

SOUTH AFRICA / JUDGMENT

Blignaut v Road Accident Fund (24248/2015) [2017] ZAGPPHC 940 (15 December 2017)

[2017] ZAGPPHC 940

COURT

North Gauteng High Court, Pretoria

BEFORE

M J Mosopa

CASE / FILE NUMBER

24248/2015

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HIGH

COURT OF SOUTH AFRICA

(GAUTENG

DIVISION, PRETORIA

CASE

NO: 24248/2015

15/12/2017

Not

reportable

Not

of interest to other judges

Revised.

In

the matter between:

IZAK

JOHANNES

BLIGNAUT Plaintiff

And

ROAD

ACCIDENT

FUND Defendant

JUDGMENT

MOSOPA, AJ

- [1] The plaintiff, an adult male born on the 05 May 1961 instituted a claim against the Defendant claiming for damages in terms of section 17(1)(b) of the Road Accident Fund Act 56 of 1996 ("Act") that were suffered as a result of a collision with the insured driver on the 26 May 2011.
- [2] The collision occurred between a green BMW motorcycle with registration numbers PVY 976 GP driven by the plaintiff and a Volkswagen Polo motor vehicle driven by the insured driver, Mr K.C Kekana on the N4 East Platinum highway next to the Doompoot Plaza.
- [3] At the commencement of the proceedings an application for the matter to be postponed was made by the defendant as the defendant was of the view that there were two pending claims of the plaintiff and at all material times they were dealing with a wrong file of the plaintiff. No substantive application for postponement was filed by the defendant. The application was opposed by the plaintiff on the ground that the matter is six years old and if a postponement is granted the plaintiff will be prejudiced. After listening to the arguments on behalf of the parties I refused the application for postponement and ordered the trial to proceed.
- [4] It was further brought to my attention that the parties agreed at the pre-trial conference held on the 13th November 2017 that the issue of merit will be separated from the issue of quantum. I therefore ordered the separation of merits and quantum and allowed the trial to proceed on issue of merits.
- [5] In the particulars of claim the plaintiff avers that the collision was caused by the sole negligence of the insured driver in that:
1. He failed to avoid a collision by exercising reasonable care and skill;
 2. He failed to keep a proper lookout;
 3. He changed the traffic lines when it was not safe for him to do so and without considering other road users.
- [6] The defendant pleaded that the collision was as a result of the sole negligent of the plaintiff and, should it be found that the insured driver was negligent and then the plaintiff contributed to the negligence in one or more of the following respects:
1. He failed to keep a proper lookout;
 2. He failed to observe the presence, movement and/or actions, alternatively further probable movement and/or actions of other vehicles, particularly, the insured vehicle;
 3. He failed to avoid collision when by the exercise of a reasonable care and skill he could and should have done so.

- [7] The issue to be determined is whether the collision was solely caused by the insured driver and if there was contributory negligence on the part of the plaintiff. The plaintiff testified and closed his case without calling further witnesses. The defendant closed its case without calling any witnesses.
- [8] The summary of the plaintiff's evidence is that on the 26 May 2011 at around 7h10 in the morning he was driving his BMW motorcycle on the N4 east highway. At that time he was travelling from home, Clarina to his work place. The type of road he was travelling on had two lanes travelling in the same direction.
- [9] He was travelling on the left lane and the insured driver was traveling on the right lane towards the same direction and the insured driver was in front of the plaintiff.
- [10] As he was approaching Doomport plaza tollgate he reduced speed as he was travelling in less than 100 km per hour speed on the road with a speed limit of 120 km per hour.
- [11] He remained on the left lane and all of a sudden the insured driver changed his lane of travel and entered the lane of travel of the plaintiff. The insured driver's motor vehicle came very quick and gave no indication that he was going to change lanes.
- [12] He made an observation of the insured motor vehicle when it was travelling on the right lane as it was always by his side. The motorcycle lights were on and he did everything to avoid the collision by moving to the far left to his lane of travel but the insured motor vehicle ended up colliding with the plaintiff's motor cycle by bumping it on the left front. He then sustained injuries as a result of the collision.
- [13] Under cross-examination, the plaintiff said he attended an advanced motor cycling driving conducted by BMW. He only mentioned for the first time under cross-examination the he applied the brakes but could not avoid the collision.
- [14] On the evidence. presented, I must now determine if the collision was caused by the sole negligence of the insured driver and if there was contributory negligence.
- [15] The onus of proof vests on the plaintiff to proof on the balance of probabilities, that the insured driver was negligent on one or more of all grounds as averred in the particulars of claim.
- [16] In *Kruger v Coetzee* 1966 (2) 428 (A) Holmes J.A at 430 E-F stated: "For the purpose of liability culpa arises if :-
- (a) a diligens paterfamilias in the position of the defendant –
 - (i) would foresee the reasonable possibility of his conduct injuring another in his person or property and causing him patrimonial loss, and;
 - (ii) would take reasonable steps to guard against such occurrence and

(b) the defendant failed to take such steps,

Whether a diligens paterfamilias in the position of the person concerned would take any guarding steps at all and, if so what steps should be reasonable, must always depend upon to particular circumstances of each case. Hence the futility, in general of seeking

guidance from the facts and results of other cases."

[17] In *Burger v Santaam Versekeringsmaatskappy* 1981 (2) SA 703 (A) the court held that where a reasonable driver of the motor vehicle approaches a motor vehicle which has over a considerable distance been veering to the right or to its wrong side of the road he would have to take at least three steps, namely he would have to reduce his speed by braking or moving slowly, he would have to turn left or right as far as possible or would have to hoot continuously to alert the driver of his presence".

[18] It was contended by Mr Freitas on behalf of the plaintiff that there is uncontested evidence by the plaintiff that he did everything to avoid the collision. There is also uncontested evidence that when the insured driver changed lanes he never indicated to show that he is changing lanes. He requested the court to find that the defendant's insured driver is the sole cause of the collision.

[19] Mr Magau on behalf of the defendant contended that the issue of brakes only came for the first time under cross-examination . The size of the insured motor vehicle allowed the plaintiff to avoid the collision. There was contributory negligence and the plaintiff should be awarded 80% of the proven claim.

[20] In evaluating the evidence before me it is undisputed evidence that when the collision occurred the plaintiff was travelling on his correct lane of travel. The plaintiff tried to avoid the collision by swerving to the far left but as the insured motor vehicle approached very quickly there was nothing more he could do to avoid the collision. At the time of collision the plaintiff had reduced his travelling speed as he was about to reach a tollgate. There is no version of the insured driver before me. I can safely accept the plaintiff's version that when the insured driver changed his lane of travel into plaintiff's lane of travel he did not signal his intention of doing so by indicating.

[21] The defendant in the alternative pleaded contributory negligence. It is trite law that the defendant must prove the contributory

negligence of the plaintiff. The defendant failed to discharge its onus in proving plaintiff's contributory negligence. I

therefore find no contributory negligence on the part of the plaintiff.

[22] I am therefore satisfied that the plaintiff had a right of way and remain in his correct travel of lane. The insured driver in his position of diligence paterfamilias would have foreseen when changing the lanes of travel that his conduct would result in injuring or colliding with the plaintiff, and he failed to take reasonable steps to guard against such occurrence.

[23] I therefore make the following order:

1. The collision was solely caused by the negligent driving of the insured driver;
2. The defendant is liable to pay 100% of the proven or agreed damages incurred by the plaintiff in the above collision;
3. The issue of quantum is postponed sine die;
4. The defendant is to pay cost of suit

M. J. Mosopa

Acting Judge of the High Court

APPEARANCES:

For the Applicants: Adv P.G De Freitas

Instructed by:

Riette Oosthuizen, Attorneys, Pretoria

For the Defendant: Adv M.L Magau

Mkhonto & Ngwenya Inc., Pretoria

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Prepared on 26 October 2026 · Esheria