

**IN THE HIGH COURT OF SOUTH AFRICA
(TRANSVAAL PROVINCIAL DIVISION)**

Case number: 2807/04
Date: 25/8/2006

UNREPORTABLE

In the matter between:

N W ERASMUS

and

THE ROAD ACCIDENT FUND

JUDGMENT

ISMAIL AJ:

- [1] The plaintiff instituted proceedings against the defendant as a consequence of the insured driver's alleged negligence in causing a motor vehicle collision.

- [2] The collision took place between a Toyota vehicle driven by the plaintiff and an Audi motor vehicle driven by the insured driver on the Rustenburg- Marikana road (Main Road) where it met a side road forming a T-junction. Where this side road met the main road there was a mandatory stop sign. The two roads described are clearly visible on photograph 8 of the merits bundle.
- [3] The plaintiff's vehicle travelled on the side road and intended to turn right onto the main road in the direction of Rustenburg. The insured driver drove along the main road from Rustenburg towards Marikana.
- [4] By agreement between the parties the issues of the merits and quantum were separated. The issues which I had to determine related to the merits and the question of negligence in particular. The question of quantum was postponed sine die.

[5] The following facts were common cause between the plaintiff and defendant.

- (i) That the accident happened during day light hours namely between 8-9 am;
- (ii) The road surface was dry;
- (iii) The collision took place where the side road met up with the main road in the mandatory left lane in the direction of Marikana;
- (iv) There was a passenger in the plaintiff's vehicle;
- (v) The insured vehicle was driven by Mrs Jacobsz, who got married after the accident and whose surname changed to Mrs Roux.

[6] During the trial the two experts testified. Professor Lemmer testified on behalf of the plaintiff during his case and ms Malissa Groenewald, a motor vehicle reconstruction expert, testified on behalf of the defendant.

Issues agreed upon by the experts

[7] In a joint report the experts agreed upon the following issues:

- 7.1 Speed limit on the (main Road) is 100km/h.
- 7.2 Speed at which Audi was travelling before braking was 100km/h (approximately).
- 7.3 The length of the compulsory left turn lane was approximately 90 metres.
- 7.4 Reaction time of 1, 5 second will be used and therefore the distance travelled in the reaction time was approximately 42 metres.
- 7.5 The Toyota was most probably stationery at the time of the collision.
- 7.6 The Toyota's position at the point of impact was all four wheels were over the stop line with the rear end at the stop line, (approximately at the stop lane).

EVIDENCE TENDERED DURING THE TRIAL

[8] The evidence of the following witnesses apart from the experts was also tendered during the trial: the plaintiff, Mr Erasmus; Mrs Roux and Mr Johan Alexandra Goltswaldt a passenger in the vehicle driven by the insured driver.

[9] Mr Erasmus stated that he was employed by a security company. He fetched a security guard who completed his shift. It was a sunny morning at about 8:30-9am. He drove along the side road and stopped at the stop line. He could not see any vehicles approaching from his right side as the grass on that side of the road was fairly long and it obscured his vision. In any event the stop line is not in line with traffic approaching and he therefore drove slowly forward in order to see whether there was traffic approaching on his right side, along the main road.

[10] He then stopped his vehicle again. He turned to his right and he saw the Audi approaching directly towards him. He stated that he did not see the insured vehicle applying brakes (*"nie rook of iets gesien nie."*). He could not avoid the collision despite him seeing the approaching vehicle from his right side, and at that stage he was the proverbial sitting duck. The collision took place immediately in front of the stop sign and on the compulsory left lane. He was asked to comment on whether an accident would have arisen had the insured driver travelled on the right lane towards Marikana. He answered that the collision would not have taken place. This aspect of his evidence appears to be common cause between the parties that had the Audi travelled on the right lane no accident would have arisen. The photograph depicted on page 8 of the merits section of the bundle gives a clear depiction of the vehicles at the time the vehicles came to rest. The brake marks as well as the lanes leading towards Marikana are clearly visible.

[11] Mrs Roux gave evidence. She confirmed that she was the driver of the insured vehicle. She had three passengers in her vehicle and Mr Goltswaldt sat in the front passenger's seat. She stated that she saw the plaintiff's vehicle when she was on the bridge. At that stage the vehicle on the side road stopped at the stop street. As she advanced towards the beginning of the left lane she noticed the plaintiff's vehicle moving forward and this caused her to move into the left lane as she anticipated that the vehicle was going to turn right in front of her. By moving her vehicle towards the left she thought that she could pass the turning Toyota Corolla from behind. Lo and behold the Toyota stopped in front of her and she could not swerve to her right as an oncoming BMW vehicle was approaching on the opposite side.

[12] Mr Goltswaldt stated that he was a passenger in the insured vehicle. He was unable to give the speed at which the vehicle he was in travelled. He was busy conversing with the passengers on the rear seat facing them. He stated that: "*toe*

ek omdraai was Mnr Erasmus se voertuig verby die stop teken.

Toe gaan ons na die linkerste baan toe om die ongeluk te

vermy”.

He was unable to give an estimation of the distance which the Audi was from the plaintiff's vehicle.

- [13] He also stated that Mrs Roux could not swerve towards his right onto the right lane as there was a BMW vehicle approaching in that lane; however, he could not say how far from the T-junction that vehicle was.

During cross-examination he was confronted with the statement he made to the police on the 17 August 1999. In the statement he made to the police he did not mention anything of a swerving movement ("*uitswaai beweging*"). Furthermore he mentioned in his statement that the collision took place because the plaintiff's vehicle did not stop at the stop street. He stated that that aspect of the statement was a mere mistake.

[14] Mr Erasmus was also confronted with the statement which he made to the police. In the statement he stated:

"Ek het toe opgemerk dat die bestuurder van die voertuig remme trap. En sy het geglei en tot dat sy met die voertuig gebots het". This aspect of his statement was canvassed with him as he stated in his evidence in chief that *"ek het nie gesien dat sy rem trap of rook sien nie"*.

[15] Mrs Roux's evidence was that she was travelling at approximately 80 km/h. She was also confronted with the statement she made to the police on the 12 August 1999 and specifically what appears on pages 21, 22 and 28 of the merits bundle. On page 22 she stated:

"[a] as I approached that bridge I saw a car stopping on the intersection road waiting for my car to pass, and all of a sudden that car did not wait completely until I pass, and it drove against my car and the two vehicles collided".

[16] She stated that she read the statement prior to testifying, however, she only read pages 28 and 21. Page 28 is the preamble of the statement wherein her particulars are noted. Her actual statement pertaining to the collision begins on page 21 and continues on page 22.

She admitted reading pages 28 and 21 when she made statement but did not read what appeared on page 22. Her explanation therefore was that she made a statement previously and assumed it was the same.

Her explanation for not reading page 22 with respect does not make sense. If she assumed the statement was the same as the one which she previously made, why would she read pages 28 and 21 and not page 22? The only reason she could proffer for not reading page 22 was that she thought that the statement was the same as the one she previously made. This portion of her statement differs materially from her evidence whilst she testified in court. It is also fortuitous that she read

the statement just up to the point where the statement differs from her viva voce evidence.

[17] She also conceded during cross-examination that had she continued on her lane and not moved to the mandatory lane turning left the accident would have been avoided.

[18] Furthermore, her estimation of the speed that she was travelling namely 80 km/h cannot be correct in the light of both experts estimation. They estimated speed to be at approximately 100km. In fairness to her, it must be stated that she said that she was travelling at 80 km/h when she last looked at the speedometer.

I am convinced by the evidence of the experts that her speed was in the region of 100 km at the time when the single lane converges into two lanes travelling towards Marikana, which is a distance of approximately 90 metres away from the point of impact.

[19] A further aspect of the insured drivers' evidence which I find improbable is that in her statement she mentioned a truck overtook her at the bridge. Significantly in her statement she omits and refrains to mention that a BMW was travelling in the opposite direction to her and for that reason she could not swerve to the lane for oncoming traffic. Whilst giving evidence in court she mentioned this aspect some seven years later. Had there been such a vehicle I am amazed that she would not mention it in her statement. Instead she refers to a truck overtaking her at the bridge which has no significance to the collision. Her explanation in this regard was that the policeman told her to relate the story regarding the collision from the time she was at the bridge.

Professor Lemmer estimated the bridge to be 500 metres to a kilometre away from the point of impact. I find her explanation in this regard to be disingenuous and extremely improbable.

LEGAL POSITION:

[20] In *Marine v Trade Insurance Co Ltd v Biyasi* 1981 (1) SA

918(A), the head notes reads:

" The duty of a driver on a through road to keep a general look out includes an awareness of what is happening in his immediate vicinity, including cross- roads, although he is not under a duty a cross road controlled by a stop sign under the same careful observation as would be required of him if there was no stop sign.

See also *National Employees General Insurance v Sullivan* 1998 (1) Sa 27 (A) @ 36 D-F and *Schroeder and Another*

v President insurance Company 1978 (2) SA 600 (A) and
Cramer v SA Railways & Harbours 1949 (2) SA 125 (T).

[21] The matter *in casu*, differs materially from the decision referred to supra. In this matter the plaintiff's view towards traffic approaching him from his right, that is from the direction the insured driver travelled, was obscured by tall grass. The plaintiff after stopping at the stop sign slowly moved forward to the point where he stopped for the second time. The insured driver, Mrs Roux, had seen this from a distance of approximately 100 m. She swerved to the left lane thinking that the plaintiff was going to turn across her lane of travel and choose to swerve to the left lane. By her own admission during the cross- examination had she continued along the straight lane towards Marikana whilst reducing speed the collision would have been avoided.

[22] The plaintiff's vision from the uncontroverted evidence was that the grass obscured his view. The question to be asked is

what would the reasonable man in those circumstances have done. Van den Heever JA in *Herschel v Mrupe* 1954 (3) SA 464 (AD) @ 490 stated:

"The concept of the bonus paterfamilias is not that of a faint-heart always in trepidation lest he or others suffer some injury; on the contrary he ventures out into the world, engages in affairs and takes reasonable chances. He takes reasonable precautions to protect his person and property and expects others to do like wise."

The plaintiff as a reasonable driver stopped at the stop. Because his view was obscured he moved slightly forward in order to see to his right. He realizing that the vehicle approaching him on the left lane would have to turn immediately in front of him and not continue into his path. Had the plaintiff not moved forward as he did he would not have been in any position to observe on-coming traffic from his right. In my view the actions taken by the plaintiff in the given circumstances were not negligent in the slightest degree.

- [23] The distinguishing feature of this case is that the plaintiff stopped at the stop sign and did not drive through the stop road as suggested in the cases referred to in para [15] hereof or as suggested by the defendant in her statement or by the defendant's witness Goltwaldt.
- [24] I am therefore of the view that there is no degree of contributory negligence on the part of the plaintiff as suggested by Adv Van Antwespen.
- [25] The accident was caused by the insured driver not keeping a proper lookout, and by her assuming that the plaintiff was going to move into her path of travel. She travelled daily on that road and knew that there was a mandatory left lane on which a driver such as the plaintiff could have encroached in order to stop, however, this possibility never occurred to her. Instead she chose to travel into the path of the 'imminent danger' as opposed to travelling on the lane reducing speed as

she approached the T-junction. For this reason I find that the cause of the collision was the insured drivers' failure to keep a proper lookout and not reducing speed in the circumstances.

[26] Accordingly, I make the following order

- (i) The insured driver's negligence was the sole cause of the collision;
- (ii) Costs of the hearing which includes Professor Lemmer's qualifying fees.
- (iii) The question of quantum has been postponed sine die.

Ismail AJ

For the Plaintiff : F Grobler instructed by Van der Merwe

Du Toit Inc, Pretoria.

For the Defendant: Adv M van Antwerpen instructed by State
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