that suggest that the plaintiff was driving at a very high speed to can cause or call for the insured driver to be alert and to take a reasonable step. There is nothing expected of the insured driver to have done.

[12] According to the sketch plan filed by the plaintiff the plaintiff's vehicle collided into the insured driver's vehicle on a straight lane whereas the insured vehicle according to his sketch on accident report he was changing lanes when he heard the bang. If the insured vehicle heard a bang when he was changing lanes then he would not have kept a proper lookout however according to the plaintiff's averment the insured vehicle was being towed and could not have changed lanes as its motion was dependant on the towing vehicle.

[13] The sketch plan as per accident report is consistent with the plaintiff's version save for the fact that it was being towed however according to the sketch plan drawn by the Limbazz Investigators and Assessors as commissioned by the plaintiff contradicts Accident report's sketch plan which showed that the insured vehicle was not being towed, although he claims that it was the insured driver who suggested to him to say he was not being towed and indeed the insured vehicle could not veer on the path of

the plaintiff if it was being towed unless there was expert evidence to suggest otherwise. As a result it renders the evidence of the plaintiff to be highly improbable.

[14] The plaintiff said he was influenced by the insured driver to say that he was not being towed so that his insurance would not repudiate his claim and that insured driver was not the one who testified Mr Leshilo but Justice yet the insured driver's version is that Justice was never at the scene when the collision took place he only came to the scene long after the plaintiff was taken to hospital, and the insured driver used him to interact with the plaintiff towards the repairs of his vehicle which was never denied and Justice was never called by any of the parties to come and testify. The plaintiff's versions are different and which one must the Court believe, he concedes that he lied on the day of the collision, how do we the Court know that he is not lying again in court.

[15] The plaintiff failed to bring evidence that would explain the probability of the towed vehicle veering to the right when the chain breaks because of the towing vehicle turning to the left.

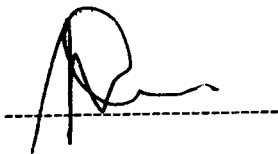
[16] The essence of the Plaintiff's case was that the insured driver turned his vehicle which was towing another vehicle without giving notice of his intention which led to the towed vehicle to break the chain and veer into the other traffic lanes and collided with the Plaintiff's car.

[17] The reasonable person test is used to assess the conduct of road users. The court set out that, conduct expected of the prudent road user, and the obligations which apply to motorists. It was found against that backdrop that a reasonable and prudent driver would not have conducted himself in the way the plaintiff did prior to the collision. He did not keep a proper lookout, he did not keep a safe following distance, and did not take any evasive steps to avoid the collision.

[18] On the facts before court the plaintiff is solely to blame for the collision and the plaintiff's negligence was the primary cause of the accident.

[19] In the result I make the following order:

That the plaintiff's claim is dismissed with costs.

A handwritten signature in black ink, appearing to be 'M.S. Makamu', written over a horizontal dashed line.

M.S. MAKAMU

ACTING JUDGE OF THE HIGH COURT

DATE OF JUDGEMENT : 27 /07 /2016

PLAINTIFF'S ADV : ADV F MATIKA

INSTRUCTED BY : B.DLOVA MOLOT ATT

DEFENDANT'S' ADV : E MOGANE

INSTRUCTED BY : RAMBEVHA MORABANE ATT