

SOUTH AFRICA / JUDGMENT

Chetty v Road Accident Fund (98017/2015) [2017] ZAGPPHC 892 (8 December 2017) [2017] ZAGPPHC 892

COURT

North Gauteng High Court, Pretoria

BEFORE

C Pretorius

CASE / FILE NUMBER

98017/2015

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IN

**THE HIGH COURT OF SOUTH AFRICA
(GAUTENG
DIVISION, PRETORIA)****Case****number: 98017/2015**

Date: 8/12/17
Not
reportable
Not
of interest to other judges
Revised
In

the matter between: TERUSHAN
CHETTY PLAINTIFF
And
THE
ROAD ACCIDENT
FUND DEFENDANT

JUDGMENT

PRETORIUS J.

- (1) In this action the plaintiff claims for damages for injuries sustained in a motor vehicle accident. The issue of merits and quantum are separated in terms of Rule 33(4) of the Uniform Rules of Court. The court has to decide only the merits in this action.

THE PARTIES:

- (2) The plaintiff is an adult male, who was the driver of his motor vehicle on 4 November 2014.
- (3) The defendant is the Road Accident Fund, established by virtue of section 2(1) of the Road Accident Fund Act[1].

FACTS:

- (4) On 4 November 2014 at 22h25 the plaintiff was the driver of his motor car. He was driving from West to East on Michael Brink Street, approaching the Hardy Muller circle. It was at night on a clear, dry night. He entered the slipway to the circle, after ensuring that there was no vehicle in the circle travelling from East to West, that is travelling from his right-hand side. As he was in the circle he saw a blue car coming from his right-hand side at a high speed. He swerved to avoid a collision with this car. He swerved to his right-hand side as there was no time to apply his brakes and he thought, in that split second, that swerving to avoid the car was the best way to deal with the situation. His vehicle hit the kerb on the right side, which caused his vehicle to overturn and to hit a lamp post. He only regained consciousness in hospital.
- (5) During cross-examination the plaintiff testified that he was driving at less than 60 km per hour. Although he had looked when at the stop line before entering the circle, he had not seen the blue vehicle at all and did not know where the vehicle was at the time. It was possible that the vehicle had already been in the circle, but travelling at a high speed.
- (6) The only other witness, Mr Mabena, confirmed the plaintiffs evidence. He is a friend of the plaintiff and they had visited a certain Mr De Villiers on the evening of the incident. Mr Mabena had had no alcohol on the evening in question. According to him nobody had consumed alcohol at Mr De Villiers' home whilst he was there from 21h30. When Mr Chetty, the plaintiff, left, he followed him in his car and was 2 - 3 car lengths behind Mr Chetty when Mr Chetty entered the circle. He was driving at 50km per hour. He saw Mr Chetty enter the circle and then saw a blue vehicle travelling at high speed entering the circle from the south, that is from Mr Chetty's right side. The car drove right in front of Mr Chetty causing Mr Chetty to swerve to his right, hitting the kerb, overturning and colliding with a lamp post on the circle. The blue car slowed down and then sped off. Mr Mabena's evidence was that the blue car was travelling at a very high speed and cut the circle to end up right in front of Mr Chetty's vehicle. His evidence concluded

the case for the plaintiff.

(7) Thereafter the defendant closed his case without calling any witnesses. The court has to decide the case on probabilities. First of all I must mention that both the plaintiff and Mr Mabena impressed the court as honest witnesses, who gave straight forward answers without embellishing the facts. The plaintiff was honest, when he testified that he had consumed one and a half beers before Mr Mabena had joined him and his friend. The defendant did not offer any evidence to counter the plaintiff's evidence. Although counsel, for the defendant, argued that the plaintiff had travelled at an excessive speed, this proposition was never canvassed with the plaintiff. There was no expert evidence tendered as to the cause of the collision.

(8) In South African Law of Evidence[2] the learned authors stated:

"Even in a civil case, the defendant's failure to testify cannot justify a verdict for the plaintiff unless there is enough evidence to enable the court to say that, having regard to the absence of an explanation, the plaintiff's version is more probable than not."

(9) In Titus v Shield Insurance Co Ltd[3] Millar JA found :

"In Magagula v Senator Insurance Co Ltd 1980 (1) SA 717 (N) DIDCOTT J had occasion to consider the circumstances in which an adverse inference should be drawn against a party who deliberately refrained from calling a witness who might be expected to be able to elucidate the facts and in the course of his judgment he referred in pertinent detail to most of the cases in this Court on that subject. It is therefore not necessary for me to name them all in this judgment or to refer in detail to the principles. It is clearly not an invariable rule that an adverse inference be drawn; in the final result the decision must depend in large measure upon 'the particular circumstances of the litigation' in which the question arises."

(10) This court has only the evidence of the plaintiff and Mr Mabena on behalf of the plaintiff. I have considered all the probabilities and improbabilities having regard to the evidence of the two witnesses, who came across as honest witnesses. If I apply the principles as set out above the conclusion is that the unknown driver was to blame for the accident, due to the excessive speed when entering the circle. Therefore an apportionment of blame in these circumstances would not be the correct finding.

(11) In the result I make the following order:

1. The defendant is liable for 100% of the damages that the plaintiff can prove.
2. The defendant to pay the costs of the action.

Judge C Pretorius

Matter heard on: 14 November 2017

For the Plaintiff: Adv P Lourens

Instructed by: Spruyt Inc

For the Respondent: Adv R Strydom

Instructed by: Mathie Jooma Sabdia Inc

Date of Judgment: 8/12/2017

[1] Act 56 of 1996

[2] DT Zeffert and AP Paizes, 2nd Edition

[3] 1980(3) SA 119 (A) at 133 E-F

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