

**IN THE NORTH GAUTENG HIGH COURT, PRETORIA**

**[REPUBLIC OF SOUTH AFRICA]**

**CASE NUMBER: 86183/14**

**DATE: 12 AUGUST 2016**

**REPORTABLE  
OF INTEREST TO OTHER JUDGES  
REVISED**

**In the matter between**

**LEHLOHONOLO VINCENT MOLEFE**

**Plaintiff**

**THE ROAD ACCIDENT FUND**

**Defendant**

**JUDGMENT**

**Makamu AJ**

[1] The Plaintiff an adult male born on the 3<sup>rd</sup> of October 1960 instituted an **action** against the defendant, Road Accident Fund as a result of motor vehicle

collision between vehicle registration number [SD 2..] N driven by the insured driver Tebogo Koki who will be referred to as the insured driver and vehicle [PLN 1.. GP] driven by the Plaintiff on the 29th of June 2013 at approximately 22h40 on the Golden Highway, between Elephant Street and Tumeric Drive, Lenasia South.

[2] I was addressed by the respective Counsels at the commencement of the matter for the following that both parties agreed that the matter proceed only on the merits and that *quantum* be separated from the merits and shall be dealt with later. In terms of rule 33(4) of the Uniform Rules of this court the separation wipes granted as agreed.

[3] The Plaintiff and the insured driver testified and thereafter both parties through their respective Counsels addressed the Court. I was specifically referred to, the case of President of the Republic of South Africa v South African Rugby Football Union 2000(1) SA 1 (T) and Stellenbosch Winery Group LTD and another v Martell et Cie and others 2003(1) SA 11 (SCA), where the Plaintiff through Mr Mphela asked the Court to find in favour of the Plaintiff and Mr Seima for the defendant asked the Court to dismiss the action with costs or at least find an apportionment of negligence on both drivers.

[4] The following are common cause viz:

4.1 The Plaintiff was a driver of motor vehicle [PLN1... GP]

4.2 A Collision occurred between the said motor vehicle driven by the Plaintiff and motor vehicle Honda Civic black in colour registration number [SD 2... N] driven by the insured driver on the 29<sup>th</sup> of June 2013

4.3 The motor vehicle [PLN 1... GP] was coming from the Southern direction at Orange farm ( Avaton) to the Northern direction (Soweto).

4.4 The insured vehicle [SD 2... N] was driving from Eldorado park (Soweto) to Avaton where the insured driver resides.

[5] The only issue to be determined is whether the insured driver or the Plaintiff was negligent and if such negligence was the sole cause of the collision.

[6] It is trite law that Plaintiff needs prove only 1% negligence on the part of the insured driver and receive 100% claim award.

[7] Both parties agreed following pre-trial conference to hand in bundles named bundle A to F and reference was made by both parties to photographs taken by the police and sketch plan drawn by the police in the absence of both drivers, to make it easy for the Court to understand the scene and the condition of both vehicles.

[8] Photographs depict the two motor vehicles involved and the damage to both vehicles, and the sketch plan shows a Highway with dual carriage ways to one direction and dual carriage to the opposite direction.

[9] Collision occurred on the lanes direction from Elephant street to Tumeric drive according to the sketch plan.

[10] The vehicle of the insured driver was stationery and he admitted that it is his car almost in the centre of the road but partially towards the left lane and the vehicle driven by the Plaintiff is depicted as being stationery outside the tarred road on the extreme left but the Plaintiff denied that it was his vehicle and the vehicle's last resting place.

[11] The evidence in brief is as follows that Plaintiff was driving from Orange Farm. Approximately 4 to 5 kilometres before the scene of accident he picked a man who was a stranger but looked like a security officer. He saw a crowd of people on the side of the road and heard screeching of tyres as he approached the stop sign at Tumeric drive and he reduced speed significantly to about 5km/h.

He looked around and also used his rear view mirrors but could not see the vehicles the tyres of which were screeching but he could see four vehicles coming from ahead of him, two on each lane going to the opposite direction.

All of a sudden he heard a bang on his resulting from the collision whilst driving on his correct lane. He was trapped inside his vehicle. When his vehicle came to a rest he could see the left rear door of the Honda vehicle driven by the insured driver and the damage to the insured car. He believed that it was one of the four cars that were coming from ahead, heading to the opposite direction. Because he was trapped, he was the last person to be evacuated and taken to Chris Hani Baragwanath hospital. He was only informed later that one passenger died from the insured's vehicle.

According to the particulars of claim, he suffered injuries in this fashion: a bilateral tibia and fibula fracture of his patella, Facial and head injuries, He contends that the collision was caused by the negligence of the insured driver who was negligent in *inter alia*, one or more or all of the following respects:

11.1 He drove the vehicle without a valid driver's licence;

11.2 He failed to keep a proper and or adequate lookout;

11.3 He failed to keep his vehicle under proper or adequate control;

11.4 He failed to apply the brakes of his vehicle timeously or that he did not apply them at all;

11.5 He drove his vehicle at an excessive speed, given the circumstances;

11.6 He overtook traffic when it was unsafe to do so;

11.7 He drove into the path of travel of the Plaintiff;

11.8 He failed to avoid the collision when by the exercise of reasonable care and skill he could and should have done so.

[12] The insured driver testified that he was from Eldorado Park with two passengers in his vehicle when he was driving the Plaintiff drove from a dusty road and collided with the insured vehicle. The insured driver lost consciousness and he only regained it at the hospital. He was informed that one of his friends died as a result of the collision.

[13] The Plaintiff was confident whilst testifying. He came across as being very certain of what he was saying at all times. He was open amongst others about

the fact that he did not see exactly where the car that collided against his came from. He stated that he only assumed that it was from ahead of him as there was no car coming from behind or ahead of him heading to the same direction.

[4] On the other hand the insured driver buried his head down from the beginning of his testimony and only lifted it much later. He avoided eye contact with the cross examiner or the Court. He testified that he was driving from North to South but after lunch break he changed his testimony saying that he was from South to North in accordance with the compass on the sketch plan. If that was so it means he was heading towards Soweto and not Avaton or he was executing a U-turn or spinning.

[15] As indicated supra that the road or Highway comprises of a dual carriage way on each side. Considering the sketch plan, it occurred on Northern direction carriageway heading to Soweto.

There was no inspection in loco conducted. However, the Court took liberty to look at the map of the area and took judicial notice of the fact that Tumeric drive is on the Soweto side whereas Elephant Street is towards the Avaton side.

It is not possible that collision took place on the Southern direction carriageway as the vehicles rested on the Northern direction carriageway. There is no

explanation why the insured vehicle was on the Northern direction carriageway where the Plaintiff was travelling except hearsay evidence which is not admissible. The hearsay evidence is to the effect, that there were vehicles spinning in the area and possibly the insured vehicle took part in the activity.

There was no accident expert who could help in accident reconstruction however the damage on the insured vehicle is excessive enough to suggest that it hit the plaintiff's vehicle at an excessive speed, with its front portion, more so the damage on its left side and, the damage on the plaintiff's vehicle was only on the driver's door stretching towards the end of its front portion. The principle of facts speak for themselves applies.

[16] The two versions of the two witnesses are not reconcilable at all, they are mutually destructive. The reality is that one of the versions is true when the other is false.

I was referred to the case of National Employers Mutual General Insurance

association v Gany 1931 AD 187 where the Court stated *° Where there are two Stories mutually destructive, before the onus is discharged, the Court must be satisfied that the story of the litigant upon whom the onus rests is true and the ~~defence~~* This technique was followed in Stellenbosch Farmers Winery Group Ltd and Another V Martell et Cie and others 2003 (1) SA 11 (SCA) where the Court said • The technique generally employed by courts in resolving factual

disputes of this nature may conveniently be summarised as follows. To come to a conclusion on the disputed issue a court must make findings on (a) the credibility of the various factual witnesses; (b) their reliability; and (c) the probabilities".

[17] The insured driver did not have a valid driver's licence but he wanted to convince the court that he possessed a learner's licence, later admitted that the very learner's had expired, A version by such a witness cannot be trusted.

[18 ] He also contradicted himself about the direction to which he was driving but he later changed and said he could read a compass which was used on the sketch plan and he was driving towards North. The truth of the matter is that he realised later that the collision took place on his wrong side of the road and he had to justify why his vehicle is on the on-coming traffic.

[19] The two controversial averments by the insured driver should prove fatal to his case as they cast aspersions on his truthfulness as witness.

[20] When it comes to apportionment of damages there is no need to start with an argument as the insured driver is obviously on the incorrect side of the road and he is 100% to be blamed for the collision.

[21] I therefore find that the plaintiff has discharged the onus borne by him in proving that the sole cause of the collision was the negligence of the insured driver.

[22] I also find that the insured driver did not have valid driver's licence.

[23] I find that the insured driver did not keep proper look out, or adequate lookout.

[24] The insured driver drove at an excessive speed given the circumstances.

[25] He failed to exercise reasonable care and skill whilst driving so as to avoid the collision.

[26] The insured driver was 100% negligent and the plaintiff could not have done anything to avoid the collision.

[27] As a result I make the following order

**ORDER:**

1 The Draft Order marked "**X**", which is attached to the Plaintiff's heads of argument, be and is hereby made an order of court.

**SMAKAMU**

ACTING JUDE OF THE HIGHCOURT

DATE OF THE JUDGEMENT : 12/08/2016

PLAINTIFF'S COUNSEL : ADV RBMPHELA

Instructed By : JK MALATJI ATT

DEFENDANT'S COUNSEL : ADV SZSEIMA

Instructed By : LEKHU PILSON ATT

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

**ON THE 12<sup>th</sup> OF AUGUST 2016**

**BEFORE THE HONOURABLE MR JUSTICE MAKAMU AJ**

Case No: 86183/14

In the matter between:

**LEHLOHONOLO VINCENT MOLEFE**

Plaintiff

and

**THE ROAD ACCIDENT FUND**

Defendant

**DRAFT ORDER**

**HAVING HEARD THE EVIDENCE PRESENTED BY THE PARTIES AND HAVING HEARD  
COUNSEL FOR THE PARTIES, THE FOLLOWING ORDER IS MADE:**

The defendant is liable to 100% of the Plaintiff's agreed or proven damages arising out of the motor vehicle accident occurred on 29 June 2013.

2. The defendant is ordered to pay the plaintiff's taxed or agreed party and party costs of action to date, on the applicable High Court Scale, which costs shall include but not limited to the following:

2.1 The costs of the preparation of 6 trial bundles as per the Directive and as agreed upon in the Pre-Trial Minutes.

2.2 Costs of counsel, including counsel's reparation fees: full day fees for the 05<sup>th</sup> and the 08<sup>th</sup> of August 2016 and costs for preparing heads of argument as directed by the Presiding Judge.

<sup>i</sup>  
**2.3** The costs of attorney, which includes travelling costs, attendance to court, all costs for preparing for Pre-Trial Conferences, formulation of Pre-Trial Minutes and costs for actual attendances to Pre-Trial Conferences.

<sup>i</sup>  
2.4 The costs for preparation for trial for attorney.

2-5: The reasonable costs and / or disbursements of the Plaintiff in attendance who is hereby declared a necessary witness.

<sup>i</sup>  
2.6 The reasonable costs of consultation with counsel for trial purposes.

3. In the event that the parties do not agree on the costs referred to in prayer 2 above, the Plaintiff shall serve notice of taxation on the defendant's attorney of record and the Defendant is ordered to pay the

Plaintiff's taxed and/or agreed costs within 14 days from date upon which the accounts are taxed by the taxing master and or agreed between the parties.

4. Quantum is postponed *sine die*.

BY ORDER OF COURT

REGISTRAR

**For the Plaintiff**

Adv. R.B Mphela

! (012) 303 7400

i Instructed by JK Malatji Attorneys

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**For the Defendant**

! Adv. M Seima.

j Instructed by LekhuPilson Attorneys

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