

**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION: MTHATHA)**

CASE NO: 1980/09

In the matter between:

THAMSANQA HAKO

PLAINTIFF

And

SITOILE MZOLISI

DEFENDANT

JUDGMENT

PAKADE ADJP:

[1] The key issue in this action is whether the Plaintiff has proved negligence or not of the Defendant when the Defendant's motor vehicle with registration letters and number FBY 508 EC driven by him at the time, collided with the Plaintiff's motor vehicle with registration letters and number FBT 984 EC driven by him.

[2] On the 09 October 2008 and at a turn off to Qokolweni from the public road from Viedgesville to Mqanduli, a collision occurred between the

Plaintiff's motor vehicle, a Mercedes Benz, and a bakkie driven by the Defendant. The Plaintiff alleges in the summons that the Defendant was the sole cause of the collision in one or more of the various ways cited by him. These are that, he failed to keep a proper look out; to apply brakes of his motor vehicle timeously or at all; to exercise due care and a precaution; to have due regard to other road users and to avoid collision which by the exercise of reasonable care he could and should have done so. The Plaintiff further alleges that the Defendant drove his motor vehicle at a high speed which was excessive in the circumstances and had also made a right turn in front of the path of travel of the Plaintiff's oncoming motor vehicle.

[3] In his plea, the Defendant admitted collision but denied that it was caused by his negligence or that he was negligent at all. He attributed the cause of the collision to the negligence of the Plaintiff who emerged at a curve at a high speed which resulted in the loss of control of his motor vehicle thus causing the collision on the Defendant's correct side of the road.

[4] At the commencement of the trial, a joint application was made by both counsel appearing on behalf of their respective parties, which I granted, that I should grant an order separating the merits of liability from quantum in terms of rule 33(4) of Uniform Rules of the Court. The trial proceeded on the merits of liability.

[5] The Plaintiff, who is a policeman, a Warrant Officer by rank, stationed at Botha Sigcau Building in Mthatha, was driving a Mercedes Benz car from Mthatha to Mqanduli. He had a front seat passenger, Mr Mthandazo Bawo Qhayiso, a motor vehicle sales person. As Plaintiff drove passed the turn off

to his left to Qokolweni Administrative Area, he saw the Defendant's motor vehicle being driven towards him and collided with his motor vehicle causing damage from the right fender right to the back of his car. His car stopped near the bridge to Mqanduli village. According to his evidence, the Defendant turned in front of his motor vehicle to Qokolweni Administrative Area.

[6] The Plaintiff's evidence adduced in cross examination is that he saw the Defendant's motor vehicle when it was colliding with his. The collision occurred on the Plaintiff's side of the road. He denied a version of the defence that his motor vehicle emerged from the curve at a high speed and that he was unable to control it. He denied that it was the high speed and his inability to control his motor vehicle which caused the collision. He denied that he crossed the road to the side of travel of the Defendant where he collided with the Defendant's motor vehicle. He testified that as he drove past the turn off to Qokolweni, the Defendant's motor vehicle turned to Qokolweni in front of his motor vehicle and collided with it. He then swerved to his left side and his motor vehicle was damaged on the right fender and the right door right up to the back. He said the Defendant's motor vehicle pushed his motor vehicle downwards and came to rest three meters from the bridge. He denied the defence's version that his motor vehicle drove and stopped at the bridge after the collision.

[7] On photo marked "C" depicting the road to Mqanduli and the junction, the Plaintiff pointed out as the point of impact, the edge of the junction towards Mqanduli. The point of impact which was pointed out by the Defendant in the same photo "C" is opposite the entrance of the junction on

the tarred road from Mqanduli. The position of the point of impact shown by the Plaintiff would mean that the collision occurred as the Defendant's motor vehicle was turning to Qokolweni whereas on Defendant's point of impact his motor vehicle was on a stationery position on the tarred road opposite the turn off.

[8] It is common cause between the parties that the damage to the Plaintiff's car is on the right fender and the door right to the back right whereas the Defendant's car was damaged from the right head lamp up to the door. The Plaintiff denied that the damage to Defendant's motor vehicle indicated that it was stationery at the time of the collision and that he was driving past through it. The Plaintiff, however, agreed in cross examination that he was able to drive 300 meters after the collision.

[9] Mr Qhayiso gave evidence and corroborated the Plaintiff on the point of impact. He testified that there is turn off to Qokolweni before reaching the bridge when one is travelling from Viedgesville. He saw a motor vehicle approaching from the front driving straight to the Plaintiff's motor vehicle. The Plaintiff swerved off the road to his left side. The Defendant's motor vehicle did not give Plaintiff's car the right of way but instead collided with it. He modified his evidence later under cross examination and mentioned that the Defendant's motor car turned into the turn off in front of Plaintiff's motor vehicle and the Plaintiff's swerved to the left side of the road. He testified that the collision occurred in the middle of the junction, a new version from the point of impact that had been shown by the Plaintiff in photo "C". After the accident the Plaintiff's motor vehicle stopped near the Total garage that is adjacent to the Funeral Parlour whereas the Defendant's

motor vehicle remained at the point of impact. The Plaintiff did not adduce evidence from the police man who attended the scene of accident regarding the position of the two motor vehicles after the accident. However, one would still question the 300 meters travelled by the Plaintiff's motor vehicle after the collision if it was travelling slowly or at a reasonable speed which would have enabled him to avoid the collision by applying foot brakes instead of swerving to the left and travelling that distance off the road.

[10] The Defendant's evidence is that he was driving a bakkie from the village of Mqanduli to Qokolweni Administrative Area. After driving across the bridge he came to a turn off to Qokolweni and he stopped and switched on the indicator to show that he intended to turn to the right. The Plaintiff's sedan car appeared from the front travelling at a high speed on the white line. It collided with the Defendant's motor vehicle on the right side and the Plaintiff lost control thereof. It then travelled off the road and stopped away from the road leaving the Defendant's motor vehicle at the collision point. The Defendant's motor vehicle was dented from the right head lamp, right side and the back.

[11] On the Plaintiff's version, the Defendant's motor vehicle turned to the right in front of the Plaintiff's car and Plaintiff swerved to the left. Both motor vehicles were damaged on the right side. While I agree that the Plaintiff's motor vehicle could be damaged to the right side if one were to accept his version, it is not possible to accept that the Defendant's motor vehicle could also be dented or damaged on the right side on the same version of the Plaintiff because as it effected the right turn to Qokolweni it exposed its left side to the Plaintiff's car to be dented in the collision. The

version of the Defendant is, in my view, reasonably possible true that his motor vehicle was stationery on the road waiting to turn to the right when the Plaintiff's motor vehicle collided with it, denting it from the right head lamp right down to the right door as it drove past and then lost control and travelled off the road. The evidence of the Plaintiff is not reasonably possible true and is rejected as palpably false.

[12] In the circumstances I find that the collision was not caused by the negligent driving of the Defendant. Accordingly the following order is made:

ORDER

There shall be absolution from the instance.

LP Pakade

ACTING DEPUTY JUDGE PRESIDENT

For the Plaintiff	:	Adv Hobbs
Instructed by	:	Keightley Incorporated
		60 Cumberland Street
		Mthatha

For the Defendant	:	Mr Notyesi
Instructed by	:	Mvuzo Attorneys

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**Heard on : 24 April 2012
25 April 2012
26 April 2012**

Delivered on : 24 January 2013