



IN THE REPUBLIC OF SOUTH AFRICA

Case no: 7283/2012

IN THE SOUTH GAUTENG HIGH COURT JOHANNESBURG

JUDGMENT

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: /NO
(3) REVISED.
Date: March 2013.

SIGNATURE: 

In the matter between:

MAKOSI AARON TIKI**Applicant**

and

THE ROAD ACCIDENT FUND**Respondent****Date heard: 6 March 2013****Date delivered: 12 March 2013**

Summary: Road accident fund. Insured vehicle collide with pedestrian. Only version of the plaintiff- not contradicted. The insured driver sole cause of the collision.

JUDGMENT

Molahlehi AJ

- [1] This is an action in which the plaintiff claims that after alighting from his truck which he had parked on the pavement and on his way to open the gate, he was knocked by a motor vehicle, which did not stop thereafter.

- [2] Following the agreement between the parties, the Court ordered that liability be separated from quantum and accordingly the only issue which this Court has to deal with presently has to do only with liability of the respondent.
- [3] The plaintiff was the only witness to testify about the collision that occurred on 7 June 2009 and at Orlando West. He testified that he was knocked by an unknown truck which was insured by the respondent. At the time the plaintiff was a pedestrian who had just parked his truck on the pavement and was walking towards his gate. The insured vehicle hit him on his right leg as he was walking on the pavement to open his gate. The insured driver did not stop after the collision. He was unable to identify the insured vehicle and could not say exactly what made it was because it was dark and he was in pain. He testified that from the sound it seemed the vehicle was a small truck. His right leg was broken as result of the collision.
- [4] The plaintiff reported the incident to the police on his release from the hospital. In his particulars of claim the plaintiff contends that the driver of the insured vehicle was negligent and was the sole cause of the collision because he failed to keep a proper lookout, he travelled at an excessive speed, failed keep a proper control of the insured vehicle and failed to avoid the collision.
- [5] In its plea the defendant contends that the insured driver was not the cause of the collision but that the sole cause of the collision was the plaintiff in that he entered the road at the time when it was not save to do so. The defendant did not lead any evidence but sought to challenge the version of the plaintiff during cross examination.
- [6] During cross examination the defendant's counsel sought to challenge the credibility of the plaintiff as a witness. In this respect the respondent's counsel questioned the plaintiff about his testimony in court and what he stated in his statement to the police. It was put to the plaintiff that he did not, in the statement

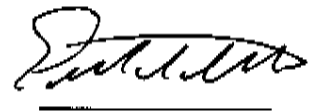
to the police state that he "alighted" from the truck. In my view this line of cross examination did not take the case of the defendant anywhere, because more than anything this was semantic. In his statement to the police the plaintiff stated that; "I disembarked from my truck to go and open the gates . . ."

- [7] The plaintiff was further cross examined about the fact that he could not state the type of vehicle involved in the collision with him. The plaintiff stated that it was a small truck. The suggestion from the cross examination was that he should not be believed because as a motor mechanic he ought to have been able to identify the kind of truck that collided with him. In my view, the fact that the plaintiff could not say the exact type of the truck that collided with him did not undermine his case particularly when the facts and the circumstances of what happened is taken into account. The plaintiff testified that the collision happened suddenly and he was immediately in pains. He also immediately after the collision concentrated in trying to place his broken leg into its correct position.
- [8] The defendant's counsel argued in her submission that it was unlikely that the collision would have happened as described by the plaintiff in his testimony.
- [9] In my view, the plaintiff's version is credible and was not shaken by cross examination. His version in court is in all material respect in line with the statement he gave to the police. The defendant placed no conflicting version to that of the plaintiff. And as stated earlier the attempt at challenging his credibility was also unsustainable. I therefore have no reason to doubt the version of the plaintiff. It is accordingly concluded that the sole cause of the collision was insured driver.

Order

[10] In the premises the following order is made:

1. The insured driver was negligent in causing the collision herein and in the circumstances the plaintiff's claim in as far as the cause of the collision is concerned is upheld with costs
2. The issue of quantum is postponed *sine die*.



Molahlehi AJ

ACTING JUDGE OF THE
SOUTH GAUTENG HIGH
COURT, JOHANNESBURG

Representatives:

For the plaintiff: Adv D Bisschoff instructed by Raphael and David Smith Inc .

For the respondent: Adv Mathebula instructed by Kunene Rapala Botha Attorneys