



IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Case number: 5005/2017

In the matter between:

MMUTSI VINCENT KHOARAI

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT BY: C REINDERS, J

HEARD ON: 7 MAY 2019

DELIVERED ON: 30 MAY 2019

- [1] Shortly before Christmas on 23 December 2015 at 14h00 on the R27 public road between Dewetsdorp and Wepener, Plaintiff was the driver of a Nissan 1400 light duty motor vehicle (“the Nissan-

bakkie”) when a collision occurred with a BMW motor vehicle (“the BMW) driven by Mr E Bacela. Plaintiff sustained serious injuries and sues the Defendant as being statutorily liable for damages that he suffered as a result of the aforementioned collision.

- [2] At the commencement of the trial I was requested to order a separation of the merits (paragraphs 1-4 of the particulars of claim and the corresponding paragraphs 1-4 of the Defendant’s plea) and the remainder of the Plaintiff’s claims in terms of Uniform Rule 33(4). I so ordered. The issue to be decided by me is accordingly the question of causative negligence.
- [3] The plea by Defendant amounts to a bare denial of paragraphs 1-4 of the particulars of claim stating the time, date, road, names of the Plaintiff and Mr E Bacela, the insured driver, and the vehicles’ details. Defendant likewise denies that the accident was as a result of the sole negligence of the insured driver and all the grounds pleaded by Plaintiff as to such negligence. Defendant was requested to make certain admissions in respect of the aforementioned, but failed to reply to the same. The Defendant’s papers were drafted poorly. This much is evident from the fact that Defendant did not plea that the Plaintiff’s claim be dismissed with costs, but merely

“**ALTERNATIVELY**, that the amount of damage found to be recoverable by the Plaintiff be reduced in terms of the provisions of the Apportionment of Damages Act 34 of 1956 to the extent as deemed fit by the above Honourable Court having regard to the extent to which the Plaintiff’s fault contributed to the causation of his injuries and damages.”

- [4] Mr Dreyer appeared on behalf of the Plaintiff. To prove his case the Plaintiff testified. The defendant did not lead any viva voce evidence. A bundle of documents (Exhibit "A") containing amongst others the Accident Report ("the report"), was handed in by Mr Dreyer without any objection thereto by Mr Nkhahle, appearing for the Defendant.
- [5] According to Plaintiff he was on his way from Bloemfontein to Wepener to deliver a heavy load of liquor, driving his Nissan-bakkie. It was 14h00 in the afternoon and visibility was good. He was driving in the left lane on the single lane road. There were no vehicles in front of him. He noticed a red BMW vehicle behind him approaching. He also observed an oncoming vehicle He was driving at a speed of 60-80km/h. He observed the BMW coming closer, attempting to overtake but then falling back. He heard noises as his Nissan-bakkie was hit on the rear, causing it to travel into the veld and overturn several times. He could do nothing to prevent the accident.
- [6] Plaintiff confirmed his sworn statements in respect of the accident, and the description thereof evidenced by the Accident Report. In the brief description of the accident it was recorded as follows:

"According to both drivers the (*sic*) were travelling straight towards dewetsdorp (*sic*) and driver of vehicle B wanted to overtake and there was an oncoming traffic he tried to return to his lane and in the process he hit vehicle A at the back and both vehicles rolled."

- [7] In cross-examination by Mr Nkahlle Plaintiff testified that he noticed oncoming traffic from a distance of about a kilometre, checked in his mirror and saw the BMW about 30m behind him. The BMW was signalling his intention to engage in overtaking manoeuvre by way of his vehicle's indicators. He was aware of the BMW and kept on concentrating on the road. The BMW wanted to overtake his vehicle and he observed same starting to pass him on his lane. The BMW attempted to return to its lane. It was put to Plaintiff that, had he reduced his speed, the BMW could have been successful in falling back in time to avoid a collision. Plaintiff denied this.
- [8] The Plaintiff made a very favourable impression on me, and I do not have any reason not to accept his testimony. The evidence of the Plaintiff on how the collision occurred, is uncontested. No other version was put to the Plaintiff. Accordingly Plaintiff succeeded in proving the negligence of the insured driver as averred in paragraph 4 of the particulars of claim.
- [9] Mr Nkahlle pressed on me that I should find on the evidence that Plaintiff contributed to the accident. He argued that Plaintiff should have foreseen the overtaking maneuver and reduced his speed of 60-70km/h even further. According to him Plaintiff took a passive roll whilst it was his responsibility to have fallen back. I was not provided with any case law by Mr Nkahlle to substantiate his submissions, nor as said, was any evidence tendered by the Defendant to this effect. In my view the submissions as to contributory negligence amount to mere speculation.
- [10] Regulation 298(1) and (3) of the National Road Traffic Act 93 of 1996 deals with the statutory obligations of a driver performing a

maneuver of overtaking and the corresponding obligation on a driver whose vehicle is being overtaken. It reads as follows:

“Passing of a vehicle-

(1) Subject to the provisions of subregulation (2) and (4) and regulation 296, the driver of a vehicle intending to pass any other vehicle proceeding in the same direction on a public road shall pass to the right thereof at a safe distance and shall not again drive on the left side of the roadway until safely clear of the vehicle so passed...

(3) the driver of a vehicle shall, except in circumstances referred to in the first proviso of subsection (1), upon becoming aware of other traffic proceedings in the same direction and wishing to pass his vehicle, cause his vehicle to travel as near to the left edge of the roadway as is possible, without endangering himself or other traffic or property on the roadway, and shall not accelerate the speed of his vehicle until the other vehicle has passed.”

I am of the view that the aforementioned does not lend support to Mr Nkahlhle’s submissions.

[11] In my view the sole reason for the collision is that the insured driver at a very inopportune moment wanted to overtake Plaintiff’s vehicle, realised that he could not and in the process of attempting fall back and return to his lane, collided with Plaintiff’s vehicle. Plaintiff could not prevent the collision.

[12] Mr Dreyer submitted that there is no evidence or legal principles upon which I should find that Plaintiff was negligent and contributed to the collision. I agree with him.

[13] I am therefore satisfied that Plaintiff succeeded to prove on a balance of probabilities that the collision occurred due to the Defendant's sole negligence. Plaintiff is entitled to costs, and I do not find any reason to deviate from the usual order that costs should follow the cause.

[14] The following orders will therefore issue:

1. The Defendant is liable for payment of all (100%) of the plaintiff's proven or agreed damages.
2. The Defendant shall pay the Plaintiff's taxed or agreed party and party costs.
3. In the event that costs are not agreed:
 - 3.1 The Plaintiff shall serve a notice of taxation on the Defendant's attorney of record; and
 - 3.2 The Plaintiff shall allow the Defendant fourteen (14) court days to make payment of the taxed costs.
4. The matter is postponed to the pre-trial roll of 15 July 2019 for continuation of the adjudication on the remainder of Plaintiff's claim against Defendant.

C REINDERS, J

On behalf of Plaintiff: Adv WJ Dreyer

Instructed by:
Van Zyl Le Roux Inc.
c/o Du Plooy Attorneys
Bloemfontein

On behalf of Defendant : Adv T Nkhahle
Instructed by:
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