



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

Case number:6618/17

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: YES

17 JANUARY 2022

.....
SIGNATURE

.....
DATE

WILLIAM MUSAWENKOSI SELOWE

PLAINTIFF

And

THE ROAD ACCIDENT FUND

DEFENDANT

Delivered: this judgment was prepared and authored by the judge whose name is reflected herein and is handed down electronically and by circulation to the parties/their legal representatives by email and by uploading it to the electronic file of on Caselines.

JUDGMENT

LESO AJ

INTRODUCTION

[1] Plaintiff instituted a claim of damages against Defendant as a result of a motor vehicle collision that occurred between the vehicle which was driven by the plaintiff with the registration number DCM747-MP and the insured driver at R40, Bushbuckridge on 06 February 2006.

BACKGROUND

- [2] The application to struck out the Road Accident Fund defence in terms of Rule 30A and in terms of the court order granted by Ledwaba DJP on 13 July 2021 was granted and the matter proceeded on a default basis.

ISSUES IN DISPUTE

- [3] The merits and quantum are in dispute however the matter was set down to proceed on merits only. Consequently, the issue to be determined is whether the collision which occurred on 06 February 2006 was caused by the negligence of the insured driver.

EVIDENCE ON THE MERITS

- [4] In the plaintiff's particulars of claim the plaintiff claims that on 6 February 2015 at approximately 02h00 in the early morning on R40 Bushbuckridge/Mariti road Bushbuckridge, a collision occurred between a silver Corsa utility vehicle with registration number DCM747MP being a motor vehicle driven by the plaintiff and the motor vehicle driven by an unknown driver. The plaintiff claims that the collision was caused by the negligence of the insured driver because of the following reasons:
- a) He/she failed to keep a proper lookout;
 - b) He/she failed to exercise proper or effective control over the vehicle that he/she driving;
 - c) He/she knowingly drove a vehicle that was not roadworthy;
 - d) He/she failed to avoid collision when by exercising reasonable care he /she could have or should have done so.
- [5] Plaintiff claims that he was driving from home going work while passing the Bushbuckridge Nature Reserve the plaintiff noticed there was a vehicle approaching from the opposite direction. Plaintiff claims that the road was curved and the visibility was hampered by mist as he noticed that the insured driver was driving in his lane of travel. He claims that he tried to avoid a head-on collision with the other vehicle by swerving to the left and he lost control and overturned before his motor vehicle came to a standstill

on the left side of the road. The plaintiff claims that the other driver did not stop at the scene.

- [6] On 06 February 2015 a case of reckless and negligent driving at the Bushbuckridge police station under case number 44/02/2015 wherein the plaintiff made a statement. On 06 February 2015. Ricardo Manzini who reported to be a constable at Bushbuckridge made a statement and confirmed that he attended a scene on the date and place as indicated by the plaintiff in his particulars. He confirmed that he found that the plaintiff's vehicle had been overturned. I do not wish to rehash the plaintiff and the witness statements save to state all the evidence before me has been analysed to determine whether the plaintiff's claim is valid

THE LAW

- [7] Section 17(1)(b) read with regulation 2(1)(b) of regulations 2008 promulgated in terms of the Road accident Fund Act, No. 56 of 1996 as amended provides that the defendant is liable to pay compensation to a third party for damages arising out of the negligent driving of a motor vehicle where the identity of the owner was not established.
- [8] The applicable legislation dealing with the merits is Regulation 299(3) of the National Road Traffic Act 93 of 1996 which provides that . . . 'where the road is divided into lanes a driver may not turn from one lane into another or across another lane unless he can do so without endangering or obstructing other traffic'.
- [9] In the *H.B. Klopper, Law of Collision in SA 7th Edition*, pg 73 the author states that If there is irrefutable proof of a collision on the incorrect side of the road, such collision constitutes prima facie negligence on the part of the driver who was found to be on his incorrect side of the road at the time of the collision.

EVALUATION OF EVIDENCE

- [10] In the heads of argument, the plaintiff's counsel argued that the court must determine the issue of contributory negligence. I do not agree with the counsel's submission purely for the reason that there is no defense before me. My finding is based on the application of the maxim *res ipsa loquitur*, meaning, the court can infer negligence from the very nature of an accident or injury in the absence of direct evidence on how any defendant behaved.
- [11] The evidence in the form of the accident report, 19F affidavit, police statement and the plaintiff's particulars of claim contains consistent and corroborating statements relating to the facts upon which the plaintiff relies to prove his claim. In the absence of evidence to the contrary, it must follow that the collision was caused by the negligence of the insured driver who drove in the incorrect lane of travel.

CONCLUSION

- [12] I am satisfied that the plaintiff has made a prima facie case that the defendant was negligent by committing the following:
- a) He travelled in the incorrect lane of travel;
 - b) He failed to keep a proper lookout;
 - c) He failed to avoid a collision by not exercising reasonable care and proper consideration of the duties of a driver in the same position;
- [13] The evidence before me justify the plaintiff's claim that the defendant is solely liable for the accident that occurred on 15 February 2006.

ACCORDINGLY, I MAKE THE FOLLOWING ORDER:

- 1] The defendant is 100% liable for the plaintiff proven or agreed damages.
- 2] The Defendant is ordered to pay the Plaintiff's taxed or agreed party and party costs on the High Court scale, subject to the discretion of the taxing master, which costs shall include the costs of counsel.

3] The quantum is postponed sine die.



JT LESO
Acting Judge of the High Court

Date of Hearing: 19 August 2021
Judgment Delivered: 17 January 2022
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