IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: ***NO***
(2) OF INTEREST TO OTHER JUDGES: ***NO***
(3) REVISED:

Date: ***1st June 2018*** Signature: _____

CASE NO: 2010/48547

In the matter between:

MOSTERT, CHRISTIAAN FREDERICK DU TOIT Plaintiff

and

TOLL GLOBAL FORWARDING (SA) (PTY) LTD First Defendant
CHAUKE, SIMON MAFEMANI Second Defendant

JUDGMENT

ADAMS J:

[1]. In this action the plaintiff claims payment from the defendants of an amount of R230 000, together with *mora* interest thereon and cost of suit. The

amount claimed represents, according to the plaintiff, his damages resulting from a motor vehicle collision on the 6th of October 2010 in which his 1983 Porsche 911 SC Cabriolet ('plaintiff's vehicle') was damaged. The damages are calculated on the basis of the difference between the fair market value of the vehicle before the collision and the post – collision value of the wreck.

[2]. The defendants accept that the second defendant was negligent and that his negligence was a cause the collision in question. The parties are in agreement that the negligence is to be apportioned 90/10% in favour of the plaintiff against the defendants. It is not in issue that the first defendant is vicariously liable for the negligence of the second defendant.

[3]. The only issue which I am required to adjudicate is the quantum of the plaintiff's damages. In that regard, the parties could not reach agreement on the market value of the vehicle before the accident and the salvage value of the wreck.

[4]. Before me Mr Steyn appeared on behalf of the plaintiff and Ms Van der Linde acted for the defendants.

[5]. The plaintiff's uncontested evidence was that he bought the Porsche during 1994 for R44 000, and has been driving it since then. He has a keen interest in vintage motor cars, and particularly in Porsches. He bought another Porsche 911 SC Convertible during 1997. Shortly before the accident on the 6th of October 2010 he had 'refurbished' the vehicle and overhauled the engine. In his words, what he had done to the vehicle was to do everything he could possibly do to bring the vehicle as close to new as possible. He for example had the leather interior redone and the bodywork re – sprayed. The vehicle was therefore in splendid condition – as close to new as it could get.

[6]. In the aftermath of the accident the plaintiff claimed his damages from the defendant. Whilst he was waiting on the defendants to settle his claim, his vehicle was stored at two separate places. After about twelve months, and whilst the storage charges were accumulating, the plaintiff decided to sell the vehicle to the owner of the place where the vehicle was last stored at an agreed price of R25 000. Prior to selling the vehicle, the plaintiff had made enquiries and, having made those enquiries, he concluded in the end that he could not do better than to sell the vehicle for R25 000. With the assistance of photographs the plaintiff explained that the damage to the vehicle was mainly to the front. The engine, situated at the rear of the car, apparently did not suffer any real or visible damage. The vehicle was damaged beyond economic repair. In other words, the repair cost would have exceeded the value of the vehicle.

[7]. Two expert witnesses gave evidence – one on behalf of the plaintiff and the other on behalf of the defendants. They were in agreement that the pre – collision market value of the vehicle was in the range between R200 000 and R250 000. Plaintiff's expert was of the opinion that, in view of the plaintiff's testimony that the car was as close to new as it could possibly get, the pre – collision market value was probably closer to R250 000. As regard the salvage value of the wreck, he accepts that the plaintiff sold the vehicle for R25 000, and, on the basis of what plaintiff says, he regards R25 000 as a fair value for the vehicle in its damaged condition.

[8]. The expert for the defendants did not take issue with most of the evidence on behalf of the plaintiff. He did however say that during 2010 there was no way in which a Porsche 911 SC would sell for R250 000. He did however concede that if the vehicle was in mint condition, as claimed by the plaintiff, it could have taken the selling price up to R250 000, which means that R250 000 could be regarded as a fair market value for the vehicle before the accident. As far as the post – collision value goes, he expressed surprise at the plaintiff having sold the damaged car for R25 000 only. In his words, the buyer

scored a bargain, implying that the plaintiff should have received more for the wreck. He did however not give an indication of how much, in his view, the plaintiff could have received.

[9]. The crisp issue which I am required to rule on is the amounts to be allotted as the pre – collision market value of the vehicle and the salvage value of the wreck.

[10]. The *locus classicus* on the quantification of damages arising from damage to motor vehicles is *Erasmus v Davis*, 1969 (2) SA 1 (A). At pg 8 Wessels JA sets out the relevant principles as follows:

> 'In my opinion the plaintiff discharged the onus resting upon him of proving the money value to him of the damaged vehicle and, in the result, the quantum of his patrimonial loss. It was not suggested by defendant that plaintiff could and should mitigate his loss by having the vehicle repaired at reasonable cost, which cost would be less than the difference between the above-mentioned values. Nell attended to the disposal of the wreck after having satisfied himself that it would not be an economical proposition to undertake repairs. As I understand his evidence - the evidence of an expert in this field – he considered it reasonable to dispose of the wreck at the price provided for in the above-mentioned contract. He was asked in cross-examination whether he could 'give the actual scrap value' of the wreck. He replied that he was unable to do so, and added that he did not know what the value of the engine was. It is not clear to me what the cross-examiner had in mind in asking about the 'actual' value of the wreck and the 'value' of the engine. The trial Court was concerned with the market value of the wreck as a unit. It was not suggested to Nell in cross-examination that the wreck could or should have been sold in a market other than the one in which it was sold. Nor was it suggested to him that the price obtained for the wreck was in any way unreasonable, or that a better price could have been obtained if the wreck were to have been disposed of in some other manner, e.g., by selling the engine as a separate item. The defendant led no rebutting evidence whatsoever.

> In my opinion Nell's evidence establishes that, in its damaged condition, the vehicle had a money value to the plaintiff of no more than R270, and that the diminution in value was, therefore, the sum of R930. I must emphasise that the plaintiff's claim is not based upon the difference between the value of the undamaged vehicle (R1,200) and the sum realised by the disposal of the wreck (R270). The evidence regarding the disposal of the wreck for R270 is relevant to the determination of the value thereof and, as I have indicated, of sufficient weight in the circumstances to establish that value.'

[11]. I find myself in agreement with the principles enunciated by Wessels JA, who wrote a separate concurring judgment.

[12]. Also, in *Southern Insurance Association Ltd v Bailey NO*, 1984 (1) SA 98 (A), Nicholas AJA made the following general remark at pg 114 in the context of the assessment of damages in a personal injury claim:

> 'It is manifest that either approach involves guesswork to a greater or lesser extent. But the Court cannot for this reason adopt a *non possumus* attitude and make no award'.

[13]. Nicholas AJA also referred to *Hersman v Shapiro & Co*, 1926 TPD 367. At pg 379 Stratford J had this to say:

> 'Monetary damage having been suffered, it is necessary for the Court to assess the amount and make the best use it can of the evidence before it. There are cases where the assessment by the Court is little more than an estimate; but even so, if it is certain that pecuniary damage has been suffered, the Court is bound to award damages.'

[14]. In the case before me there is no doubt that the plaintiff has suffered pecuniary damage. I therefore cannot adopt a *non possumus* attitude and say,

as I was urged to do by Ms Van der Linde, that I am unable to quantify the plaintiff's damages and therefore dismiss his claim. I am bound to award damages.

[15]. Applying these principles *in casu*, I am satisfied that the plaintiff has on a balance of probabilities proven the pre – collision market value at R250 000, and the salvage value of the wreck at R25 000. Plaintiff has therefore proven, in my judgment, that he has suffered damages in an amount of R225 000 as a result of the second defendant's negligence.

[16]. Plaintiff's claim should therefore succeed.

[17]. In view of the fact that the defendants have accepted liability for 90% of the plaintiff's damages as proven, judgment should be granted against the defendants for payment of the sum of 90% X R225 000 = R202 500.

Costs

[18]. The plaintiff has been successful with its claim against the defendant. This means that, applying the general rule, it is entitled to a cost order.

[19]. I can see no reason to deviate from the general rule and cost should therefore be awarded in favour of the plaintiff.

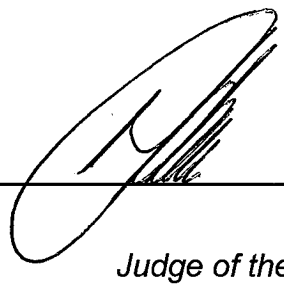
Order

In the circumstances, I grant judgment in favour of the plaintiff against the first and second defendants, jointly and severally, the one paying the other to be absolved, for:

1. Payment of the sum of R202 500.

2. Payment of interest on R202 500 at the rate of 15.5% per annum from the 7th December 2010 to date of payment.

3. Cost of suit.



L ADAMS
Judge of the High Court
Gauteng Local Division, Johannesburg

HEARD ON:	29th May 2018
JUDGMENT DATE:	1st June 2018
FOR THE PLAINTIFF:	Adv J S Steyn
INSTRUCTED BY:	Gerings Attorneys
FOR THE DEFENDANTS:	Adv C Van der Linde
INSTRUCTED BY:	Hooker Attorneys