

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

- (1) REPORTABLE: **NO**
- (2) OF INTEREST TO OTHER JUDGES: **NO**
- (3) REVISED.

CASE NO: 9787/2018
20/8/2019

In the matter between:

STELLA NADASEN
KARUSHA SIMONS

First Plaintiff
Second Plaintiff

And

THE ROAD ACCIDENT FUND

Defendant

JUDGMENT

KUBUSHI J

INTRODUCTION

[1] The plaintiffs, Stella Nadasen, the first plaintiff and Karusha Simons, the second plaintiff, have instituted action for damages against the Road Accident Fund for injuries sustained by the first plaintiff in a motor vehicle collision.

[2] When the parties appeared before me the issue of liability remained in dispute. The parties applied for the separation of the merits and *quantum*, which

application I granted. It was, however, agreed that damages for past medical and hospital expenses should be finalised.

[3] The parties agreed also that only the evidence of the first plaintiff will be led in support of her liability claim and the claim for past medical and hospital expenses.

[4] On the pleadings paragraphs 3 and 4 of the plaintiffs' particulars of claim are denied as well as the insured driver's negligence, in the *alternative* contributory negligence is pleaded in respect of the first plaintiff. Paragraph 3 of the particulars of claim sets out the date, time and place of the collision and the motor vehicles involved in the collision. Paragraph 4 sets out the negligence of the insured driver.

THE EVIDENCE

[5] The uncontested evidence of the first plaintiff was that on the day in question, she was the driver of a motor vehicle with registration number [...]. She was traveling along the R55 in Forrest Hill coming from the East of the R55 highway to the West on her way to Heuweloord.

[6] It was a clear day with no rain and the road surface was dry and the tarmac in good condition. She was travelling within the stipulated speed limit.

[7] She stopped at a robot controlled intersection where she indicated her intention to turn right into Marais Avenue. For her to get to Marais Avenue she had to cross the lane of motor vehicles travelling in the opposite direction along R55. She came to a standstill behind other motor vehicles also indicating to turn to the right.

[8] A truck with registration number [...], driven at the Ume by S Mahasha ("the insured driver"), was coming in the opposite direction. The truck also stopped at the intersection and indicated to turn right. The truck's indicator reflected that the truck was to turn to its right which was the opposite direction of where the first plaintiff was to turn. As the first plaintiff followed the motor vehicles that were in front of her in response to the robot that had turned green to allow them to turn right, the truck came straight towards her and collided with her motor vehicle. The spot where the collision occurred was in the lane where she was supposed to turn to the right.

[9] According to the first plaintiff, the robot had turned green to allow her and the

other motor vehicles in front of her to turn right and in fact was still flickering when she negotiated the turn. The truck on the other hand had indicated to turn right, which, because it was coming from the opposite direction to the plaintiff's motor vehicle, was the opposite direction of where the first plaintiff ought to have turned to.

[10] The intersection where the collision occurred was said to be an open intersection. The first plaintiff never saw the truck coming nor did she have time to do anything to avoid the collision.

[11] The first plaintiff was severely injured as a result of the collision. She was taken to hospital by ambulance and stayed there for nine days.

[12] The first plaintiff's further evidence was that she was dependent on the second plaintiff, who is her daughter. She was also registered as a dependent on her daughter's medical aid. The second plaintiff was as such responsible for the payment of all hospital and medical expenses that the first plaintiff incurred as a result of the collision. The second plaintiff is the one who paid the hospital and medical expenses incurred in the amount of R118 231, 38 and she was, thus, entitled to the refund thereof.

THE ARGUMENTS

[13] The plaintiffs' counsel, in argument, conceded that the first plaintiff was supposed to have continuously scanned the road in order to avoid the collision. Having not done so, meant that she failed to keep a proper look out. Consequently, the insured driver should not be found 100% to blame for the collision. Counsel urged the court to consider apportioning liability at 90/10 alternatively 80/20 in favour of the first plaintiff.

[14] Counsel also conceded that the evidence led in respect of the claim for past medical and hospital expenses was not the best evidence under the circumstances. The contention, however, was that the schedule and vouchers in respect of this claim were assessed by Dr P J Viviers, a specialist physician, who was satisfied that they were accident related.

[15] The defendant's counsel was in agreement with the arguments of the

plaintiffs' counsel but contended for liability to be allowed at 80/20 in favour of the first plaintiff. He agreed that the Draft Order handed in court by the plaintiffs' counsel be made an order of Court.

THE LAW

[16] It is trite law that a driver entering shortly after the green signal turns in his favour shall make allowance for the possibility of other traffic which has not yet cleared the intersection, moving across his line of travel; but thereafter he is entitled to assume that traffic facing the red signal will not enter the intersection until it receives the green signal.¹

ANALYSIS

[17] It is common cause, in this instance, that the first plaintiff had a right of way when the truck entered the intersection. It is also common cause that the insured driver entered the intersection at an inopportune time thereby causing the collision.

[18] In essence a green signal at a robot-controlled intersection confers on a driver who has the green signal in her favour, a right of way, but does not relieve her of the duty to keep a lookout for traffic in the intersection as she drives through the intersection. She is required to be alert and direct her attention to her immediate vicinity.

[19] I am satisfied that on the evidence proffered the first plaintiff was able to prove negligence against the insured driver. I am, however, mindful of the authorities that provide that even though the first plaintiff had a right of way this did not relieve her of her duty to keep a proper look out at all times. I am, thus, in agreement with the arguments raised by both counsel that negligence should be apportioned. The correct finding on negligence, in my view, ought to be 80/20 in favour of the first plaintiff.

[20] The defendant's counsel is not adverse to an order being made in favour of the second plaintiff for the medical and hospital expenses she incurred as a result of

¹ See *Netherlands Insurance v Brummer* 1978 (4) SA 824 (A) and *Santam v Gouws* 1985 (2) SA 629 (A).

the injuries sustained by the first plaintiff. He is also satisfied that the injuries in the schedule and vouchers are accident related. I intend, therefore, to award these damages. The expenses incurred by the second plaintiff ought, also, to be apportioned at 80/20 in her favour.

COSTS

[21] The first and second plaintiffs as the successful parties are entitled to the costs of suit. The costs should also follow the apportionment of liability at 80/20 in favour of the plaintiffs.

ORDER

[22] Therefore, I make the following order:

1. The Amended Draft Order marked "**XX**" is made an order of court.

E.M. KUBUSHI
JUDGE OF THE HIGH COURT

Appearance:

1st and 2nd Plaintiffs' Counsel	: Adv. N.C Maritz
1st and 2nd Plaintiffs' Attorneys	: Macrobert Incorporated
Defendant's Counsel	: Adv. A.B Rossouw
Defendant's Attorneys	: Leku Pilson Attorneys
Date of hearing	: 06 August 2019

Date of judgment

: 20 August 2019

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

On 6 August 2019.

Before her Honourable Judge Kubushi on the 5th floor in Court 60

Case No: 9787/2018

In the matter between:

STELLA NADASEN

1ST Plaintiff

KARUSHA SIMONS

2ND Plaintiff

and

ROAD ACCIDENT FUND

Defendant

DRAFT ORDER

AFTER HAVING HEARD COUNSEL, the Court orders as follows :

The Defendant is ordered to pay to Plaintiffs 80% of Plaintiffs' proven or agreed damages.

2

- 2.1 The Defendant is ordered to pay to First Plaintiff the amount of **R54,672.00 [FIFTY FOUR THOUSAND, SIX HUNDRED & SEVENTY RAND]** for past medical and hospital expenses following injuries the Second

Plaintiff sustained in a motor vehicle accident which occurred on 4 February 2014, which amount is payable by Defendant to Plaintiffs on/or before **27 August 2019** (14 days);

- 2.2 Payment of the above amounts can be made by depositing same into Plaintiffs' attorneys of record's trust account, the details of which are as follows:

ACCOUNT HOLDER	:	MACROBERT INC
BANK	:	STANDARD BANK
TYPE OF ACCOUNT	:	TRUST
ACCOUNT NUMBER	:	[....]
BRANCH	:	PRETORIA
BRANCH CODE	:	01-00-45
REF	:	NO00022942

- 2.3 The aspects of general damages, future medical treatment and past and future loss of earnings are postponed *sine die*.

3.

REQUISITION OF PAYMENT:

The Defendant's claims handler is ordered to request payment of the capital amount set out in paragraph 1 above within a period of 7 (SEVEN) days from the date upon which the court order has been served on Defendant and/or Defendant's claims handler and to provide Plaintiffs' attorney with written confirmation that payment has been requested.

4.

INTEREST:

- 5.1 The Defendant will not be liable for interest on the outstanding amount.
- 5.2 Should the Defendant fail to make payment of the capital amount on **27 August 2019**, Defendant will be liable for interest on the amount due to

Plaintiff at a rate of 10.25% per annum as from the date of this order to date of final payment.

6.

COSTS:

The Defendant is ordered to pay the Plaintiffs taxed or agreed party and party costs on High Court Scale, which costs will include, but will not be limited to, the following:

6.1 the costs of all expert reports, medico-legal reports, actuarial reports, radiological reports, addendum reports and combined reports of all experts of whom notice has been given and/or whose reports have been furnished to the Defendant and/or its attorneys and/or whose reports have come to the knowledge of the Defendant and/or its attorneys as well as all reports in their possession and/or contained in the Plaintiff's bundle of documents. This shall include, but not be limited to, the following experts of whom notice has been given, namely:

6.1.1 Dr **PJ Viviers**, specialist physician.

6.2 The full fees of Adv NC Maritz in respect of preparation, consultations, pre-trial conferences, heads of argument and day fee for 6 August 2019;

6.3 The reservation, qualifying and preparation fees of all experts as set out in 6.1 above, if any.

6.4 The reasonable travelling, subsistence and transportation costs including e-toll fees incurred by and on behalf of the Plaintiff for attending the medico-legal examinations of both parties;

6.5 The costs consequent to all of the Plaintiff's trial bundles, expert reports, pleadings and notices, all indexes, document bundles and witness bundles, including the costs of 6 **(six)** full copies thereof;

6.6 The costs of holding all pre-trial conferences, as well as round table meetings between the legal representatives for both the Plaintiff and

the Defendant, including counsel's charges in respect thereof as well as all reasonable costs, including but not limited to travelling expenses, incurred by the Plaintiff's attorneys and counsel in order to attend such pre-trial conferences;

- 6.7 The costs of and consequent to compiling all minutes in respect of pre-trial conferences;
- 6.8 The full travelling and accommodation costs of the Plaintiff, who is hereby declared a necessary witness, if any.
- 6.9 The full travelling costs of the independent eyewitnesses, who is hereby declared necessary witnesses, if any.

7.

TAXATION:

- 7.1 Plaintiff is ordered to serve the Notice of Taxation of Plaintiffs party and party bill of costs on Defendant's attorneys of record.
- 7.2 The Defendant is ordered to pay the Plaintiffs taxed and/or agreed party and party costs within 14 (fourteen) days from the date upon which the accounts are taxed by the Taxing Master and/or agreed between the parties.
- 7.3 The Defendant's claims handler is ordered to request payment of the taxed or agreed party and party costs within a period of 7 (SEVEN) days from the date upon which the accounts have been served on Defendant and/or Defendant's claims handler and to provide Plaintiff's attorney with written confirmation that payment has been requested;
- 7.4 Should the defendant fail to make payment of the party and party costs within 14 (FOURTEEN) days after service of the taxed accounts on the defendant's attorneys of record, defendant will be liable for interest on Page 7 the amount due to plaintiff at a rate of 10.25% per annum as from the date of taxation to date of final payment.

8.

CONTINGENCY FEE AGREEMENTS:

The Plaintiff and the Plaintiff's attorneys of record **did not** enter into any contingency fee agreement.

SIGNED AT PRETORIA ON THIS THE 5th DAY OF AUGUST 2019.

REGISTRAR

Plaintiffs Attorneys : **MacRobert Attorneys**
Plaintiffs Counsel : **Adv NC Maritz - 082 654 3937**

Defendant's Attorneys : **Lekhu Pilson Attorneys**
Defendant's Counsel : **Adv A Rossouw, SC – 083 259 2547**