REPUBLIC OF SOUTH AFRICA

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

Case No: 1408/2017

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: YES / NO.
(2) OF INTEREST TO OTHER JUDGES: YES / NO.
(3) REVISED.

DATE: 28 October 2021

SIGNATURE

In the Matter between:

Quinell Maarman Plaintiff

And

The Road Accident Fund Defendant

JUDGMENT

Maumela J.

1. In this case the Plaintiff is Quinell Maarman, an adult male who is 27 years of age. The Defendant is the Road Accident Fund, a statutory body, with legal capacity, established in terms of Section 2 (1) of the

Road Accident Act 1996: (Ac No 56 of 2996), 'the Act'. Its registered address is at No 38, Ida Street, Menlopark, Pretoria in Gauteng Province; South Africa.

2. In terms of the provisions of the Act, the Defendant is liable to compensate the Plaintiff in respect of Plaintiff's proven or agreed damages arising from the accident. Plaintiff's cause of action arose from bodily injuries which he sustained in the motor vehicle collision which allegedly happened as indicated above. The matter is defended.

BACKGROUND.

3. The plaintiff was a pedestrian on the 30th of June 2013, when the insured vehicle with registration number BYD 551 NC, driven at the time by a Mr Seekoei, knocked him. The incident occurred at approximately 18h00 at an intersection in Douglas, Northern Cape. The intersection was at a T-junction between Bouwker Street and a street the name of which was not determined. The plaintiff was crossing the road at a stop sign which the traffic travelling along the road had to obey. Plaintiff stated that the insured vehicle approached the place where he was crossing from his right-hand side. At that timing, the insured vehicle collided with him on his right.

4. The appellant sustained severe injuries. The parties agreed to separate the issues of liability and quantum and to postpone the quantum *sine die*. The Defendant denies liability for the accident in which the Plaintiff sustained the injuries he alleges. The Defendant therefore puts the Plaintiff to the proof of the negligence alleged against the "insured driver". In these proceedings, the plaintiff stands substituted by his (*curatrix ad litem*). The plaintiff gave evidence at the trial where after he closed his case. The defendant closed its case without leading any evidence. The court is only required to make a finding on whether the insured driver was negligent or not.

5. The **first** witness to testify for the plaintiff was **Quinell Maarman**. Under oath, he testified that he is the Plaintiff. He confirmed that his claim arises from a motor vehicle accident. It is common cause that the accident occurred on the 30th of June 2013, at around 18h00. It was dark at the time and he was in the company on a friend called

Vigil Salmon.

6. He said that he and his friend were walking in Douglas, a Town in the Northern Cape. At that town, his home is in Breipwaal, at Buiker Street. He was walking on the right hand side of the road. He confirmed that Photo number 3 shows the intersection; a T/Junction where he was walking. He stated that he stood near a stop sign at the junction. The road is tarred at that place.

7. He testified that while he stood there, a bakkie approached from his right hand side, moving at a slow pace with its lights on. Because the bakkie approached slowly, he thought it would stop in compliance with the stop-sign. As a result, he crossed the road. His intention was to cross over to the shops on the right side. He testified that at that place, there are no white demarcation lines on the road. He stated that there was nothing on or near the road obscuring the view of the driver of the bakkie. As he crossed the left lane, the bakkie hit or collided with him. According to him, the bakkie should have stopped in compliance with the stop sign. He stated that he lay on the other side of the road. His friend Vigil came to his assistance.

8. Plaintiff testified that he sustained bodily injuries as a result of being collided against by the insured vehicle. The Defendant did not lead evidence. It submitted that in the event where the court finds negligence on the part of the insured driver, it should consider determining the amount of contributory negligence on the part of the plaintiff.

EVALUATION.

9. The court has to determine whether the Plaintiff has successfully proven a case against the Defendant. In argument, the Defendant urges that in the event where the court finds that there was negligence on the part of the Insured Driver, it, (the court), should also find that there was contributory negligence on the part of the Plaintiff.

10. The Plaintiff stated that he stood at the stop sign before commencing to cross the road. That is the time at which he observed the insured vehicle. He then crossed the road at the stop sign. According to him, he had crossed most of the lane in which the vehicle was travelling,

when the vehicle collided with him on the right. He said that his friend; who accompanied him, had already crossed before him and was waiting for him from the other side of the road. He said that his assumption was that the vehicle would stop, as it was travelling slowly and there was nothing to alert him to the fact that the driver would no obey the stop sign.

11. The Plaintiff testified that the road that he crossed was a narrow tar road, with two lanes for vehicles travelling in opposite directions. He said that the road markings were very faded and were not clear to the eye. He said that the road was dry. Under cross-examination the plaintiff confirmed that he knows the area and the road. Plaintiff said that the road is not particularly busy where the accident took place. There are streetlights in the area and one could see one's surroundings. The area is built-up area with houses. He stated that there were trees in the vicinity overhanging on the pavements, but not on the side from which the insured driver approached. He contended that the vision of the insured driver was not obscured by any obstacles.

12. The plaintiff referred to photographs of the scene handed in and marked bundle "B" and pointed out on them where he was standing before the collision, the direction from which the insured vehicle approached and where the point of impact was. He was referred to a translation of a statement which was apparently made by him. The statement does not make mention of the fact that he saw the vehicle approaching slowly. The statement was not identified by the defendant's counsel as such and confirmation was not sought from the plaintiff that it was his statement; or how the statement came about. The statement accordingly does not form part of the evidence before the court.

13. The Plaintiff testified that when he saw the insured vehicle driving towards the crossroads at a notably reduced speed, and noting that there was nothing to obscure the driver's, and indeed the view of everyone else, he assumed that the insured vehicle would stop in obeisance of the stop-sign. He made the point that the view of the stop-sign was unobscured and was therefore clearly visible. The plaintiff was able to give a step-by-step account on how the insured vehicle approached the cross and how upon failing to stop, it collided

against him. On the basis of his observation which was not disputed; that the insured vehicle approached the cross at a notably slow pace, the court finds that the Plaintiff kept a proper look-out while crossing the road.

14. The plaintiff disputed the suggestion that he assumed that there were no vehicles in view of the fact that the road as known by him is often not busy. He denied that he crossed the road without taking notice of whether there was any oncoming traffic. He re-iterated that he noticed the insured motor vehicle approaching slowly. Because it was moving notably slowly, he assumed that it would stop in compliance of the stop sign.

15. It is trite that the plaintiff bears the onus to prove on a balance of probabilities that the collision was caused by the negligence of the insured driver. In this case the plaintiff submits that on the available evidence, the plaintiff discharged this onus and has proven on a balance of probabilities that the collision was caused by the sole negligence of the insured driver. He charges that the insured driver failed to abide by the traffic signs in that he failed to stop at the intersection as he was obliged to do. In the case of Willmers v Cape Provincial Administration[1], the court stated that the defendant has failed to establish that the speed at which the plaintiff was travelling was excessive and it was not established that the plaintiff failed to keep a proper look-out.

16. In this case, the defendant failed to establish any negligence on the side of the plaintiff as set out in its plea. There can be no other inference drawn from the evidence before court, but that the insured driver failed to stop at the stop sign. There is no other explanation of how the collision occurred before the court.

17. In deducing that a vehicle approaching a stop-sign at notably slow pace is doing so because the driver noticed the stop-sign and that the vehicle shall stop in obeisance of the stop sign, the plaintiff did not act contrary to how a reasonable man using a public road would be expected to act.

[1]. 1992 (1) SA 310 (E) at 316 D – F.

18. The court should apply the maxim '*res ipsa loquitur'* in view of the absence of any other explanation concerning how the collision occurred. This prima facie inference of negligence converts into proof of negligence in view of the absence of any explanation by the defendant, and taking into account the plaintiff's version of events.

19. The plaintiff disputed the suggestion that he assumed that there were no vehicles in view of the fact that the road as known by him is often not busy. He denied that he crossed the road without taking notice of whether there was any oncoming traffic. He re-iterated that he noticed the insured motor vehicle approaching slowly. Because it was moving notably slowly, he assumed that it would stop in compliance of the stop sign.

20. It is trite that the plaintiff bears the onus to prove on a balance of probabilities that the collision was caused by the negligence of the insured driver. In this case the plaintiff submits that on the available evidence, the plaintiff discharged this onus and has proven on a balance of probabilities that the collision was caused by the sole negligence of the insured driver. He charges that the insured driver failed to abide by the traffic signs in that he failed to stop at the intersection as he was obliged to do. In the case of Willmers v Cape Provincial Administration[2], the court stated that the defendant has failed to establish that the speed at which the plaintiff was travelling was excessive and it was not established that the plaintiff failed to keep a proper look-out.

21. In this case, the defendant failed to establish any negligence on the side of the plaintiff as set out in its plea. There can be no other inference drawn from the evidence before court, but that the insured driver failed to stop at the stop sign. There is no other explanation of how the collision occurred before the court. The court should apply the maxim '*res ipsa loquitur'* in view of the absence of any other explanation concerning how the collision occurred. This prima facie inference of negligence converts into proof of negligence in view of the absence of any explanation by the defendant, and taking into account the plaintiff's version of events.

[2]. 1992 (1) SA 310 (E) at 316 D – F.

22. In the case of *Kruger v Coetzee*[3], concerning negligence, the court stated the following: *"For the purposes of liability, culpa arises if-*
(a). a diligens paterfamilias, in the position of the defendant;
(i). would foresee the reasonable possibility of his conduct injuring another in his person or property and causing him patrimonial loss and
(ii). would take reasonable steps to guard against such occurrence; and
(b). the defendant failed to take such steps."

23. It was incumbent upon the insured driver at the time he approached the cross to obey the stop-sign and to look out for other road users, including pedestrians like the plaintiff. There was nothing hindering the insured driver's view. The defendant did not lead evidence and no version was put to the plaintiff under cross-examination.

24. The enquiry in the present matter to establish contributory negligence is whether it was opportune and safe for the plaintiff to attempt to cross the road at the particular moment at which he attempted to. This will depend upon whether the *diligens paterfamilias* in the position of the plaintiff would have made such an assumption; see Boots Company (Pty) Ltd v Somerset West Municipality[4] where the court discussed the test in the context of a vehicle making a right-hand turn.

25. The defendant's counsel argued that the plaintiff was contributory negligent in that he was wearing grey clothes and was accordingly not easily visible after dark. This is based on the statutory statement by the plaintiff and was never put to the plaintiff in cross-examination. As was previously pointed out, the statement was never identified as that of the plaintiff, and the contents thereof with regards to the colour of his clothing was not put to the plaintiff. The submission is that there are many shades of grey, even if it is accepted that the plaintiff was clothed in grey clothing at the time, and it does not constitute evidence that the plaintiff was not visible. The plaintiff's direct evidence was that there were streetlights in the vicinity.

26. The court finds that the plaintiff acted reasonably when he assumed that the insured vehicle, which was approaching at a notably slow

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[3]. 1966 (2) SA 428 (AD) at page 430.
[4]. 1990 (3) SA 216 (C) at 224 F to G and 226 H to I.

pace would stop. Counsel for the defendant conceded this in argument. The court finds that where a vehicle approaches a stop sign whilst slowing down it is reasonable for anyone to deduce that its driver is doing so with the intention to stop. This being the case, the court finds that it was reasonable for the plaintiff to assume that the approaching vehicle would stop and that it was safe for him to cross the road.

27. Counsel for the defendant also argued that the court was faced with two versions. However, in doing so, she relied on and referred to a version contained in a statement which does not form part of the evidence obtaining in this case. She relied on a version which the plaintiff advanced his oral evidence. Even if that statement were to be accepted by the court, it is not in conflict with the plaintiff's oral evidence. Defendant's counsel argued that the statement makes no mention of the plaintiff observing the insured vehicle approaching the intersection slowly. The defendant's counsel did not cross-examine the plaintiff on this aspect. As such, she failed to put it to the plaintiff that he did not notice the insured vehicle approaching as he stated in his oral evidence.

28. From the evidence outlined above, the defendant failed to prove that there was contributory negligence on the part of the plaintiff which contributed in causing the insured vehicle to collide or to knock the plaintiff down. The court finds that the plaintiff has discharged the onus to show on a balance of probabilities that the collision was caused by the negligence of the insured driver. In the case of *Willmers v Cape Provincial Administration* [5], the court stated that the defendant has failed to establish that the speed at which the plaintiff was travelling was excessive, nor was it established that the plaintiff failed to keep a proper look-out, as was relied upon in its plea.

29. The defendant did not lead evidence. Consequently, it failed to establish any negligence on the side of the plaintiff as set out in its plea. There is no evidence before court therefore on which an apportionment of negligence can be ordered. The court only has the plaintiff's evidence on the basis of which to arrive at a decision. Considering the evidence at hand, the court finds that the insured

[5]. 1992 (1) SA 310 (E) at 316 D – F.

driver contributed 100% to the accident in which the plaintiff was knocked down by the insured vehicle. In the result, the following order is made:

ORDER.

29.1. In terms of Rule 33 (1), the merits and quantum of Plaintiff's claim are separated for trial purposes.
29.2. The Defendant is ordered to pay to Plaintiff 100% of Plaintiff's proven or agreed damages.
29.3. The quantum of Plaintiff's claim is postponed *sine die*.
29.4. The Defendant is ordered to pay to the Plaintiff's attorney and correspondent's agreed party and party costs on a High Court scale, which costs include, but will not be limited to the following:
    29.4.1. The full fees of Plaintiff's counsel or junior scale in respect of preparation, consultations, pre-trial conference, heads of argument and a day for 5 August 2019;
    29.4.2. The costs of holding all pre-trial conferences between the legal representatives for both the Plaintiff and the Defendant and the cost of and consequent to compiling all minutes in respect all minutes in respect of such pre-trial conference;
    29.4.3. The costs of plaintiff's attorney with the right of appearance in the High Court to prepare for and to attend the Judicial Management Meeting held on 14 June 2019 as directed by court.
    29.4.4. The reasonable taxable costs of one consultation with the client in order to consider the offer made by the Defendant.
    29.4.5. The reasonable costs of travel and accommodation of Plaintiff and Plaintiff's eye witness, Virgil Salmon, in order to attend the consultation and trial;
    29.4.6. The costs consequent to all of the Plaintiff's trial bundles in respect of merits, pleadings and notices, all indexes, documents bundles, including the costs of 6 (six) full copies thereof.
    29.4.7. The total costs of Plaintiff's assessor in respect of an investigation into the merits of the matter which include

an inspection in loco, taking of photographs and obtaining of all relevant documentation;

29.4.8. The costs of Plaintiff's interpreter.

29.4.9. The costs payable by the Defendant to the Plaintiff shall be deposited into Plaintiff's attorney of record as follows:

Account Holder : Scott Els Attorneys Inc.
Bank : Nedbank.
Type of Account : Trust Account.
Account Number :[….].
Branch Code : 146-905.
Reference : Scott/LS037.

29.4.10. Plaintiff is ordered to serve the Notice of Taxation of Plaintiff's party and party bill of costs on the Defendant's attorneys of record.

29.4.11. The Defendant is ordered to pay the Plaintiff's taxed 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.

29.5. Should the Defendant fail to pay the party and party costs within 14 (fourteen) days after service of the taxed accounts on the Defendant's attorney of record, Defendant will be liable for interests on the amount due to the Plaintiff at a rate of 10.25% per annum as from the date of taxation to date of final payment.

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T.A. Maumela.
Judge of the High Court of South Africa.