

SOUTH AFRICA / JUDGMENT

Abrahams v Afrika (2368/2009)

[2018] ZAECPEHC 26 (26 June 2018)

[2018] ZAECPEHC 26**COURT**

Eastern Cape High Court, Port Elizabeth

BEFORE

G G Goosen

CASE / FILE NUMBER

2368/2009

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IN THE HIGH COURT OF SOUTH AFRICA

EASTERN CAPE DIVISION, PORT ELIZABETH

CASE NO: 2368 / 2009

Date heard: 23 May 2018

Date delivered: 26 June 2018

In the matter between

SHAFEEKA ABRAHAMS Plaintiff

And

FLYNN AFRIKA Defendant

JUDGMENT

GOOSEN, J.

[1] The plaintiff claims damages against the defendant arising from injuries she sustained in a motor vehicle collision which occurred on 11 May

2007. She was at the time a passenger in a motor vehicle driven by the defendant. At the commencement of the trial a separation of issues, was ordered by agreement between the parties. The trial therefore proceeded in relation to the liability only based on the alleged negligence of the defendant.

[2] The circumstances in which the collision occurred are essentially common cause. The collision occurred at approximately 07h10 on the R75 road between Uitenhage and Port Elizabeth. The vehicle, a Citi Golf, driven by the defendant, collided with the rear of a

stationary truck on the eastbound side of the roadway. The roadway consists of three lanes and an emergency lane. The truck was stationary in the middle lane, the lane in which the defendant drove his vehicle. It was also common cause that the truck had come to be stationary in that lane as a result of it being involved in a collision with another vehicle.

- [3] In the particulars of claim the plaintiff alleges that the defendant was negligent in several respects. It is, for instance, alleged that he drove at an excessive speed in the circumstances; that he failed to keep a proper lookout; that he failed to apply the brakes of the vehicle timeously or at all; and that he failed to take steps, which he could have taken, to avoid causing the collision. The defendant denies that he was negligent. He pleads that he was confronted with a sudden and unexpected emergency and that he took all reasonable steps to avoid the collision but that he could not.
- [4] The plaintiff, as I have indicated, was a passenger in the vehicle. It is accordingly necessary for her to prove only a degree of negligence on the part of the defendant in order to succeed. The plaintiff testified and presented the evidence of Mr Phillip, the driver of the stationary truck. The defendant testified in his defence.
- [5] The plaintiff said that she had been getting a lift to University with the defendant since the beginning of that year. There were three passengers in the vehicle, all university friends. She was seated behind the driver's seat. They had left Uitenhage at approximately 7.00am. The weather was clear and fine and the road surface was dry. The sun was still rising. It was however low above the horizon and it had a blinding effect whenever the road turned in an easterly direction.
- [6] Ms Abrahams explained that they were chatting in the car and that the defendant was participating in the conversation. He looked to his left and behind him when he was talking. She was also looking around inside the vehicle. She looked ahead and she saw nothing in the road which warned her of any hazard. She said that Mr Afrika was driving fast. She conceded in cross-examination, however, that he was travelling at less than the speed limit which, on that section of the road, is set at 120 km/h. She did not see the stationary truck in the roadway ahead. She only saw it when Mr Afrika slammed on the brakes of the vehicle. Moments later the car collided with the truck and she was rendered unconscious.
- [7] Mr Phillip, a heavy-duty truck driver with considerable experience, was responsible for driving the stationary truck with which the defendant's vehicle collided on the day. He stated that he had been driving along that route for many years. He said that he was driving the truck in the middle lane. Although the speed limit on that section of the road is 120 km/h, the generally applicable speed limit for a heavy duty truck is 80 km/h. He said he reduced his speed to approximately 65 km/h because of the conditions. These were that the sun was rising low in the sky and that it was particularly bright and had a blinding effect. He said he was nevertheless able to see ahead of him. There was little traffic. Two LDV vehicles had passed him on the right. They were travelling very fast and the rear vehicle was following very close behind the front one. The front vehicle slowed down and the rear vehicle applied

brakes to avoid a collision. He explained that it swerved and then executed what he described as a U-turn in front of him in the middle lane. He applied the brakes of the truck, but could not avoid colliding with the LDV vehicle that

was in his lane. He brought the truck to a halt in the middle lane, switched on the hazard lights and got out of the truck to inspect the damage. He told his assistant to take the “warning triangles” and to place them behind the truck. He then telephoned the police. While attending to this and before his colleague had placed the warning-signs, he heard a very loud bang. This was the sound of the Citi Golf colliding with the rear of his truck.

- [8] When asked about the effect of the sun on visibility, he said that it was blinding but not such that it might cause a collision. He conceded however that given the raised height of the truck the effect of the sun’s glare may not be the same as it would be in a motor vehicle.
- [9] When asked to estimate the distance that he could see ahead, he said that it was about 100 m. As to the time between him bringing his truck to a halt and the collision from the rear, he said it was very short – “possibly less than 2 minutes”. The evidence was that he immediately had sent his colleague to place the hazard signals behind the truck but that his colleague had not yet deployed them by the time the collision occurred.
- [10] The defendant stated that he was driving his vehicle in the middle lane. He was travelling between 100 and 110 km/h. He stated that he was familiar with the road, having travelled it to university for several months. The sun was low in the sky and he said it had a blinding effect when driving directly in an easterly direction. He was aware of other vehicles on the road, both to his left and right. He said that he saw the truck ahead of him on the roadway, although he could not say how far away it was when he first saw it. He stated that visibility, because of the blinding effect of the sun, was between 50 and 100 m. He explained that he was about 15 m from the truck when he realised that it was stationary. He did not see hazard lights, although he accepted that they may have been on. On realising that the truck was stationary he glanced left and right in his rearview mirror; realised he could not change lanes, and then applied the brakes of the vehicle hard hoping to avoid the collision. It was common cause that the brake marks on the road surface extended for 30 m.
- [11] In cross-examination it was put to him that the plaintiff’s evidence was that he had participated in the conversation and that he had turned to look at others in the car. He denied this, saying that he did not recall being distracted before the collision. When asked why his counsel had not challenged the evidence, he said he did not know that he could draw such things to counsel’s attention. When challenged as to the steps taken to avoid the collision. He said that he did not believe that he had had any chance. He could not change lanes because of the risk of colliding with other vehicles. He therefore braked hoping to avoid colliding with the truck.

- [12] A driver of a vehicle which collides with the rear of another vehicle is prima facie negligent, unless he or she can give some explanation which negatives the inference of negligence. The defendant's pleaded case was that his vision of the road ahead was impaired as a result of the blinding effect of the sun and that he was confronted by a sudden and unexpected emergency, being the stationary truck in his path of travel.
- [13] It is however to be expected of the driver of a vehicle whose vision ahead is impaired by the blinding effect of the headlights of an oncoming vehicle, or for that matter the blinding effect of sunlight, to reduce the speed of his vehicle to enable him to bring it to a halt within the range of his vision. A failure to do so will support an inference of negligence on his part (see *Flanders and Another v Trans Zambezi Express (Pty) Ltd and Another* 2009 (4) SA 192 (SCA) at 199E-200B).
- [14] In this instance the evidence of the plaintiff, that of Mr Philip, and that of the defendant was to the effect that the R75 meanders in a generally easterly direction and that at points along the road, when the road turns more directly east, the sunrise had a blinding effect. The defendant was aware of this, having driven the road at that time over many months. He was aware of the blinding effect that the sun had on that day. Indeed the evidence of Phillip, who was also familiar with that stretch of road, was that the conditions were such as to cause him to reduce his speed. The defendant testified that he was driving at a speed slightly less than the speed limit. His evidence was however that he maintained a steady speed. Although it was put to the plaintiff on defendant's behalf that he had reduced his speed because of the blinding effect of the sunlight, the defendant did not testify to this effect. The defendant was accordingly in a position of a driver who was aware of the potentially blinding effect of the sunlight at points during the journey. The potentially blinding effect was therefore not unexpected (cf. *Pienaar and Another v Commercial Union Assurance Company of SA Limited* 1969 (3) SA 61 (T)).
- [15] The defendant's evidence was that he was aware of the truck on the roadway ahead of him. He was unable to state how far the truck was ahead of him when he first became aware of it. He stated that he only realised that the truck was stationary when he was about 15 m away from the truck. The objective admitted facts however suggest that he must have been further away from the truck since the brake marks on the road surface were 30 m in length. It should also be borne in mind, that Phillip brought the truck to a halt immediately after it had collided with the LDV vehicle; that he alighted from the truck and went to inspect the damage and then phoned the police. On this evidence, which must be accepted, time (estimated by Phillip to have been 2 minutes) must have passed between the first collision and the collision which involved the defendant's vehicle. Even if it accepted that the time that passed was less than 2 minutes, it must follow that the defendant's vehicle was still a considerable distance away from the truck when the truck collision occurred. In this regard it is to be borne in mind that the defendant stated that he was travelling at between 100 and 110km/h. If the time between the collisions is reduced to one minute, the defendant's

vehicle would have been in excess of 1½ kilometres from the truck. If the defendant was aware of the truck ahead he would also have been aware that his vehicle was closing on the truck. Yet his evidence is that he only realised that the truck was stationary when he was almost upon the truck. In my view the inference is inescapable that the defendant was not keeping a proper lookout.

[16] The defendant's explanation was that he was blinded by the sun. I have already mentioned that his evidence did not establish that he reduced his speed because of the reduced visibility. A reasonable driver would be expected to do so. In any event, if it is accepted that the sun had a blinding effect to the extent that the defendant lost sight of the truck on the road ahead, and therefore was not aware that it had come to a halt, then it must be accepted that the defendant continued to drive at the same speed notwithstanding the blinding effect of the sun. This too points to negligence.

[17] It follows from what is set out above that I unable to find that the defendant was confronted by a sudden and unexpected emergency. All the evidence points to the conclusion that he was, having regard to the conditions, driving at an excessive speed in the circumstances

and that he failed to keep a proper lookout. In the circumstances the defendant drove his motor vehicle in a manner that was negligent and such negligent driving was the cause of the collision.

[18] In the result the following order will issue.

1. The defendant is held liable to the plaintiff for such damages arising from the motor vehicle collision which occurred on 11 May 2007, as the plaintiff is able to prove.
2. The defendant is ordered to pay the costs of the action.

G. G. GOOSEN

JUDGE OF THE HIGH COURT

Appearances: For the Plaintiff

Adv. L. A. Schubart SC

Instructed by Heine Ungerer Attorneys

For the Defendant

Mr. Maher

Instructed by Goldberg & Victor

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