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(Inlexso Innovative Legal Services)##

IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION PRETORIA

CASE NO: 53932/2015

DATE: 2019.10.25

10 In the matter between: -

FENK JACOB MATSEPE

and

ROAD ACCIDENT FUND

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## JUDGMENT

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**MAVUNDLA, J:**

Judgment, paragraph [1]. All the paragraphs should be in

20 square brackets. The plaintiff is Mr Fenk Jacob Matsepe, with Identity Number [...]. A major male maintenance foreman born on

the [...].

Residing at [...] [...] Street, [...], P[...] in the North West Province.

Instituted an action against the defendant in terms of the Road Accident Fund Act 56 of 1996

(claim and damages) he suffered as a result of injuries sustained when a collision occurred on 16 November 2011 at or near N12 road, Elansfontein Farm, between a motor vehicle with registration letter and number [...] he was driving, and a motor vehicle with registration number and letters unknown to the plaintiff, herein after referred to as the insured vehicle, then and there driven by an unknown driver herein and after referred to as the insured driver.

[2] The plaintiff alleged in his particulars of claim that the unknown

10 insured driver was the sole cause of the collision in that he was negligent in one or all or various ways which were alleged in the particulars of claim. I do not intend to chronicle all those alleged matters of negligence. Next paragraph.

[3] The plaintiff has been employed for 20 years since November 1998. The injuries as a result of the collision were:- 3.1 head injury, 3.2 chest injury, 3.3 shoulder dislocation, 3.4 wrist injury right, 3.5 amputation of the right finger, 3.6 injury of the lumbar spine. It would seem that there was an

20 undetected injury of the clavicle on his right and this was not contested.

Next paragraph

[4] The plaintiff as the result of the injuries he sustained from the accident claimed alleged damages in an amount of R3 746 901.00, made as follows. Past loss of income, R308 179.00, future loss of income,

R2 238 722.00, total loss, R2 546 901.00. In respect of general damages, an amount of R1 000 200.00 was claimed thus making the sum total of the amount then R3 746 901.00. I will repeat again, R3 746901.00.

- [5] it was further alleged that the plaintiff has suffered one or more serious injuries as contemplated by section 17(1) read with section 17(1)(A) of the Act. The plaintiff has complied with regulation 3 of the Road Accident Fund, relation of 208 and injuries referred to in 7, referred to above has
- 10 been assessed.

- [6] In this particular case, it would seem that these were not assessed in accordance with the regulations resulting in the parties requesting that the Court should deal with the aspect of general damages.

- [7] The plaintiff was called to the stand and he testified to that in support of his claim. According to him, the accident occurred on 16 November 2011 at or near the N12 road Elandsfontein Farm when he passed the entrance of Fochville where there is a T-junction. There was a curve to
- 20 the right.

There was a vehicle which came from the opposite direction and it was at night, almost midnight. They both were dimming and brightening to each other as they were approaching the curve. The plaintiff was already in the intersection, rather in the curve when the other vehicle travelling in the opposite direction suddenly switched on its spotlights and headlights.

The plaintiff thought that this vehicle was coming towards him and he then swerved slightly to the left. With his left set of wheels on the gravel of the tar road, as a result, he lost control of his vehicle which then rolled. It was in the middle of the night.

- [8] The other vehicle was big and had lights on top. The plaintiff tried to bring the vehicle back onto the road to no avail. The reason he swerved to his left was because he saw as if the vehicle was coming towards him. When he saw the other vehicle switching on his spotlights, he reduced his speed and swerved to the left. That was all that he could do. After his vehicle rolled, someone came to his vehicle and took him out of the vehicle.

He then realized that his right finger has been severely injured. He was injured on his left shoulder. His right middle finger was subsequently amputated. Immediately after the accident, he was taken to Leslie Williams Hospital.

- [9] 20 He was referred to a statement which he has since handed in as EXHIBIT A in the yellow flagged bundle with index discovered documents. He confirmed that this was the statement taken from him. He confirmed that or rather he stated that the accident was caused by the driver of the unknown vehicle who switched on his spotlights and headlights as result blinding him. Next paragraph.

- [10] Under cross-examination, the plaintiff said *inter alia* that no streetlights in that area. The road was curving from his right to his left. When the vehicle approached from a distance, he dimmed his lights, and the other vehicle also dimmed his lights.

They dimmed and brightened each other interchangeably as they

were approaching each other. As the other vehicle approached the curve it

- 10 switched on its spotlights and brights as a result blinding the plaintiff. His vehicle was in motion. He deaccelerated by removing his foot from the acceleration pedal. The last he saw was when the other driver blinded him with his sportlights and his headlights.

He continued driving. He took his foot off the pedal. He tried to swerveto give it way and his set of wheels got off the tar road.

When he was close to the curve the other driver was still far. As they were about to pass each other, the other driver put his bright lights on. When he was

- 20 putting his bright lights and dimmed, he was also doing the same and, in the curve, the other driver switched on his bright lights.

The other vehicle was about 20 meters away from him. They were both inside the curve ... [inaudible]. It was not the first time for him to travel along the road. There are no street lights. It is not surprising to me that another vehicle brightening another with its headlights. He said that if the road was straight, he would have continued to drive straight.

It was put to him that why did you not stop his vehicle when he was blinded by the bright lights. The plaintiff said that his vehicle was in motion, decides removing his foot from the accelerator to reduce speed, he swerved to the left to give the other vehicle way.

- [11] under cross, under re-examination, he said that the other vehicle with its bright lights was coming from the opposite direction. When asked what he did to avoid a collision he said he took his foot off the accelerator slightly and swerved to the left

as he thought the other vehicle was coming towards him.  
Next paragraph.

[12] it is trite that the plaintiff bears the onus of proving his case against the defendant. The defendant in his pleadings denied any negligence on the part of the insured unknown driver and contended that the plaintiff was the sole cause of the accident and in the alternative alleged that the plaintiff was also contributory negligent. As such there should be a apportionment. The defendant did not call any witnesses to refute the plaintiff's version. Next paragraph

[13] The test to be applied in order to weigh the insured driver's conduct is referred to in the case of *Kruger v Coetzee* 1966 (2) SA (428) A f43O E, where the following was stated.

“Each case in which it is alleged that a motorist is negligent must be decided on its own facts. Negligence can only be attributed by examining the facts of each case. Moreover, one does not draw inferences of negligence on a ...narrow [inaudible] approach. One must consider the totality of the facts and then decide whether the driver has exercised the standard of conduct which the law requires. The standard of care so  
10 required is that which a reasonable man would exercise in these circumstances and the degree of care will vary to the degree of the circumstances. In all the cases the question is whether the driver reasonably in all circumstances are foreseeing the possibility of a collision.”

Close quote. Next paragraph.

In the matter of *C Havers [spelt] Corporation v Duncan Dock Cold Storage* 2000(1) SA 827 (SE), it was held that:

“Whether what had been labelled as the relative theory of negligence (*articulated in Mukheibier [spelt] and another v Raath [spelt] and another 1993 (3) SA (1065) (SCA) at 1077 E to F*) or had been labelled the absolute or abstract theory of negligence (*articulated in Kruger V Coetzee 1966 (2) SA (428) at 30E-F*) was adopted. It should not be overlooked that artmaking the true criteria for

Determining negligence was whether in the particular circumstance the conduct complained of fell short of the standard of the reasonable person.

Further, that whichever formula were adopted there should always be a measure of flexibility to accommodate rather opening quote, “grey area” cases. The need for various limitations to the broadness of the incorrect where circumstances so demand had been long acknowledged. It has thus been recognized that while the precise or the exact manner in which harm had occurred would not have been foreseeable. The general manner of its occurrence the two have been reasonably foreseeable.”

Next paragraph.

- 15 There is only the value of the plaintiff as pointed here in above. The defendant did not call any witnesses to refute the value of the plaintiff. It was contended that the plaintiff failed to stop his vehicle at the moment
- 20 he was blinded by the sports and headlights of the other vehicle in that he was therefore negligent and the sole cause of the accident.

I do not agree with this proposition. It can hardly be expected of a driver in the situation as the plaintiff was in to apply their brakes to bring his vehicle to a sudden halt because that itself is a

dangerous manoeuvre which might result in the vehicle skidding or swerving into the path of the oncoming vehicle.

Besides, faced with a sudden emergency as the plaintiff was, prompt reaction is required even if it is a wrong decision, there is no negligence that can be attributed to him. His action of swerving to the left would only have been to avert a head-on collision and was therefore in my view reasonable. Next paragraph.

[16] I must hasten to refer to the matter of McIntosh v Premier ...  
[indistinct]

10 KwaZulu Natal and another, where it was held:

“As is apparent from the March [inaudible] of Holmes JA in Kruger v

Coetzee 1966 (2) Sa (42) A (430) E to F. The issue of negligence itself involves a twofold enquiry. The first is, was the harm reasonably foreseeable. The second is. Were the diligence part ...[inaudible] familiars take reasonable steps to gather against such occurrence and d, the defendant failed to take those steps. The answer to the second enquiry is frequently expressed in terms of a duty. The foreseeability requirement is more often than not assumed, and the enquiry is said to be simply whether the defendant had a duty to take one or another step, such as, perform some or other act, positive act and if so whether there is the failure on the part of the

Defendant to do so to amounted to a breach of their duty”

It was further held that:

“the crucial question, therefore, is the reasonableness or



otherwise of the respondent's conduct. This is the second leg of the negligence enquiry. General speaking the answer to the enquiry depends on the consideration of all the relevant circumstances and involves a value

- 10 judgment which is to be made by balancing various competent considerations including such factors as the degree or extent of the risk created by the actor's conduct. The gravity of possible consequences in the bearing of eliminating the risk of harm. See *Cape Metropolitan Council v Graham* 2001 (1) SA (1197) (SA) 7."

Next paragraph.

- [17] In my view, the plaintiff found himself in a sudden emergency situation which was created by the other driver who switched on his spotlights and headlights when he was already about 20 meters away from the
- 20 plaintiff headlights when he was already about 20 meters away from the plaintiff inside the curve. In my view, the conduct of the insured driver was unreasonable if not reckless.

He must have foreseen that by switching his spotlights as well the headlights to bright at that particular moment, did blind the driver of the oncoming vehicle, in this case, the plaintiff and this would result in a collision or the plaintiff being forced to swerve to his left off the road.

The insured driver in my view must have realized that the vehicle of the plaintiff veered off the road and overturned. He failed to stop to render assistance and provide his details. This on its own is indicative of a matter of guilt on his part. That is why he drove away. In this regards vide *McIntosh v Premier KwaZulu Natal* and another where the Court held that:

- 10 “The crucial question, therefore, is the reasonableness or otherwise of the respondent’s conduct. This is the second leg of the negligence enquiry. General speaking, the answer to the enquiry depends on a consideration of all the relevant circumstance and involves a value
- 20 judgment which is to be made by balancing various competent considerations including such factors as the degree or extent of the risk created by the actor’s conduct. The gravity of possible consequences and the value of eliminating the risk of harm.”

[18] Next paragraph

Insofar as it is contended that in the alternative there should be apportionment it needs mentioning that the defendant as the party who alleges that there was contributory

negligence on the part of the plaintiff, bore the onus of proving this.

There was no evidence by the defendant to discharge this onus. Vide Mobile ...[inaudible] Southern Africa Pty (Ltd) v Machin [spelt] 1965 (2) SA (706) (AD) 711 E to G, accordingly this contingency in my view must fail. Next paragraph.

[19] In the result, I find that the insured driver was the sole cause of the sudden emergency situation which confronted the plaintiff resulting in him eventually losing control of his vehicle and overturned.

[10] Consequently, I find that the defendant is 100 percent liable to provenor agreed upon damages for the plaintiff. Next paragraph.

[20] The injuries of the plaintiff which I have referred earlier were not disputed. The parties have agreed that for loss of future earnings an amount of R573 014.30 should be awarded. The court was

called upon to R300 000.00 for general damages would be fair and reasonable.

On the other hand, counsel for the plaintiff contends that an amount of

- 20 R450 000.00 to R500 000.00 will be fair and reasonable having regard for the period the plaintiff spent 8 days in hospital. He was, he spent 5 days in one hospital whereafter that would be the Williams Hospital wherefrom he was discharged and to recuperated at Mediclinic for 3 days. Next paragraphThe award of general damages is a solatium. There is no mathematical method to calculate the exact amount to be awarded but this is a matter falling within the discretion of the Court which will have regard to that extent and the severity of the injuries and try to balance the interest of both parties.

The Court is not necessarily bound by previous Court awards because each and every case is unique on its own and different from the other. Previous awards are mere guidelines but not cast in stone. In the

- 10 matter of *Sanlam*[?] quoted by ... [inaudible] CJ in the matter of *S v Road Accident Fund* (47763/2014) [2019ZAGPPHC109] (13 March 2019) in this division at paragraph 10 of the judgment she had this to say with regard to general damages the Court is *Sanlam* [?] *v WilsonSuppliers LCD 1941 (AD) Act 199* the Court stated that:

“The amount to be awarded as compensation can only be determined by the broadest general consideration and the figure arrived at must necessarily be uncertain depending on the judge’s view of what is fair in all the

I do not intend to deal with the issue of general damages in supplemented fashion depending on the specific heads of injuries sustained. I do bear the extent of the injuries in the excise of my discretion I am of the view that an amount of R450 000.00 will be fair and reasonable as general

Damages. In the result it is ordered that 1. The defendant pays plaintiff an amount of R1 023 014.30 within 14 days of this order.

2. that the defendant provides the plaintiff with an undertaking certificate in terms of section 17(4)(a) of Act 56 of 1996 to pay the loss of the future accommodation of the plaintiff in the hospital or nursing home or treatment or rendering of a service or supplying of goods to his other arising from injuries sustained by him in the collision which

10 occurred on 16 November 2011 or of other costs that have been incurred. Next paragraph.

The defendant shall pay the plaintiff taxed or agreed party and party costs in the High Court scale to date subjected thereto that such costs shall include the costs, of the plaintiff's counsel, the costs and reservation costs where applicable of the plaintiff's experts and the actuary, the reasonable costs incurred by and on behalf of the plaintiff and as well as the costs consequent to the attorneys, the medical examination of both parties if applicable.

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**MAVUNDLA. J**

**JUDGE OF THE HIGH COURT**

**DATE: 2021/06/10**