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

CASE NO: 19623/2019

DOH: 7 and 8 November 2024

DATE OF FINAL HEADS: 21 February 2025

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

29 April 2025

SIGNATURE

DATE

LOUIS BEKKER

Plaintiff

ROAD ACCIDENT FUND

Defendant

This Judgment was handed down electronically and by circulation to the parties' legal representatives' by way of email and shall be uploaded on caselines. The date for hand down is deemed to be on 29 April 2025

JUDGMENT

MALI J

[1] This matter concerns a claim by the plaintiff for general damages arising from the motor vehicle accident which occurred on 15 April 2017. The defendant repudiated the plaintiff's claim. It denied that the accident occurred and denied negligence of the insured driver. In the alternative the defendant pleaded that the insured driver was faced with sudden emergency and denied the sequelae and injuries.

[2] The defendant's case is that the plaintiff was the driver of the motor vehicle and was the sole caused of the accident. Therefore the defendant is not liable to compensate the plaintiff for the injuries he sustained from the accident.

Law

[3] **Section 17 (1) of the Road Accident Fund Act 56 of 1996** provides that it is: *"...the obligation of the Fund to compensate the third party for injuries suffered as a result of negligent driving by the insured driver."*

[4] This Court must determine whether the plaintiff was the driver of the motor vehicle and whether another motor vehicle was involved in the accident. Three witnesses including the plaintiff testified for the plaintiff's case.

[5] The plaintiff testified on 15 April 2017 on the Old Rustenburg Road he was travelling with his family from Buffelspoort at Marumba to Mooinooi. He and his two sons were passengers in a motor vehicle driven by his wife, Mrs Maria Bekker. Their son Marinus was sitting behind his mother, the driver and the other son, Marius was sitting behind him.

[6] He described the motor vehicle as Isuzu Bakkie with registration number J[...] (the Bakkie) belonging to his friend Gerard Fourie known as Fellies. He had an arrangement with Fellies to take over the hire purchase installment of the bakkie, and the insurance was in Phyllis' name.

[7] He testified that Mrs Bekker was driving at a low speed, when the oncoming motor vehicle appeared driven with bright lights on, driven at a high speed

approaching their lane from the opposite direction. He noticed his wife also switching on the bright lights to warn the driver of the oncoming vehicle, but the other car kept on moving to their side.

[8] Mrs Bekker swerved the car to the left in order to avoid collision. It is at that stage that he heard a bang as there was collision in the mirror on the drivers' side caused by the oncoming traffic. His wife moved out of the road to the gravel and the left wheels were off the tar road.

[9] The front wheel of the bakkie broke after contact with the oncoming car. The bakkie went into the ditch and collided with the trees and overturned once. The bakkie fell on its left side. He lost consciousness, and regained consciousness in the hospital when he noticed his son pushing him in a wheel chair. He lost consciousness again and regained it the following day when his wife visited him. He could not recall talking to a nurse or doctors. He testified that if his wife had not avoided the accident they would have died. She did what was best in the circumstances.

[10] The plaintiff further testified that the reason he was not driving on that day is because he consumed alcohol. It is his family's norm that he does not drive when he had consumed alcohol, hence his wife was the driver on that day.

[11] He identified the license disk of the bakkie as J[...]. The same number which appeared in the exhibit photographs. It corresponded with license number 4[...] and the control number with the expiry date being 31/12/2017.

[12] He further testified that about accident report in annexure RA4. He confirmed that Mrs Bekker, reported the accident to the police station as she was the driver as recorded in the accident report. He explained that the registration number S[...] which appeared on the accident report was not in his wife's handwriting.

[13] The plaintiff further stated that the typed S[...] in his section 19 (f) affidavit had been typed by Mr Anton Myburgh, his erstwhile attorney. He did not read the typed document, he just signed it as he had presented everything to his erstwhile attorney.

[14] Under cross-examination he said the day was Saturday it was very dark, but the condition of the road was good although the road was broken on the sides. It was dry, the speed limit of the road is 80 kmh. He further stated that he did not recall the speed his wife was driving and that he was not sure whether he drank 20 or 30 beers called Hunters Dry.

[15] He further stated that the photograph of the scene was taken by his wife on 16 April, the day after the accident, he didn't know when she took the photograph of the vehicle. He reiterated that he did not know how he got to the hospital. He did not know whether police were called to the scene. After he was discharged from hospital he did not ask his wife about reporting the accident. Although he was concerned whether the accident was reported was reported or not, he did not do anything.

[16] During cross-examination he further that his wife normally tastes alcohol and on that day she did not taste alcohol. He stated that remembered being called by the RAF attorneys, he told them to call back as he wanted to first consult his attorneys, they never called back. He didn't know whether they contacted his wife.

[17] When it was put to him that he was the driver of the Bakkie he insisted that he was unconscious to explain to anybody that he was the driver. He did not know who wrote the notes in the hospital depicting him as the driver. He did not tell anyone that he was the driver. He admitted being intoxicated and having regained his consciousness at the hospital, regained it and lost it again. When he was asked why would the hospital lie, he stated he did not know.

[18] During the trial the witness would be irritated at times and threw his hands up in particular when asked about how many beers he consumed and the speed the car was driven. This conduct does not taint the credibility of the witness. Although he was not impressive probably from the fact that he did not remember the incident well as he was drunk, overall he is found to be a satisfactory witness.

[19] The second witness Marinus Bekker, corroborated the evidence of the first witness, except to state that after the collision with the oncoming vehicle, the bakkie

collided with the tree. He further stated that a certain lady facilitated that their trip to the hospital. Under cross-examination he insisted that his mother was the driver of the bakkie. At Marumba he saw the plaintiff drinking beer and he could not remember the number of drinks as he was with his mother all the time, and the plaintiff was not always within his sight. Mr Marinus Bekker's evidence cannot be faulted. He is found to be a credible witness.

[20] The third witness, Maria Magdaline Bekker, testified that she was the driver of the bakkie when the accident occurred. She corroborated other witnesses in almost all aspects. She added that the plaintiff did not use a safety belt. She also stated that the battery of the bakkie exploded as a result of the collision. She further stated that she noticed that the plaintiff was "dead" only to realise when he gained consciousness in hospital that he was not "dead".

[21] She saw the plaintiff the following day at the hospital when he had regained consciousness. He was resisting, he wanted to go home. He started to ask her what happened the previous night and she explained to him.

[22] Mrs Bekker testified that she did not know the car registration number, because it did not belong to them. When she reported the case she used the license disc number, and the police statement referred her as the driver of the Bakkie. The document was completed by a police officer and she did not verify the registration numbers that were written in her statement.

[23] She stated that the police officer commented that the manner the accident occurred is similar to hijacking. She was further told by the police officer, that since she was not the owner of the bakkie and did not know the insured driver there was no need for SAPS accident report. The accident report was compiled later when Fellies needed it for his insurance claim.

[24] She further stated that she could not have done anything else to avoid the collision. Under cross-examination she gave the same explanation that the plaintiff's erstwhile attorneys completed the section 19 (f) affidavit and that she also signed without reading what was written. She did not notice that the registration number of

the bakkie did not correspond with the licence disk. She did not agree with plaintiff that they left Marumba in the late afternoon. She stated that they left at about 12pm. During cross-examination she further stated that she was not asked at the hospital whether she was the driver of the bakkie.

[25] Before the closure of the plaintiff's case the amendments of the particulars of claim to reflect the correct registration number of the bakkie as J[...] was effected.

Defendant's case

[26] Only one witness testified for the defendant. Mr Sherwin Kemoetie, testified that he was the investigating officer employed by the RAF. He testified that he was an overseer for the team of investigators and oversees investigations. The matter was a referral from the Claims department, on the basis that plaintiff/claimant said he was the passenger when he was a driver.

[27] He testified that they rely on the affidavit of the claimant's, accident report and a copy of the accident register from South African Police Service (SAPS). As standard procedure they also rely on interviewing the owner of the vehicle. In this case they could not trace the driver because there was a problem with the registration number and that also the insurance report led them to the owner of the bakkie. He further testified that he is not the one who compiled the report and he neither gathered any information on the matter.

[28] Under cross-examination he said unfortunately he did not approach the hospital to verify the information. He conceded that the investigation was unfinished as he did not check the license disc.

Analysis

[29] The defendant's case is that the plaintiff was the driver of the motor vehicle and he is the sole cause of the accident. Moreso, because he was driving whilst drunk hence he caused the accident.

[30] From the defendant's closing heads of argument a lot of reliance was placed on hospital records. In fact, during cross-examination of the plaintiff, he was asked to concede to the information and meaning of certain medical terms from the hospital records. I enquired whether any witness from the hospital was going to give evidence, the answer was in the affirmative. Nevertheless, the defendant did not call anyone from the hospital.

[31] It is apparent from the evidence of the witness of the defendant that the defendant did not carry thorough investigation. Also, in defendant's closing arguments the court is persuaded not to accept the evidence of witnesses of the plaintiff as they are all family members. In support of this argument defendant's counsel place reliance in criminal cases dealing with cautionary rules pertaining to the evidence of a single witness. The standard of proof in a civil case is balance of probabilities.

[32] From the evidence of the plaintiff, the plaintiff was not the driver of the motor vehicle when the accident occurred. Secondly, all the witnesses of the plaintiff corroborate one another as to how the accident occurred. This leads this Court to a single determination, that the insured driver was the sole cause of the accident.

[33] In conclusion, having regard to the above the plaintiff has proven that he was involved in a motor vehicle accident and the defendant is liable for damages suffered by the plaintiff.

ORDER

[34] In the result, I grant the following order:

- 1. Defendant is liable for 100% of the Plaintiff's damages.**
- 2. The Defendant shall furnish the Plaintiff with an Undertaking in terms of Section 17(4)(a) of the Road Accident Fund Act 56 of 1996, as amended, to reimburse him for 100% of the costs of his future accommodation in a hospital or nursing home or treatment or rendering of a service or supplying of goods to him arising out of the**

injuries sustained by him in the motor vehicle accident that occurred on 15 April 2017 after such costs have been incurred and upon proof thereof.

3. The remainder of the Plaintiffs' Claims pertaining past hospital and medical expenses, Loss of income and General Damages are separated and postponed *sine die*.

N.P. MALI
JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION
JOHANNESBURG

Date of Hearing: 7 and 8 November 2024
 Date of Judgment: 29 April 2025

APPEARANCES:

For the Plaintiff: Adv. W. Naude
 Instructed by: U Jordaan

For the Defendant: State Attorney
 Instructed by: Matimu Madasele