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REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
(MPUMALANGA DIVISION, MBOMBELA)**

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

18/05/2021

.....
SIGNATURE

.....
DATE

CASE NO: 3367/2018

In the matter between:

SHERIFF NGOBE

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

J U D G M E N T

MASHILE J:

- [1] On 30 April 2016, the Plaintiff sustained personal injuries while driving motor vehicle bearing registration letters and number [...]. He was driving on R40, the road between Mbombela and Barberton, into the direction of Barberton when an unknown motor vehicle (“insured vehicle”) driven by an unknown driver, travelling into the opposite direction, suddenly turned onto the lane of oncoming traffic forcing the Plaintiff to swerve to the right to avoid a head-on collision. While in the process of doing so, his vehicle collided with a barrier on the right-hand side, lost control and overturned causing him injuries for which he is now pursuing compensation.
- [2] Believing that the collision was due to the negligent driving of the insured driver and that in terms of the Road Accident Fund Act 56 of 1996, the Defendant would be exposed to liability to compensate him, he instituted these proceedings seeking relief as per his particulars of claim. The action is not opposed by the Defendant. That said, the Plaintiff still had to allege and prove his claim notwithstanding that the claim was not opposed. Prior to the commencement of proceedings, Counsel for the Plaintiff applied to Court to have merits and quantum separated as contemplated in Uniform Rule of Court 33(4). The Court considered the matter. Noting that it would be convenient and cost effective to treat the two issues discretely, the Court granted the application.
- [3] The Plaintiff was the only witness who testified in support of his own case. He stated that he had driven pass Hilltop and was descending towards Barberton. He noticed a vehicle whose registration letters and number he could not record driven by an unknown person, suddenly move onto his path of travel. To avoid a head-on collision with the insured vehicle, he applied brakes and swerved to his right-hand side where his vehicle collided with a barrier, lost control and overturned.

- [4] He told the Court that he did not know why the driver of the insured vehicle decided to swerve to the lane of oncoming traffic especially in circumstances where there was no vehicle that he was overtaking. He conceded that it was possibly as a result of shock of seeing a vehicle suddenly entering his path of travel that he swerved to the far right-hand side where his vehicle hit the barrier. He said that had it not been for that sudden jolt, he would not have swerved that far but could have swerved just enough to avoid a head-on collision especially because there was no oncoming vehicle on the opposite lane.
- [5] He added that he could not have directed his vehicle to his left-hand side because there was an embankment. As such swerving into that direction would have been more dangerous. Insofar as he was concerned, he could not have taken any other measures than those on which he embarked to avoid the collision. Following the collision, he observed the presence of police officers at the scene of the collision. Probably appreciating that he was badly injured, the police officers did not say anything to him at the time. On his release from hospital though, they visited him at home to obtain a statement. His testimony was not challenged as the Defendant was not opposing and the Court had no other version. The Plaintiff then closed his case.
- [6] The issues to be decided are firstly, whether or not the unknown driver of the unidentified motor vehicle was negligent. Secondly and if so, were there any steps that the Plaintiff could have taken to avoid the collision happening? To resolve these two issues I now turn to the legal guiding principles below.
- [7] Counsel for the Plaintiff has referred this Court to what she believes is pertinent authority on the subject. In the case of *Sedumemanyatela v Road Accident Fund (65678/2012) (2014) ZAGPPHC 445 (30 MAY 2014)*, it was stated that even when an approaching vehicle is on its incorrect side of the road, a driver on his correct side may assume that the former will return timeously to its correct side. But this assumption does not entitle a driver on the correct side of the road to remain

passive in the face of threatening danger. As soon as the danger of the collision becomes evident he is under a duty to take reasonable steps to avert one.

- [8] Every driver has a duty to be alert and keep a proper lookout on the road at all times in order to avoid collisions happening. Thus, in *Road Accident Fund v Grobler* (96/06) ZASCA 78; (2007] SCA 78 (RSA); **2007 (6) SA 230 (SCA) (31 May 2007)**, it was held that in a sudden emergency situation, the proper approach is not to confine the inquiry into the negligence to the conduct of the driver from the moment they became embroiled in an emergency. The inquiry must extend to cover what steps a driver took to avoid the impending emergency. If a driver had an opportunity to take measures ahead of the emergency to avoid the accident, and he failed to do what a reasonable person in similar circumstances would have done, then he /or she would have been negligent.
- [9] Finally, in *Ntsala and others v Mutual and Federal Insurance Co Ltd* the Court held that: Where a driver of a vehicle suddenly finds himself in a situation of imminent danger, not of his own doing, and reacts thereto and possibly takes the wrong option, it cannot be said that he is negligent unless it can be shown that no reasonable man would so have acted. It must be remembered that with a sudden confrontation of danger a driver only has a split-second or a second to consider the pros and cons before he acts and surely cannot be blamed for exercising the option which resulted in a collision.
- [10] An analysis of the factual background, the issues involved and a consideration of the applicable law should not detain this Court for long. It must always be borne in mind that the evidence of the Plaintiff was not contested. As such, the Court has no different version from his. Ordinarily, it is expected that drivers would keep to their lanes when driving. Without any cause, it would appear, the driver of the unidentified motor vehicle went onto the lane of oncoming traffic. The only time a driver is allowed to do so, is when overtaking. That is, however, conditional upon it being safe to execute such a maneuver.

- [11] From the facts, it is clear that the driver of the insured vehicle was not overtaking another but he was still driving on the wrong side of the road. That leaves this Court baffled. Even if he was passing another vehicle, it would not have been the safest place to carry out such an exercise especially when another vehicle was approaching from the opposite end. In my opinion, the driver of the unknown motor vehicle was negligent by swerving over to the lane of travel of oncoming motor vehicles.
- [12] Turning then to the question whether or not the Plaintiff could have avoided the collision. In the manner circumstances unfolded shortly before the collision, the Plaintiff was faced with a situation where he had to make sudden decisions and all in a split of a second. Ordinarily, a driver does not anticipate another to drive on the lane of oncoming traffic especially when there is another vehicle approaching from the opposite direction. The Plaintiff's shock when seeing the insured vehicle in his lane is therefore perfectly understandable.
- [13] Since the action of the driver of the insured vehicle happened so swiftly, it would have been suicidal for the Plaintiff to assume that the driver of the insured vehicle would swerve back to his lane. He had to take measures to avoid the collision then and there. In the circumstances and placing him in the position of a reasonable driver, I conclude that the situation was such that he had to swerve to the right-hand side of the road to avoid a head-on collision. This is no different to the situation describe in the Sedumemanyathela case *supra*.
- [14] Similarly, when considering the question whether or not the Plaintiff could have swerved just enough not to hit the barrier on the right-hand side of the road, one must do so as a reasonable man placed in the position of the Plaintiff who found himself confronted with that situation of sudden emergency. The shock that he experienced might have exacerbated his reaction. The question is, can he be blamed for such an act? In my opinion no. This should be in line with what the

Court held in Ntsala *supra*. He could not have swerved to the left-hand side because there was an embankment and driving ahead would have meant a head-on collision with the insured driver. As such, the only way out for him was swerving to the right-hand side.

[15] In the circumstances, I am satisfied that the Plaintiff has on a balance of probabilities established that the driver of the unidentified motor vehicle was negligent by driving on the lane of oncoming traffic. The Plaintiff could not have taken any other steps than those he took to avoid a head-on collision. The Defendant is held liable for 100% of the collision happening. I make an order in the following terms:

1. The Defendant is liable for 100% of damages that the Plaintiff may prove;
and
2. The Defendant is directed to pay the costs of the Plaintiff.

B A MASHILE
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MBOMBELA

This judgment was handed down electronically by circulation to the parties and/or parties' representatives by email. The date and time for hand-down is deemed to be 18 May 2021 at 10:00.

APPEARANCES:

Counsel for the Plaintiff:

Instructed by:

Ms L Ramarumo

Thobela Attorneys

Counsel for the Defendant:
Instructed by:

No appearance

Date of Hearing:

26 April 2021

Date of Judgment:

18 May 2021