



NORTH WEST HIGH COURT, MAFIKENG

CASE NO.: 20/2009

In the matter between:

MOSSAH MARIA DITLHAKA

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

CIVIL MATTER

KGOELE J.

DATE OF HEARING : 21 September 2010

DATE OF JUDGMENT : 17 December 2010

COUNSEL FOR THE PLAINTIFF : Advocate Swart

COUNSEL FOR THE DEFENDANT : Advocate Chwaro

JUDGMENT

KGOELE J.

- 1] The plaintiff instituted an action against the defendant for compensation in respect of bodily injuries resulting from a collision that occurred on or about the 15th July 2007. By agreement between the parties, the merits and quantum were separated at the beginning of the trial.
- [2] The plaintiff was a passenger in a motor-vehicle with the registration number DPF 971 MP driven by the deceased, Lebogang Simon Mwale. They were travelling on a public road Sannieshof to Mareetsane.
- [3] Mr Mokaleng, the insured driver of the defendant, was driving a motor vehicle bearing the registration number SPG 506 GP. He was travelling from the opposite direction. The two motor-vehicles were involved in a collision.
- [4] The evidence of the plaintiff is to the effect that when the collision took place it was already dark around seven or eight in the evening. The car that they were travelling in was a bakkie and she was seated in front with the driver. Whilst travelling she saw the lights of an oncoming vehicle which were too bright. On the left hand side of the road where they were travelling, there were some

stones. The stones were from outside the road up to the inside of the road but did not cross the center line. The last stone on the road was not close to the centre line of the road. According to her estimation, the space in between this last stone and the center line was enough for the width of the car to pass through.

- [5] As a result of this stones, the driver of the motor vehicle in which she was a passenger swerved a little bit towards the center line to avoid the stone when he was passing them. According to her, the driver managed to pass through the space in between the stone and the center line without even crossing the center line. It was at that moment that the oncoming vehicle driven by the insured driver of the defendant came to their side and collided with their motor-vehicle. She sustained injuries mostly on the two legs, one was ultimately amputated.
- [6] Plaintiff also called Inspector Sehume who was the investigating officer in this matter. He mainly testified about the statement he took from Mr Mokaleng, the driver of the defendant which was handed in as an exhibit. He further testified that he was also at the scene of accident and according to his own observation the collision took place more towards the middle of the road, not to the outside of the road.

- [7] Mr Mokaleng, the insured driver, testified on behalf of the defendant. His testimony is to the effect that he was driving on the opposite side of the motor-vehicle in which plaintiff was a passenger. This oncoming vehicle had its bright lights on. He flickered to signal to it that it has its bright lights on, but the driver of that vehicle did not respond. Realizing that the driver of the oncoming vehicle insist on driving with bright lights, he put on his car's hazards, moved to the left side of the road, and went completely out of the road towards his left hand side where he was travelling. After stopping his car there, this oncoming vehicle, as a result of the high speed it was travelling in, came towards his vehicle and collided with it. He was injured too and even hospitalized.
- [8] Plaintiff alleges that the collision was solely caused by the negligence of the insured driver. The legal question that the court has to determine is therefore, whether the insured driver was negligent or not.
- [9] In reaching its decision, a court should never engage in a piecemeal process of reasoning. In all cases, a court must consider all the evidence before it and then ask in a civil case, whether, by balancing the probabilities it is possible to select the conclusion that appear to be the more probable, but not the only conclusion.
- [10] The court has to therefore analyze and evaluate the evidence led

by all the witnesses in this case. In this regard I found the following reasons made by **Eksteen AJP** in the case of **National Employers General Insurance Co Ltd V Jogers 1984 (4) SA 437 (E)** very helpful in dealing with cases like the present one.

“ In deciding whether the plaintiff has discharged the onus of proof, the estimate of the credibility of a witness will be inextricably bound – with a consideration of the probabilities of the case and, if 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 nonetheless believes him and is satisfied that his evidence is true and that the defendant’s version is false. It is not desirable for a court first to consider the question to the credibility of the witnesses and then, having concluded that enquiry, to consider the probabilities of the case, as though the two aspects constitute separate fields of inquiry”.

- [11] The following is an analysis of the court of the evidence before it. The plaintiff was steadfast in her evidence and during cross-examination that even though the motor vehicle in which she was travelling had to swerve to the right towards the center of the road, their car did not cross the white lane / centre line at all. She further

persisted that the space between the last stone on the road and the center line was enough for the car to pass. The car driven by the insured driver came to their side and collided with them. Her testimony was not at all shaken during cross-examination. She also appeared to be an honest and credible witness.

[12] Her evidence is to some extent corroborated by the police officer Inspector Sehume. Although he came after the collision, he testified that from his observation the collision took place towards the center line. He is not an expert as far as detecting the exact place of the collision, but this court can only rely on his observation. An important part of his observation is to the effect that the collision did not at all take place outside the road.

[13] The insured driver's evidence on the other hand is to the effect that the collision took place outside the road when he had already stopped. The question is, if indeed that was the case, why would inspector Sehume vehemently deny this and say it was towards the centre line. I am saying this because, the middle of the road (centre line) and the outside of the road are two vast position which are far from each other.

[14] There is a statement made by the insured driver that was accepted as exhibit. Counsel for the defendant only took issue about the statement after it was admitted as evidence. He maintained that the rights of the insured driver was not explained to him at the

particular time the statement was taken. This issue is devoid of substance because, beside the police officer testimony that he had explained the rights, there is an indication in the statement itself that the police officer who took the statement had amongst other things that he had done during the taking of the statement explained the rights.

- [15] In this statement, Mr Mokaleng gives a different account of how the collision took place. To quote, he says the following in paragraph in paragraph 6:-

“Seeing that the vehicle was not complying to my request, I reduced the speed to 60km/h so that we pass each other, safely. When we were about to pass each other, I noticed this vehicle turning towards my direction / lane. I then also turned to the right a bit to avoid collision and with hope that the vehicle will pass on my left. Unfortunately it was very late as the on coming vehicle hit on my bakkie head on and both stopped on the road facing western direction.”

- [16] This version is not reconcilable with the one that was put in the evidence in chief and during cross-examination by the insured driver. This inconsistent versions by the insured driver unfortunately taints his credibility.

- [17] When one consider the uncontroverted evidence of the plaintiff together with that of the inspector, the probabilities weighs far more favourable against the testimony of the insured driver.
- [18] I am of the view that it is highly unlikely that on this day the plaintiff's car went out of its lane, passed the right hand side and went to the far side, outside the road where the insured driver had stopped and that collision took place there. What is also surprising is that the version in his statement made to Inspector Sehume, instead, somehow corroborates that of the plaintiff and Inspector Sehume on the fact that the collision took place towards the centre line. Unfortunately this version renders the plaintiff's version more likely and/or probable.
- [19] Probabilities points more towards the fact that when the insured driver saw that the car in which the plaintiff was driving was moving towards the centre of the road avoiding the stones, he drove to the right side of the road (that is the side of the oncoming vehicle) with the thinking that the oncoming vehicle will pass him on the left as he said in his statement, and collision took place. This conduct thus constitutes negligence on his part and I find that it is the sole cause of the collision.
- [20] I come to the conclusion that the plaintiff managed to discharge the onus on a balance of probabilities that the defendant was the cause of the accident on this day.

(21] The following order is therefore made:-

21.1 Quantum and merits are separated;

21.2 Defendant is liable to pay Plaintiff the proven damages;

21.3 Defendant is ordered to pay costs.

A.M. KGOELE
JUDGE OF THE HIGH COURT

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