

SOUTH AFRICA / JUDGMENT

Coertzen v Road Accident Fund (21391/2015) [2017] ZAGPPHC 320 (4 July 2017) [2017] ZAGPPHC 320

COURT

North Gauteng High Court, Pretoria

BEFORE

Ranchod

CASE / FILE NUMBER

21391/2015

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Policy**IN****THE HIGH COURT OF SOUTH AFRICA****GAUTENG****DIVISION, PRETORIA****CASE****NO:21391/2015**

DATE:

3/7/2017

REPORTABLE

: NO

OF

INTEREST TO OTHERS JUDGES: NO

In

the matter between: MI
 COERTZEN
 PLAINTIFF
 and
 THE
 ROAD ACCIDENT
 FUND
 DEFENDANT

JUDGMENT

RANCHOD J:

- [1] The plaintiff in this matter seeks compensation for injuries sustained in a motor vehicle collision.
- [2] It is alleged that the plaintiff was driving a motor vehicle with registration letters and numbers [N...] when a collision took place with a motor vehicle with registration letters and numbers [S...] (the insured vehicle) driven at the time by Mr J Uys (the insured driver).
- [3] It is common cause that the collision occurred on 11 November 2013 at about 14h10 inside the intersection of Garsfontein and Solomon Mahlangu Roads, Moreleta Park, Pretoria.
- [4] At the commencement of the trial I was informed that a separation of the issue of metis from that of quantum of damages had been agreed upon between the parties. An order was accordingly made that the matter proceed on the issue of liability only and the issue of quantum was postponed indefinitely.
- [5] The parties also agreed on the common cause facts namely the date of the accident, the parties involved, that the plaintiff was travelling in a straight line, that the insured driver was executing a turn to his right when the collision occurred and that the traffic light was green for both
- drivers as they entered the intersection from opposite directions.
- [6] Only the respective drivers of the two motor vehicles testified for the plaintiff and defendant respectively.
- [7] The plaintiff testified that she was the driver of a single-cab bakkie namely, [N...] (the plaintiff's vehicle) with a trailer in tow. She was travelling from North to South on Solomon Mahlangu Road in the left of three lanes at about 50km/h. The intersection with Garsfontein road is a traffic-light controlled intersection. As she approached the intersection the traffic light was in her favour so she proceeded into the intersection. The insured driver turned in front of her and collided with the right front of her vehicle.

- [8] Plaintiff testified that she could not avoid the accident as it happened suddenly and she could not take evasive action. When she entered the intersection there were no vehicles ahead of her. She said the insured driver executed a right turn but she did not see him.
- [9] Under cross examination she denied that there was another vehicle ahead of the insured driver which also executed a turn to its right. She also denied that the insured driver was waiting to turn to his right behind the other vehicle.
- [10] Under further cross examination the plaintiff repeated that she did not see the insured driver immediately prior to the accident but then later said that he came at a speed and turned in front of her without stopping beforehand. She said she first saw him when she was already in the intersection and just before he collided with her.
- [11] The insured driver testified that he was travelling on the same road as the plaintiff but from the opposite direction. (Plaintiff said the road is in a North-South direction whereas the insured driver said he was travelling in an 'easterly' direction on the same road but that is not material. What is common cause is that they were both travelling on Solomon Mahlangu Road but in opposite directions).
- [12] The insured driver testified that both he and another driver ahead of him were inside the intersection to execute a right turn. They had stopped to allow motor vehicles from the opposite direction to pass them before they proceeded to turn right. He said the motor vehicle ahead of him drove off and he noticed that vehicles on the opposite side were standing still. He proceeded when suddenly he saw the plaintiff's vehicle and they collided.
- [13] The insured driver testified further that the speed limit on that road is 80kph and that immediately before he came to the intersection he had been travelling about 80-90kph but slowed down as he approached the intersection. He then said there was a motor vehicle ahead of him but he could not say if it was stationary. He was inside the intersection for some time to allow oncoming traffic to pass.
- [14] The insured driver went on to say he had seen vehicles in the oncoming lanes standing still except for their extreme left lane where he did not see any vehicle. Like the plaintiff, he too testified that he also could not do anything to avoid the collision as it happened very quickly.
- [15] Under cross examination the insured driver testified that he was on his way to the Pretoria-East hospital at the time but he was not in a hurry. He is a medical representative. He went on to say that he was concerned that he could not see clearly on the other side. He could not say who collided with whom. He did not see plaintiff's motor vehicle immediately before the collision.
- [16] As I said, it is common cause that the traffic light was in favour of both drivers when they entered the intersection. The plaintiff was proceeding straight ahead whereas the insured driver was executing a turn to his right. In *Sieborger v South African Railways and Harbours* 1961(1) SA 498 (A.A) at 505A-D it was held-

"The heavy flow of urban traffic would be seriously interfered with if, on each occasion when a signal is exhibited by a motorist intending to turn across the line of traffic, such traffic were required to come to a stop or slow down. Such signal is of course a notification to following and oncoming traffic that the driver intends to turn across the line of traffic, but equally implicit in it is that he intends to do so at an opportune moment and in a reasonable manner. It is also, more particularly, a signal to following traffic that the driver in question intends to move over towards the middle of the road preparatory to choosing the opportune moment to cross over on to that half of the road being used by traffic coming in the opposite direction. A driver of a vehicle proceeding in this latter direction does not, with reference to a vehicle whose driver has signalled an intention to turn across his path and who is directing his vehicle towards the middle of the road preparatory to doing so, incur an obligation to stop or slow down. Certainly he must keep such vehicle under observation and as soon as it is clear that, despite the inopportuneness of the moment, it intends to cross in front of him, he must take all reasonable steps that may be necessary to avoid colliding with it.'

- [17] In applying these principles in this case before me it is clear that the insured driver had to ensure that it was safe for him to proceed to turn right before doing so. He says he did not see plaintiff's motor vehicle which indicates he did not keep a proper look out. He clearly had the responsibility to ensure it was opportune for him to proceed.
- [18] However, that is not the end of the matter. The question arises whether the plaintiff could have taken evasive action herself to avoid the collision. She testified she could not. Given that the point of impact was on the right hand side of her motor vehicle in front of the right front wheel gives credence to her version that she could not take evasive action as the insured driver must have moved into her lane of travel at the last moment. The only difficulty I have with her evidence is that she said she did not see the insured vehicle but then later said she saw it approach at speed. The latter was clearly an afterthought as she had at least twice before that said she had not seen the insured vehicle. However, although this aspect of her evidence can be criticized overall the witness made a good impression and I accept the rest of her evidence as being credible.
- [19] But the plaintiff had a duty to keep a proper lookout. Had she done so, she would have observed the insured vehicle. She would then have had to keep the insured vehicle under observation and as soon as it was clear that, despite the inopportuneness of the moment, it intended to cross in front of her, she could and should have taken all reasonable steps that may be necessary to avoid colliding with the insured vehicle. (See Sieborger above).
- [20] However, given that it was the insured driver who turned in the face of oncoming traffic he had the greater duty to keep a proper lookout. He said he did not see plaintiff's vehicle coming which indicates that he did not keep a proper lookout. Had he done so, he would have observed plaintiff approaching and waited for an opportune moment before proceeding further. The insured driver must be held to be at fault to a greater extent than the plaintiff.

[21] In all the circumstances I make the following order in favour of the plaintiff:

1. The defendant is liable for 80% of the plaintiff's agreed or proven damages.
2. The defendant is to pay the costs of the trial on the merits.
3. The determination of quantum is postponed sine die.

RANCHOD J

JUDGE OF THE HIGH COURT

Appearances:

Counsel on behalf of Plaintiff

: Adv J Barn

Instructed by

: Ehlers Attorneys

Counsel on behalf of Defendant

: Adv N Mabena

Instructed by

: Ningiza Horner Inc.

Date heard

: 9 February 2017

Date delivered

: 4 July 2017

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Prepared on 27 October 2026 · Esheria