

THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA



CASE NUMBER: 66312/2014

DATE OF HEARING: 20 OCTOBER 2016

DATE OF JUDGMENT: 4 NOVEMBER 2016

In the matter between:

(1) REPORTABLE: ~~YES~~ NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~ NO
(3) REVISED.
4-11-2010
.....
DATE

[Signature]
.....
SIGNATURE

ANGELA INEZ KRUGER

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

J U D G M E N T

AVVAKOUMIDES, AJ

- [1] This is an action wherein the plaintiff claims damages arising from injuries sustained by the plaintiff in a motor collision on 13 June 2013. The quantum has been settled in the amount of R2 223 059.45. The only issue for determination is the merits.
- [2] The collision occurred in an agricultural area and at the intersection of road number 5 and Campbell Road, Randfontein. It is common cause that the main road is road number 5 and that Campbell road is the side road. Campbell road is partly tarred on the left side of road number 5, travelling in the direction of travel by the plaintiff, and after it crosses road number 5, it is a gravel road. It is common cause that the plaintiff sustained serious injuries in the collision. She accordingly testified that she had no recollection of the collision and her memory came back to her a few weeks after the collision. She was diagnosed with retrograde amnesia and could not testify as to how the collision occurred.
- [3] The plaintiff testified that she had been living in the area for some time before the collision, and still does. The collision occurred about 3 blocks away from her home. She was riding on her motorcycle. The plaintiff testified that she regularly used road number 5 and drove across the intersection of Campbell. She testified that Campbell road is the side road, whereas road number 5 is the main road, but that there are no traffic signs at that intersection and most other intersections in that area. The plaintiff testified that if one drives along road number 5 you do not have to stop at the intersection of Campbell road because road number 5 is the main road. Traffic driving along Campbell road must stop and yield to the traffic along road number 5.

- [4] Under cross examination the plaintiff testified that when one drives along Road number 5, as she did, you still have to pay attention to traffic coming from the side roads and be aware of the surroundings. The plaintiff testified that the custom in the area is for traffic along Campbell Road to yield for traffic coming along road number 5. This is generally the case in that area where many of the side roads join the main roads. The plaintiff's husband, Mr Kruger, testified that on the night in question, approximately 18h30, he was driving behind the plaintiff in a Volkswagen Sharan, at a distance of approximately 30 to 40 metres behind her. He had his lights on as did his wife.
- [5] Mr Kruger testified that if you did not have your lights on you would not be able to drive along that road given the poor visibility and the many potholes on the road. He testified that he did not see any lights coming from his left, i. e the direction from which the insured driver was travelling. They were travelling back from the Cradle of Mankind in Ventersdorp. His speed was approximately 40 to 50 kilometres per hour. He testified that there are no road signs at the intersection of road number 5 and Campbell Road as there are no signs at most of the intersections. It was dark and all he could see was the area illuminated in front of him by his headlights and his wife on the motorcycle. He suddenly saw lights of a vehicle from his left and then a collision occurred between this vehicle and his wife.
- [6] He stopped and went to look for his wife. He initially actually thought that this vehicle may have missed colliding with his wife but then found her on the right

of the intersection. He testified that the grass on the left of road number 5 had grown long at that stage and this, together with the darkness, made it impossible to see any vehicles travelling across the intersection. Mr Kruger stated that the insured vehicle had come to a standstill right into the intersection. According to Mr Kruger the first time he saw the lights of the insured vehicle is when the insured vehicle had come into the intersection.

[7] The insured vehicle was a Toyota farm bakkie that operated as an Armed Reaction Response in the area. The skid marks of the bakkie were approximately 17 metres into the intersection. Under cross examination he stated that the grass on his left had grown to a height which was a little higher than the bakkie and this prohibited him from noticing even the glare of any oncoming lights. It was put to him that the insured driver only saw Mr Kruger's lights on his right but not the lights on the motorcycle. The motivation for this question was to suggest that the lights on the motorcycle were not on. Mr Kruger responded that if you did not have any lights on you would not be able to drive along that road, given the darkness and potholes. The plaintiff closed her case.

[8] The defendant called the insured driver, Mr Myburgh. He testified that he knows the crossing in issue. He confirmed that he was travelling along Campbell Road towards road number 5 and he saw lights coming from his right towards the intersection. He said that he satisfied himself that the lights were far way enough for him to cross the intersection. He did not see the plaintiff on her motor cycle at all. He had responded to an emergency call out

at that stage and he travelled at 60 to 70 kilometres per hour towards the intersection. When he approached the intersection he started braking, on and off, to slow his vehicle. He was already in the intersection when the motorcycle collided with the right front of his vehicle. The reason for him braking on and off was that he wanted to see what was coming along, this after already having testified that he had seen the oncoming lights of Mr Kruger.

- [9] Under cross examination the insured driver conceded that he was not that acquainted with the roads in the area because he had just started working as a response officer in the area. He confirmed that he knew that road number 5 is the main road and that he would have to yield for traffic coming in road number 5. He said that traffic coming in road number 5 have the right of way. He conceded that he bore an obligation to ensure that it was safe to cross the intersection. Mr Myburgh testified that he went into the intersection at approximately 15 kilometres per hour. This means that he did not stop completely. Yet his skid marks were measured at 17 meters on the gravel road, meaning that he continued skidding for 17 metres after the collision. He did not see the motorcycle at all and conceded that, as a result, could not say whether the lights of the motor cycle were on or not.

- [10] In argument the plaintiff's counsel referred me to authority, *Martindale v Wolfaardt* 1940 AD 235, in support of the submission that, at an intersection which is not governed by traffic signs, the traffic traveling in side roads has the duty to yield for traffic traveling in main the roads of such intersection. In

Martindale the court held that the driver of a vehicle travelling on a main road is entitled to regulate the manner of his driving on the assumption that the driver of a vehicle driving in a side road approaching the intersection would not suddenly without warning expose himself and others to danger, *"and that under the circumstances the defendant had not been negligent in not reducing his speed at an earlier stage in the occurrence."*

- [11] The defendant submitted that, with reference to the decisions in Robinson Bros v Henderson 1928 AD 138 at 141 and Martindale, *supra*, the plaintiff had a duty when approaching the intersection, no matter whether she believed that she had the right of way or not, to have regard to the traffic coming from the side street. Whilst this is correct, the facts of this case do not support the defendant's submission. It was dark and on the insured driver's version, he was travelling at 60 to 70 kilometres per hour on his way to an emergency call out. When he entered the intersection he had still not seen the plaintiff and only realized that something was wrong when the collision occurred. He braked and skidded for approximately 17 metres. It is clear that, given the surrounding area and poor visibility he was driving too fast and was negligent. Whether any contributory negligence may be attributed to the plaintiff is for the defendant to have proven. There was no evidence upon which I could find that the plaintiff was contributory negligent.

- [12] Consequently I find that the driver of the insured vehicle was solely to blame for the collision. In the result I make the following order:

[12.1] The defendant is liable for 100% of the plaintiff's agreed or proven damages arising from the motor vehicle accident of 13 June 2013.

[12.2] The Defendant shall pay the capital amount of **R 2 223 059.45 (TWO MILLION TWO HUNDRED AND TWENTY THREE THOUSAND AND FIFTY NINE RANDS AND FORTY FIVE CENTS)** to the Plaintiff.

[12.3] Payment shall be made into the Plaintiff's attorney of record's trust account, details as follows:

Name of Account Holder:	Moss and Associates Inc Trust Ace
Bank Name:	First National Bank
Branch Name:	RMB Private Bank
Account Number:	[6.....]
Branch code:	25 06 55

[12.4] Payment shall be made by the 28th of November 2016, failing which the Defendant shall pay interest a *tempora morae* at the rate of 10.25% on the amount to date of final payment.

[12.5] The Defendant shall furnish the Plaintiff with an undertaking in terms of Section 17(4)(a) of the Road Accident Fund Act, No 56 of 1996, for 100% of the costs of future accommodation in a hospital or nursing home or treatment or rendering of a service or supplying of goods to the Plaintiff or related expenses arising out of the injuries sustained by

the Plaintiff in the motor vehicle collision on the 13 June 2013, after such costs have been incurred and upon proof thereof.

[12.6] The Defendant shall make payment of the Plaintiff's agreed or taxed party and party High Court costs of the action including costs of Senior Counsel and the qualifying, reservation and/or preparation expenses of the Plaintiff's experts:

GW Jacobson (Actuaries)
Dr JJ Schutte (Orthopaedic Surgeon)
Dr Oelofse (Orthopaedic Surgeon)
Dr Berkowitz (Plastic Surgeon)
Dr P Steyn (Urologist)
Dr Scheltema (Neurosurgeon)
Dr Cheyip (Neurologist)
Dr K Roux (Psychiatrist)
Dr C Gordon (Neuropsychologist)
N Doorasamy (Occupational Therapist)
Meryl! Shein (Industrial Psychologist)

[12.7] Any cost attendant upon obtaining payment of the capital amount.

[12.8] The reasonable traveling and accommodation costs incurred to ensure the Plaintiff's attendance to all Medico-Legal appointments.

[12.9] The Plaintiff shall, in the event of the costs not being agreed, serve the notice of taxation on the Defendant's attorneys of record.

[12.10] The Plaintiff shall allow the Defendant 14 (Fourteen) days to make payment of the taxed costs.

G. T. AVVAKOUMIDES
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA
DATE: 4 NOVEMBER 2016

Representation for Plaintiff:

Counsel: I. J. Zidel S. C.

Instructed by: Moss & Associates

Representation for Defendant:

Counsel: H. J. Strauss

Instructed by: T. M. Chauke