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

CASE NUMBER: 80635/2019

REPORTABLE:NO

OF INTEREST TO OTHER JUDGES:NO

REVISED: NO

19/01/2023

In the matter between:

BEN RAMPETE RAMOKHELE

PLAINTIFF

AND

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

LE GRANGE AJ:

[1] Before me is a claim for damages resulting from a motor vehicle accident.

[2] The matter came before me on 16 January 2023 and was rolled over to the next day to provide the parties an opportunity to consider settlement and/or to limit the issues.

[3] On 17 January 2023, as no settlement could be reached, the following emerged after my enquiry as to the readiness of the parties to proceed with the trial:

(a) Both counsel confirmed that only the merits are to be adjudicated as quantum has been settled.

(b) Both counsel confirmed that the only remaining issue to be decided (pertaining to merits) was the question of negligence and contributory negligence (if any).

(b) Counsel for the defendant confirmed that nothing came from the defendant's investigation (or rather intended investigation) into the accident, and possible consequential amendment (as indicated in the pre-trial minutes dated 14 December 2022).

(c) Counsel for the defendant confirmed that he had received, read and considered the plaintiff's (recently delivered) supplementary- and witness statements; and

(d) Both parties are ready to proceed with the trial.

[4] Both counsel then indicated that they are willing and able to proceed (not leading oral evidence but) on the papers before me, myself being in doubt, I listened to brief oral submissions, based upon:

(a) The accident report (dated 13 April 2018);

(b) The plaintiff's initial statement of events (dated 17 January 2019);

(c) The plaintiff's supplementary statement of events (11 January 2023);
and

(d) The plaintiff's witness' statement of events (dated 16 January 2023)

[5] At this stage, both counsel agreed that the plaintiff's initial statement, read with the accident report leave questions as to the real cause of the accident (both documents in itself not textbook examples of 'how to do it'), the relevant portions of which reads:

The accident report of 13 April 2018:

"Its alleged both driver A (the plaintiff) was driving from west to east direction & driver B (in a "Daihatsu" with registration number: [...]) was coming west to east direction then driver A was trying to overtake the truck that was already turning right to enter into the Kingsley Depot then he collided with an oncoming vehicle and (5) five people sustained injuries.

The plaintiff's statement of 17 January 2019 reads:

"I was driving in Klipriver. A truck ("truck") was driving in front of me the truck look as if it wanted to turn into the gate and then suddenly decided to not to turn right but turned left I swerved out of the way to avoid a head-on collision but lost control of my car and collided with the gate."

[6] From the above documents (compiled around the date of the collision), two inconsistent possibilities could be found:

(a) The truck drove in front of the plaintiff (on the same lane), its sudden un-signalled 'left-turn' into Kingsley Depot, causing the plaintiff (in avoidance of colliding into its back) to overtake the truck on its right, but only to collide with the oncoming Daihatsu; or

(b) The truck approached the plaintiff (oncoming lane), its sudden un-signalled 'right cross-turn' into Kingsley Depot, causing the plaintiff (in avoidance of colliding into its left side) to swerve to the right, but only to collide with the oncoming Daihatsu.

[7] I do not find it strange that the plaintiff then deemed it necessary to clarify the issues, by filing further statements of the event, i.e. the plaintiff's (recent) supplementary- and witness statements.

[8] Considering the further statements also, counsel for the plaintiff (Adv Louw) in conclusion submitted that the cause of action is now clear, the plaintiff not being negligent at all, is entitled to a 100% of his claim.

[9] Counsel for the defendant (Adv Sekgotha) in conclusion, admitting to the negligence of the insured driver, however sought apportionment of 30%, based upon the inconsistencies in the statements read with the accident report. No reason could be tendered by Adv Sekgotha of how the 30% was determined.

[10] Although no reference was made (in argument at this stage) to the particulars of claim, and averments therein (dated 6 May 2019), it needs mentioning that the plaintiff avers (therein) that the accident (being a collision between the plaintiff's vehicle and a Daihatsu) was caused by the sole negligence of the (driver of the) Daihatsu, no mentioning being made of the/a truck.

[11] For reason of the above inconsistencies, I requested that oral evidence be led.

[12] On 18 January 2023, I heard the testimony of the plaintiff, Mr Ramokhele, a 50 year old black male who struggled to express himself in English (his hands all-over), especially when he was confronted with information on documentation, but nonetheless left a good impression on the Court. He's evidence seemed bluntly truthful and to the point, which was in essence (*put in chronological order by myself*), regarding the accident specifically, the following:

- He was in an accident in 2018, the exact date which he can't remember nor immediately extract from the accident report when shown to him.
- He drove on the R550, a single road lane, from Heidelberg to Kliprivier at a speed of between 80 and 100 km/h.
- There was no car or truck driving in front of him.
- When he reached the Kingsley Depot which was on his lefthand side, and a seemingly farmgate on the right hand side, a truck and trailer approached from the front in the opposite lane, and without any signal or

indication thereto, suddenly, cross-turned right in front of the him, into the Depot.

- To avoid colliding into the side of the trailer of the truck he swerved to his right and went off the road.
- This is where he collided head-on with the Daihatsu.
- This Daihatsu was travelling behind the truck and overtook it on its left side, when the truck suddenly cross-turned right into the Depot.
- The plaintiff further indicated that he had no option but to swerve to his right, as he was too close to brake and swerving left would cause a collision into the truck itself.

[13] Cross examination was mostly spent on pointing out the (previously discussed above mentioned) inconsistencies. No alternate version was put to the plaintiff nor was the version of the plaintiff, in this oral testimony, rejected as false or not probable.

[14] During cross examination, the plaintiff was (further) referred to the fact that the averment (contained in the particulars of claim), that the Daihatsu was the sole cause of the accident; and that the truck, never being mentioned, now seems to be the sole cause of the accident according to his evidence.

[15] I did not find it strange that the plaintiff had no idea of what an averment or particulars of claim was and why it said what it did.

[16] The plaintiff's simple answer to this was that the truck and the Daihatsu drivers was both negligent.

[17] At this stage of the proceedings the plaintiff's counsel applied (from the bar) to have the particulars of claim amended, to (not replace but) include the truckdriver's negligence as being the cause of the accident.

[18] The application for amendment was opposed on the basis that:

- (a) It constitute a new cause of action; and
- (b) the defendant is being prejudiced as it is not afforded the opportunity to investigate the roll of the truck and its driver, who would (admittingly by counsel for the defendant) also be regarded (in law for purposes of a claim against the defendant), as an insured driver.

[19] The application was granted for the following reasons:

(a) The law is clear: particulars of claim has as purpose, i.e. to ventilate the issues in order for the parties to come to court knowing what to meet (investigation and preparation having been done) so that a party is not ambushed with some or other unforeseeable fact or possibility.

(b) Referring to the matter of ***Pithey v Road Accident Fund 2014 (4) SA 112 (SCA)***:-The defendant had knowledge of the alleged part that the truck played, from the plaintiff's initial statement and the accident report (as quoted above. See my emphasis) and later the more recent supplementary- and witness statements, and notwithstanding decided to proceed with trial. The defendant knowingly waived the opportunity to (initiate or further) investigate the accident, with all the knowledge at hand, i.e. the truck and its role in the accident. I reiterate, I specifically enquired from the defendant's counsel regarding the intended investigation into the accident, to know if the defendant is ready to proceed or whether the matter should rather be postponed, which I was informed, came to naught.

(c) The defendant's counsel at no stage of the proceedings objected to any testimony of the truck being led and the, allegedly negligent, (sudden emergency) roll it played in the collision.

(c) The issue of, and the part which, the truck and the Daihatsu played was well ventilated in the evidence and was never challenged.

(d) In the premises, I found it to be in the interest of justice to grant the application.

[20] No application for a postponement was then made by the defendant.

[21] After due considerations of the evidence before me together with the arguments made, I find as follows:

As to the plaintiff:

[22] I find that he found himself, in a sudden confrontation of imminent danger, not of his own doing, when the oncoming truck cross-turned right in front of him and into the Kingsley Depot.

[23] I cannot find the plaintiff's actions being negligent in what followed, i.e. him swerving to the right to avoid a collision with this cross-turning truck, and thereby leaving the road surface.

As to the truck driver:

[24] I find his/her actions to be negligent in that it made an inherently hazardous manoeuvre (similar to the cases Adv Louw referred me to) while he/she failed to take the necessary care before doing so.

As to the driver of the Daihatsu:

[25] I find his actions to be negligent in that he overtook (or swerved by/around) the truck on its lefthand side and off the road.

[26] This manoeuvre could only have emanated from a negligent act, i.e. When faced with the imminent sudden danger of the cross-turning truck, travelling in front of him, he was either not looking out, or driving too fast, or too close to the truck, to stop – which caused him to swerve around the danger in front of him; or he was simply blatantly disregarding road regulations by overtaking the truck on its left side, on the gravel.

In the result, the draft order marked “X” is made an order of court.

LE GRANGE

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

APPEARANCES

For the Plaintiff: Adv. Louw on the instruction of Brits & Beukes Inc.

Attorneys: Miss K Clark

For the Defendant: Adv. Sekgota

RAF Claims Officer: Thembisile Ntsele