



**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: 3484/2017

In the matter between:

MASEODI SUZAN MOSIA

1st Plaintiff

MASEODI SUZAN MOSIA N.O.

2nd Plaintiff

and

ROAD ACCIDENT FUND

Defendant

HEARD ON: 26 & 27 FEBRUARY 2019

JUDGMENT BY: MATHEBULA, J

DELIVERED ON: 24 MAY 2019

- [1] The only issue to be determined is the merits of this claim. As per agreement between the parties, I ordered separation of the merits and quantum in terms of Rule 33 (4) of the Uniform Rules of Court.

- [2] The common facts as recorded are that the accident occurred on 22 July at around 19H45 pm on the intersection near Winburg where the Virginia Road intersect and cross over the N5 freeway. The deceased, a member of the South African Police Service, was driving a motor vehicle to wit Toyota Quantum with registration letters and numbers [...] B. The insured driver was driving a motor vehicle to wit a Volvo truck with registration numbers and letters [...] GP. As a result of the accident, the deceased suffered severe bodily injuries and passed away on the same day.
- [3] The pertinent issue for determination is whether the insured driver drove the insured motor vehicle in a negligent manner causing or contributing to the accident. The plaintiff must discharge the burden of proof on a balance of probabilities.
- [4] Two (2) witnesses namely an independent witness Ronel Smith and the insured driver Zama Mrawushe testified in this matter.
- [5] Briefly Ronel Smith testified that on the day in question she was a passenger in a motor vehicle driven by her husband. They were on the road between Winburg and Senekal. Because he is a slow driver she was able to observe in clear details the flow of traffic around them. In addition it was fairly quiet on the road.
- [6] They were following a truck driven by the insured driver when she noticed a motor vehicle on her left approaching the intersection in a high speed. She could see it from quite a distance. The driver of that motor vehicle was the deceased. This episode gave her a fright and she alerted her husband of the impending danger who

responded by swerving to the left of the road to avoid any collision. They stopped about ten (10) metres away.

- [7] He saw the deceased's motor vehicle colliding with the trailer pulled by the insured motor vehicle on the left back. It occurred to her that the insured driver was not aware of the collision as he continued driving for about two hundred (200) metres before stopping. On his return he informed them that he felt that all was not in order. It was her opinion that he did not realise that he had been involved in an accident.
- [8] In a "nutshell" the insured driver testified that he had been driving heavy duty motor vehicles since 1994 and the N5 freeway was well known to him. He observed the motor vehicle coming from his left side with its headlights on approaching from a distance of approximately one (1) kilometre. Thereafter he did not see the lights again because he did not look in that direction. His main focus was on controlling his motor vehicle and keep a proper lookout on the road.
- [9] On entering the intersection he did not envisage that anything will happen to his motor vehicle. However, he did feel it shaking and suspected that it was a puncture. At that stage he was on the incline and driving at a low speed. There was no obligation on him to bring the motor vehicle to a stop. Further that there was nothing that he could have done to avoid the accident.
- [10] The two (2) witnesses though on the opposite side of the same coin, gave a good and detailed account of the events leading to the collision. It is common cause that the deceased approached the

intersection cutting across the N5 on a high speed. It is an uncontradicted fact that the insured driver had the right of way which demanded that the deceased can only enter the N5 when it was safe to do so. However, this did not exempt the insured driver from keeping a proper lookout as measured on the standard of care and skill which would be observed by the reasonable man.

[11] In **Nogude v Union and South West Africa Insurance Co Ltd**¹ the court described a proper lookout as entailing a continuous scanning of the road ahead, from side to side, for obstructions or potential obstructions. The insured driver on his own version testified that he saw the deceased's motor vehicle heading towards the intersection and lost sight of it. In essence after observing it once, he did not look in that direction again. Even the impact of that motor vehicle on his truck felt like a minor distraction. This ties up with the evidence of Ronel Smith that he appeared to be unaware that he was involved in an accident. He continued to drive on for approximately two hundred (200) metres before bringing his truck to a halt. This points in the direction of a person not keeping a proper lookout as plainly described in Nogude's matter.

[12] A driver of such vast experience would be expected to be more cautious at all times. His level of being alert will even be more activated when he observes another road user driving at a high speed or wrong side of the road or any other indiscretion that might be a hazard to others. This will require him/her to take appropriate measures to mitigate any danger. The insured driver came short of keeping a proper lookout as per required standard of care and

¹ 1975 (3) SA 685 (A) at 688A

skill of a reasonable man in the position of the insured driver in similar factual circumstances.²

[13] In matters of this nature the plaintiff only has to prove 1% negligence against the insured driver. As discussed in preceding paragraphs, I conclude that the insured driver's conduct is indicative of negligence on his part. Therefore, the plaintiff ought to succeed in her claim.

[14] I make the following order:-

14.1. Judgement is entered in favour of the plaintiffs with costs.

M.A. MATHEBULA, J

On behalf of applicants:

Instructed by:

Adv. R.P. van Niekerk

Kramer Weihmann & Joubert

Bloemfontein

On behalf of respondent:

Instructed by:

Adv. J. S. Motloun

Maduba Attorneys

Bloemfontein

/roosthuizen

² Kruger v Coetzee 1966 (2) SA 428 (AD) at 430 D-F