

REPUBLIC OF SOUTH AFRICA



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

Case No.: 2018/13206

(1)	REPORTABLE: <u>YES</u>
(2)	OF INTEREST TO OTHER JUDGES: <u>YES</u>
(3)	REVISED.
	<u>29/04/2020</u>
	DATE
	
	SIGNATURE

In the matter between:

VEERAN COOPI

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

J U D G M E N T

MNGQIBISA-THUSI, J:

[1] The plaintiff, Mrs Veeran Coopi, has instituted a claim against the defendant, the Road Accident Fund, in which she seeks damages for loss suffered as a result of injuries sustained in a motor vehicle collision which occurred on 14 April 2016 at the corner of Napier and Gabriel streets, Forest Hill, Johannesburg. At the time of the collision the

plaintiff was a pedestrian when she was allegedly knocked down by a motor vehicle whose registration details and identity of its driver are unknown.

- [2] As a result of the collision, the plaintiff sustained a right hip intraprotic fracture. According to the plaintiff she was admitted to the South Rand Hospital where she was later transferred to the Charlotte Maxeke Hospital where an open reduction and internal fixation was done.
- [3] The defendant disputes that the collision as alleged by the plaintiff actually happened. As a result the issues of liability and quantum were separated. The issue of quantum be postponed *sine die*.
- [4] The only issue to be determined is whether the injury sustained by the plaintiff was as a result of her being knocked by the unidentified motor vehicle.
- [5] The plaintiff was the only witness to testify and her evidence is as follows.
- [6] During 2016 she was staying at 57 Stanford Street, Forest Hill. On the relevant day before 18h00 she went to the shops to get some grocery items. On her way back she was in the process of crossing Napier Street when vehicle which she expected to stop at a stop sign failed to stop and hit her. As result of being hit by the unidentified vehicle she fell on the ground and a passer-by called an ambulance which only arrived four hours later. When the ambulance arrived, some members of the public had already loaded her into another vehicle with the

intention of taking her to hospital. This other vehicle took her to the South Rand Hospital where she was admitted. Three or four days after her admission at South Rand Hospital, she was transferred to the Charlotte Maxeke Hospital as there was no available orthopaedic surgeon at South Rand. At the Charlotte Maxeke Hospital she underwent a surgical procedure.

- [7] With regard to the reporting of the accident one year after it occurred, the plaintiff testified that as a result of her injuries, she was immobilised and in bed for most of the time. She further testified that although she was provided with crutches, she was unable to use them as she could not balance them.
- [8] With regard to the discrepancy relating to the streets she alleges the accident occurred, the plaintiff testified that the accident happened at the corner of Napier and Gabriel streets and not Napier and Hay streets as is recorded in her statement to the police.
- [9] The plaintiff further testified that at the time of the collision, she was self-employed as a hawker, selling sweets to learners outside the Voorbrand School. She further testified that she used to carry her stock for a distance of 8 blocks from where she stayed to the school. Furthermore that she made a profit of R200.00 from the sale of the sweets. According to the plaintiff, as result of the injury sustained, she no longer continued with her sweet business as she is in constant pain and is unable to run or climb.

- [10] The plaintiff's hospital records record that she sustained a fracture from a fall. During cross examination the plaintiff reiterated that she sustained a fracture as a result of being bumped by the unidentified vehicle and has no idea why it was recorded that she sustained her injury after falling. The plaintiff testified that she had informed the nurses and the doctors at the two hospitals she received treatment from never asked her how she sustained her injury but merely spoke to the paramedics who accompanied her to the South Rand Hospital.
- [11] Under cross examination the plaintiff reiterated that she did not sustain her injury as a result of merely falling but that she was knocked by a vehicle and she fell. The plaintiff admitted that she suffers from epilepsy and osteoporosis but denied that she had defaulted on her treatment.
- [12] With regard to how the collision happened, the plaintiff asserted that she was crossing hay street where there is a stop street and a pedestrian crossing and that she crossed the street when she felt it was safe to cross as she expected the vehicle which hit her to stop at the stop street.
- [13] Further still under cross examination, the plaintiff could not recall having been treated at various hospitals mentioned by counsel for the defendant. However she did admit that she previously had surgery on both of her ankles although these were performed at different times.

- [14] The plaintiff denied the defendant's counsel's contention that the collision never happened. She reiterated that the accident did occur as she had testified. Further, plaintiff reiterated that the accident happened at the corner of Napier and Gabriel Streets and that the indication that it happened at the corner of Napier and Hay Streets must have been a mistake.
- [15] The defendant's counsel incorrectly put to the plaintiff that she had never informed anyone about being involved in an accident in that even in the medical experts' reports there is no mention that the plaintiff sustained her injury as a result of being bumped by a motor vehicle. This assertion is incorrect as a perusal of the medical reports do indicate that the plaintiff informed them that she sustained her injury after being hit by a motor vehicle.
- [16] I found the plaintiff to be an honest but slightly confused witness who sometimes had memory lapses. However, her evidence was credible and believable as to how he came to sustain her injury.
- [17] At the close of the plaintiff's case the defendant sought absolution from the instance. The application was refused on the basis that I was of the view that the plaintiff had made out a *prima facie* case with regard to the accident having occurred in which she sustained an injury.
- [18] The defendant closed its case without calling any witness.
- [19] It is expected that a reasonable driver would be more cautious when travelling on a road where he is likely to encounter pedestrians.

[20] There is no evidence contradicting the evidence of the plaintiff about the occurrence of the collision. The plaintiff's evidence is clear that she was crossing Gabriel Street at the corner of Napier and Gabriel's streets when an unidentified vehicle did not stop at a stop street. As she was already on the pedestrian crossing, the vehicle which did not stop hit her.

[21] I am satisfied that the plaintiff has shown on a balance of probabilities that the collision did occur and that she was hit by the unidentified vehicle which failed to stop at the stop street and after it hit her. I am of the view that the unidentified insured driver was negligent in failing to stop at the stop street and in failing to keep a proper lookout for pedestrians.

[22] Accordingly the following order is made:

1. The defendant is liable to compensate the plaintiff in respect of her agreed or proven damages arising from the collision which occurred on 26 April 2016.
2. The defendant to pay the costs of the action in respect of the issue of liability.



N P MNGQIBISA-THUSI
Judge of the High Court

For the Plaintiff: Adv W Bezuidenhout (instructed by MED Attorneys)

For the Defendant: Adv B Molajoa (instructed by Molefe Diepu Attorneys)