

REPUBLIC OF SOUTH AFRICA



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

CASE NO: 2016/9459

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


SIGNATURE

11 SEP 2016
DATE

In the matter between:

MAREE, SUSARA PETRONELLA

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

MATOJANE J

Introduction

[1] This is an action for damages. On 2 April 2013 between 19:15 and 19:45 the plaintiff, Ms Maree, and the insured driver of the defendant, Ms Nina Degger, were

involved in a motor vehicle collision. The parties have different views on how the collision occurred. The quantum of damages have by agreement between the parties been separated from the merits in terms of Rule 34 of the Uniform Rules of Court. The only issue to be determined is that of liability.

Common cause facts

[2] It is common cause that the collision occurred along Doak Street, Germiston. Doak Street is a two-way road with cars travelling in opposite directions. The plaintiff was a driver of a Nissan bakkie, and the insured driver drove a Nissan Tida. The point of impact was on the insured driver's lane of travel. The cars were travelling in opposite directions.

The plaintiff's version of the facts

[3] Ms Maree testified that she was driving out from the Pick n Pay parking lot to go to the nearby Spar to purchase electricity, and had turned left into Doak Street. According to the plaintiff, it was approximately 19:45, raining heavily, and there was raw sewage and oil residue on the road surface. A drain at a nearby car washing bay was overflowing onto the road. Ms Maree described the exit from the parking as being situated on a rise, followed by a sudden dip in the road. She stated that when she was exiting the parking lot she had been unable to pull off in first gear, and that her wheels spun when she attempted to do so. She explained that she then put the vehicle into second gear in a further attempt to pull off.

[4] The plaintiff testified that after she accelerated and turned into the road, the back wheels of her bakkie skid, and the back tyre of the bakkie bumped against the pavement on the left side of the road. She stated that her vehicle then 'jumped', and that in an attempt to avoid the pavement on the left side she 'over corrected' the bakkie, coming to a stop across the road with her front wheels on the side of oncoming cars. In other words, on her version, she had swerved too far to the right to avoid the pavement, and her vehicle ended up at a standstill across the two lanes of travel, angled slightly to the right. Ms Maree testified that there was no oncoming

traffic at the time. She also maintained that she had not been driving at an excessive speed.

[5] Ms Maree stated that she looked to her right and left to ensure that the coast was clear, and as she put her foot on the clutch to reverse she heard the sound of a crash and felt the impact of another vehicle hitting her. She says that she was thrown across her vehicle and that she ended up lying with her head in the passenger seat.

[6] She maintains that she was stationary, trying to get her car into reverse, when the insured driver collided with her. She testified that after the impact, a white male jumped out of the driver's side of the insured driver's vehicle. She said that he grabbed her by the clothes, dragged her out of the vehicle and began 'pounding' at her. He informed her that he had a baby in the back seat. He was aggressive and a paramedic had to get him off of her.

[7] From the altercation she understood that there was a three week old baby in the insured driver's car. Concerned, she approached the insured driver's car to check whether the baby was alright. When she put her face to the window of the passenger seat, the mother of the child slapped her in the face. She was adamant that the lady who slapped her, namely the insured driver, was not the driver of the car immediately before the collision. According to her, the car was driven by her male partner.

[8] Ms Maree testified that her vehicle was severely damaged on the left door and that the insured driver's car was damaged in the front, at the bottom below the headlamps. She stated that the headlights of the insured driver's car were intact and that the bonnet was not bent. On her version, the front of the insured driver's vehicle collided with the left side of the bakkie (on the passenger door side).

[9] The plaintiff called her partner, Mr William Dippenaar (Dippenaar), as a witness. He testified that he is the owner of the bakkie that Ms Maree drove. He was informed of the accident soon after it happened, and when he arrived at the scene of the accident he found that the vehicles had been moved from their post-collision resting positions. He stated that the passenger door of the bakkie was damaged.

[10] With regards to the damages on the insured driver's vehicle, Mr Dippenaar's testimony was inconsistent. He first stated that the bonnet of the Nissan Tida was damaged. He observed that there were marks on the chassis and that there was no damage to the bumper, although it was skew. He also testified that the vehicle's headlamps were not broken. He stated that there was damage to the right-hand side of the insured driver's vehicle.

[11] In cross-examination, Mr Dippenaar denied that the side of the Nissan Tida had any damage, stating that there was no chance that the right door of the vehicle could have been jammed (contrary to what the insured driver alleges). However, when confronted with the Accident Report Form, which indicates that the entire right side of the Tida sustained damage, Dippenaar conceded it had been damaged on the right-hand side. He further stated that there was a certain point at which the damage was concentrated, and that was at the front of the insured driver's vehicle.

[12] Mr Dippenaar also testified that the plaintiff did not drive the bakkie often as she did not have a driver's licence.

The insured driver's version

[13] The insured driver, Ms Nina Degger, testified that she was driving along Doak Street after 19:00 and that it was drizzling. She was travelling with her partner and her three month old baby in the vehicle. The baby was strapped into a baby seat in the back seat of the car. They were returning from a visit to her son's grandparents, and were heading to a petrol garage nearby. There is a petrol garage situated on Doak Street.

[14] She saw the plaintiff's car coming out of the Pick n Pay parking lot and turning left in her direction. The plaintiff's bakkie was about 25 metres ahead of her. The bakkie lost control, spun twice, and collided with her. She stated that she could not take any avoiding action as there was a steep embankment on her left-hand side and on the right-hand side was the lane of oncoming traffic.

[15] Ms Degger stated that after the collision she could not get out of the driver's side of the car as the door could not open. After her partner exited the vehicle

through the passenger door, she got out through the passenger door and went to attend to her baby, who was upset.

[16] She states that while she was attending to her baby, the plaintiff approached her and that she asked the plaintiff to leave her alone. She had the baby in her hands and covered with blankets as it was raining. She denies slapping the plaintiff, stating that she could not have done so while holding her child.

[17] Ms Degger testified that the majority of the damage to her vehicle was on the right-hand side and that she could not open her door as a result. She stated that the damage on the plaintiff's vehicle was on the front passenger side. She maintains that she was still in her lane when the spinning vehicle of the plaintiff impacted with her car. On her version, she did not collide with the plaintiff's bakkie with the front of her car. She states that the vehicles collided while in motion and that it was a 'side-on-side collision', meaning that the vehicles collided while they were parallel to one another.

Analysis

[18] The two versions before the Court are so conflicting that they are irreconcilable and mutually destructive. For the plaintiff to succeed, she must satisfy the Court on a preponderance of probabilities that her version is true and accurate and therefore acceptable and that the other version is therefore false or mistaken and falls to be rejected. The approach to be adopted when faced with two mutually destructive versions was set out as follows by Eksteen AJP in *National Employers' General Insurance Co Ltd v Jagers*:¹

'....where the onus rests on the plaintiff as in the present case, and where there are two mutually destructive stories, he can only succeed if he satisfies the court on a preponderance of probabilities that his version is true and accurate and therefore acceptable, and that the other version advanced by the defendant is therefore false or mistaken and falls to be rejected. In deciding whether that evidence is true or not the Court will weigh up and test the plaintiff's allegations against the general probabilities. The estimate of the credibility of a witness will therefore be inextricably bound up with a

¹ *National Employers' General Insurance Co Ltd v Jagers* 1984 (4) SA 437 (E) at 440D-G.

consideration of the probabilities of the case and, if the balance of probabilities favours the plaintiff, then the Court will accept his version as being probably true. If however the probabilities are evenly balanced in the sense that they do not favour the plaintiff's case any more than they do the defendant's, the plaintiff can only succeed if the Court nevertheless believes him and is satisfied that his evidence is true and that the defendant's version is false.'

[19] I accept the insured driver's version of how the accident occurred. She is clear and unwavering in the important details of the accident. Accepting the plaintiff's version of events would mean accepting that the insured driver drove at an excessive speed, on a rainy night, with her three month old baby in the back seat, whom she had just recently brought home from the hospital. There was nothing in her evidence to lead me to believe that she would act in such reckless manner.

[20] Furthermore, on Ms Maree's own version, she was clearly visible to oncoming vehicles. She states that the bakkie's hazards and headlights were on, and that she was at a standstill under a lit streetlamp. If this was the case, the insured driver would most likely have spotted the bakkie and taken evasive action to avoid a collision with Ms Maree.

[21] I need to add that the sudden emergency in which the insured driver found herself entangled in was not of her own creation. Such emergency was created by the plaintiff, even on her own version, whose car left its lane and entered into the insured driver's lane of travel.

[22] Ms Maree's version of events gives rise to problems. If indeed she looked to her left and right before attempting to reverse, she ought to have seen the insured car bearing towards her. On her version, the road was slippery due to the presence of 'sludge' on the road and it was 'raining cats and dogs'. The tyres of the bakkie made contact with the pavement and while correcting it, 'the bakkie jumped', swerving into the lane of oncoming traffic. Ms Maree cannot be said to have been in control of her vehicle.

[23] It is also telling that she had difficulty in exiting the parking lot, which exit onto the road is situated on a rise. To reiterate, Ms Maree stated that she was unable to pull off in first gear, and that she then put the vehicle into second gear in order to get

more power to enable her to do so. It is unusual to try and pull off in second gear on an uphill, which leads me to doubt the plaintiff's driving skills, particularly in light of the fact that she does not have a driver's licence.

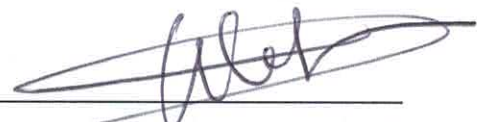
[24] On Ms Maree's own version, the Nissan bakkie was not a vehicle which she drove often; she stated that she drove it 'once in a blue moon'. In all likelihood it was her inexperience with driving, coupled with her unfamiliarity with the particular vehicle and the unfavourable driving conditions, which led to her losing control of the bakkie. It is most probable that she lost control of the bakkie and it veered into the insured lane and collided with the insured driver's vehicle while both vehicles were in motion.

[25] In the affidavit Ms Maree submitted to the defendant in terms of section 19 of the Road Accident Fund Act, she states that the vehicle skid on the left side of the road and after the wheels were scraping alongside the left side pavement she over-corrected the vehicle to the right, and as a result, she lost control and came to a complete standstill on the other side of the road. Her version is consistent with the insured driver's version except insofar as she testified that the plaintiff's bakkie spun and collided with her car.

[26] Given the facts as I have found them, on a preponderance of probabilities the insured driver's version is true and accurate and therefore acceptable, and the other version advanced by the plaintiff is therefore false or mistaken and falls to be rejected.

Accordingly make the following order is made:

1. The action is dismissed with costs.



K E MATOJANE

JUDGE OF THE HIGH COURT

GAUTENG LOCAL DIVISION, JOHANNESBURG

Date of hearing: 2-3 September 2019

Date of judgment: 13 September 2019

Appearances:

Counsel for the Plaintiff: Mr R Kok

Plaintiff's Attorneys: Leon J J Van Rensburg

Counsel for the Defendant: Adv. M I E Ismail

Defendant's Attorneys: Mayat Nurick Langa Inc