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REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NO: 25590/18

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

22 AUGUST 2019
DATE

.....
SIGNATURE

EVANS: BRONWYN JILL

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

J U D G M E N T

MAHALELO, J:

INTRODUCTION

[1] The plaintiff herein, an adult female of 29 years, instituted action against the defendant for damages suffered arising from the injuries she sustained as a result of a motor vehicle collision which occurred on 6 November 2017.

[2] The case served before this court with the parties having agreed to separate issues as envisaged in the Uniform Rules of Court 33(4). The court accepted the parties' agreement and ordered that merits and quantum be treated separately. Accordingly, this matter proceeds on merits only quantum having been postponed *sine die*.

[3] The merits in this matter are to be decided on the basis of the testimony of the plaintiff and one eye witness, being Mr Alexander Reginald King.

COMMON CAUSE FACTS

[4] The following factors are common cause between the parties:

- 4.1 Plaintiff's locus standi
- 4.2 Jurisdiction of this court
- 4.3 The date, time and place of the collision
- 4.4 Vehicles of the Plaintiff and the insured driver

ISSUES IN DISPUTE

[5] The negligence of the insured driver as set out in the plaintiff's particulars of claim, as to whether or not the driver of the insured motor vehicle was solely negligent in one or more of the following ways:

- 5.1 He failed to keep any proper lookout;
- 5.2 He failed to apply the brakes of his motor vehicle, alternatively, failed to apply brakes of his motor vehicle timeously;
- 5.3 He drove at an excessive speed under the prevailing circumstances;
- 5.4 He failed to avoid a collision when by the exercise of reasonable care, he could and should have done so;
- 5.5 He failed to exercise the care a reasonable person would have exercised under the prevailing circumstances
- 5.6 He disregarded a red traffic light

.

[6] In essence, the plaintiff alleges from the pleadings that the collision was caused solely by the negligence of the driver of the insured vehicle. The defendant disputes the aforementioned allegations and poses a question whether there might have been any contributory negligence on the part of the plaintiff.

MERITS/NEGLIGENCE/LIABILITY

[7] PLAINTIFF'S VERSION

7.1 The plaintiff testified that she was the driver of motor vehicle bearing registration letters and numbers [...] GP, on 06 November 2017 at approximately 11h30 at or near R563 and Kromdraai Road, Tarlton.

7.2 The plaintiff's evidence is that she was travelling at a speed below 80km/h towards Krugersdorp with her father, as a passenger in the motor vehicle.

7.3 She observed that the road was a single carriage lane on both sides and it becomes a slight double lane to allow cars to turn to the left towards Sterkfontein. There was a T-Junction on the left side of the road which is controlled by way of a stop sign.

7.4 As she approached the T-junction she observed a stationary motor vehicle on her lane of travel, which was later identified as that being driven

by Mr RB Ererson (“insured driver”), bearing registration letters and numbers [...] GP. She got the impression that the insured vehicle was coming from the T-junction which has a stop sign to control cars coming and going towards Krugersdorp and Maropeng.

7.5 She testified that when she realised the insured vehicle on her lane it was already too close, she then looked up to check the oncoming vehicles, she swerved her vehicle to the right to avoid a colliding with the insured motor vehicle, however the insured driver also swerved to the right and hit her vehicle on the front passenger side causing the vehicles to collide on the lane for vehicles travelling in the opposite direction. She testified further that when she noticed the insured vehicle on her lane of travel she does not remember if she applied brakes and according to her swerving to the right was the only option to take at that point in time. She disputed that she was in any way negligent and stated that there was nothing she could have done to avoid the collision.

7.6 The plaintiff was cross-examined. Her evidence gave the impression that she did not act as a reasonable driver in the circumstances and she further did not recall all the instances surrounding the collision for example, applying brakes to reduce the speed or sounding a hooter. It is the testimony of the plaintiff that the insured driver was the sole cause of the collision.

[8] MR ALEXANDER KING'S EVIDENCE

8.1 Mr King testified that he was travelling behind the plaintiff's motor vehicle when he observed the insured vehicle approaching from the T-Junction and gradually entering the road. It appeared to him that the insured driver was undecided as he kept on slowly creeping into the road across the stop sign into the left lane.

8.2 As the plaintiff was swerving to the right to avoid collision, the insured driver also suddenly turned right and the collision occurred.

8.3 It is the testimony of Mr King that he did not see brake lights from the plaintiff's vehicle, nor did he hear the sound of a hooter from the plaintiff's vehicle. Lastly, according to him the point of impact was in the middle of both lanes.

[9] The defendant's counsel submitted that there was contributory negligence on the part of the plaintiff in that, while driving her vehicle she should have exercised reasonable care that is expected of a reasonable driver driving under the same circumstances by applying brakes, thereby reducing her speed and sounding her hooter.

[10] From the evidence of the plaintiff outlined above, this court is called upon to decide who of the two, the insured driver or the plaintiff was negligent. In *S v Mokgethi & Others* 1990 (1) SA 32 (A) 40-41, Van

Heerden JA held that there is no single and general criterion for legal causation which is applicable in all instances. He suggested a flexible approach where the court has the freedom in each case to apply a theory which serves reasonableness and justice, in light of the circumstances, taking into account considerations of policy. The basic question is whether there is a close enough relationship between the wrongdoer's conduct and its consequence for such consequence to be imputed to the wrongdoer in view of policy considerations based on reasonableness, fairness and justice.

[11] It is trite that the onus rests squarely upon the plaintiff to prove that the insured driver's negligent conduct caused the harm giving rise to the claim.

[12] In matters against the Road Accident Fund, liability generally depends on the negligence or any other wrongful act of a third party in causing a collision.

ANALYSIS OF THE EVIDENCE

[13] The plaintiff was a very emotional witness who was unable to give her best account of the events leading to the collision as she referred to them as "traumatic" and something she would rather forget. She could not answer certain questions posed by the court and replied in some instances

that she had forgotten. Her evidence is to be considered by court with caution.

[14] On the other hand, Mr King was a consistent witness who gave his best account of the events leading to the collision and did not seem to be untruthful. His evidence is accepted as being a true reflection of the events.

[15] As already indicated, the defendant did not call any witnesses.

CONTRIBUTORY NEGLIGENCE

[16] Section 1 (a) of the Apportionment of Damages Act 34 of 1956 provides:

“Where any person suffers damage which is caused partly by his own fault and partly by the fault of any other person, a claim in respect of that damage shall not be defeated by reason of the fault of the claimant but the damages recoverable in respect thereof shall be reduced by the court to such extent as the court may deem just and equitable having regard to the degree in which the claimant was at fault in relation to the damage”.

[17] In *Sedumemanyatela v Road Accident Fund* (65678/2012) [2014] ZAGPPHC 445, at page 14 paragraph 21 Molefe J appositely remarked:

“Even when an approaching vehicle is on its incorrect side of the road, a driver on his correct side may assume that the former will return timeously to its correct side of the road. But this assumption does not entitle a driver on the correct side of the road to remain passive in the face of threatening danger. As soon as the danger of the collision becomes evident he is under a duty to take reasonable steps to avert one”

[18] In *casu*, the plaintiff was travelling on a single carriage road on both sides when the insured driver entered into her lane of travel from the T-junction. She noticed the insured vehicle in front of her and without slowing down or applying brakes or sounding a hooter, swerved to the right side. I accept that everything happened quickly, however, I am of the view that if the plaintiff could have reduced her speed by applying brakes she could have avoided the collision.

[19] When the totality of the evidence is considered, the conclusion that the plaintiff contributed to the accident is unavoidable in that:

19.1 She failed to keep a proper lookout, as she would have seen the insured driver entering the road;

19.2 She failed to apply her brakes timeously in order to avoid collision;

19.3 She failed to act as a reasonable driver in the circumstances.

[20] Consequently, I find it appropriate to apportion the degree of fault between the plaintiff and defendant at 10%- 90% respectively. Such apportionment is made on the considerations of justice and equity. See: *General Accident Versekeringsmaatskappy Bpk v Uijs NO* [1993] ZASCA 58; 1993 (4) SA 228 (A) at 234J-235E.

[21] As a result I make the following order:

1. The defendant is liable to pay 90% of the plaintiff's proven damages.
2. Defendant is to pay costs of the action.

M B MAHALELO

JUDGE OF THE HIGH COURT

GAUTENG LOCAL DIVISION, JOHANNESBURG

APPEARANCES

**FOR THE PLAINTIFF: ADV SCHOUTEN
INSTRUCTED BY: WIM KRYNAUW ATTORNEYS**

**FOR THE DEFENDANT: ADV MAFARO
INSTRUCTED BY: MALULEKE MSIMANG & ASSOCIATES**

**DATE OF HEARING: 10 JUNE 2019
DATE OF JUDGMENT: 22 AUGUST 2019**