

SOUTH AFRICA / JUDGMENT

Dangazele v Road Accident Fund (1756/18) [2020] ZAECMHC 6 (13 February 2020) [2020] ZAECMHC 6

COURT

Eastern Cape High Court, Mthatha

BEFORE

Z. M. Nhlangulela

CASE / FILE NUMBER

1756/18

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IN

THE HIGH COURT OF SOUTH AFRICA

[EASTERN

CAPE LOCAL DIVISION, MTHATHA]

[Not

Reportable]

CASE

NO: 1756/18

Heard

on: 05 & 06/02/20

Delivered

on: 13/02/20

In

the matter between: MAWANDE
 DANGAZELE
 Plaintiff
 and
 ROAD
 ACCIDENT FUND
 Defendant

JUDGMENT

NHLANGULELA DJP

- [1] Guided by the legal principles stated in the cases of *Kruger v Coetzee* 1966 (2) SA 428 (A) at 430 and *International Shipping Co (Pty) Ltd v Bently* 1990 (1) SA 680 (A) the plaintiff bears onus of proof that the negligent driving of the defendant's insured driver caused an accident that resulted in the plaintiff sustaining serious bodily injuries for which he seeks to be compensated.
- [2] The evidence adduced by the plaintiff and his witness, Mr Andiso Mbalo, shows that on 17 December 2016 a collision occurred between a motor vehicle with registration letters and number DRS [...] EC, driven at a time by the plaintiff, and another motor vehicle with registration letters and number WF [...] GP driven by one Mr Ndyabo Sikefile (the insured driver). The collision took place on R61 National Road situated at Zone 14 Administrative Area, Mthatha. That road traverses Zone 14 A/A towards the western Engcobo direction and Eastern Mthatha town direction. Whereas a plaintiff's vehicle was driven towards Engcobo that of Mr Sekefile was driven in the opposite direction towards the town. The two sides of the road are divided by a white barrier line. Zone 14 is located at a distance of approximately 6 kms away from the town. The plaintiff's vehicle was a taxi.
- [3] The plaintiff stated that at about 7:30 am, before the collision took place, he had taken into his vehicle a number of passengers, including Mr Mbalo. When he got to Zone 14 A/A, a lady passenger alerted him that she was going to alight at Ezinkunini stop. Upon reaching the stop he drove out of the tarmac and over the yellow line such that the vehicle stopped with the left hand-side wheels having landed onto the gravel and the other two standing on the tarmac. The passenger alighted; Mr Mbalo closed the door and took a seating position at the centre of the passenger seat behind the driver's seat; the plaintiff scanned the front and right sides of his path of travel, and ascertained that it was safe for him to drive into the road. As the plaintiff had one side of his vehicle onto his path of travel he saw vehicle WF [...] GP approaching in the front and being driven at a high speed. Realising the possibility of a collision the plaintiff initiated an avoidance steering swerve to the left side to get outside the road. However, that manoeuvre was interrupted by the approaching vehicle

that suddenly hit plaintiff's vehicle head-on. The plaintiff lost consciousness until he regained it at Nelson Mandela

Academic Hospital. He sustained serious bodily injuries for which he now seeks to be compensated by the defendant.

- [4] Mr Mbalo stated that the position that he took whilst seating in plaintiff's vehicle was such that he could see vehicle WF [...] GP approaching at a very high speed. He confirmed that a complete collision avoidance action could not have been taken by the plaintiff.
- [5] Both the plaintiff and Mr Mbalo contended that Mr Sekefile's negligent driving caused the collision. They were never consulted by the police in connection with the collision with the result that police statements were never taken from them, even when the plaintiff took the trouble of going to the Police Station upon discharge from detention in the hospital for three months his oral accident report was not recorded in writing. Those witnesses corroborated one another in stating that the point of impact was located on the plaintiff's side of the road due to wrongful encroachment thereon at the time when it was not safe for vehicle WF [...] GP to be driven there. According to the witnesses Mr Sikefile was overtaking vehicles in front of his vehicle at an inopportune time when the plaintiff was in occupation of his correct path of travel towards Engcobo direction.
- [6] The corroborated version of the plaintiff is the only evidence that was placed before the Court. The defendant did not call witnesses to testify. That approach is consistent with the bare denial of plaintiff's clearly pleaded case which called for a defence. In light of the defendant's notice of intention to defend that was filed of record. I agree with Mr Badli's submission that the notice to defend cast a duty upon the defendant to disclose a defence. In that regards see: *Neuyebauer & Co Ltd v Bodiker & Co (SA)* 1925 AD 316 at 321. What counsel for the defendant did was to cross-examine the oral witnesses apparently to undermine their credibility. That stratagem was not successful. Consequently, the unchallenged evidence of the plaintiff is accepted by the Court.
- [7] The issues to be decided in this case are whether Mr Sikefile drove vehicle WF 896 GP negligently; and whether the personal injuries sustained by the plaintiff were caused by Mr Sikefile. These questions can be answered by application of the "reasonable person" and "but for" tests which were stated in the cases of *Kruger* and *International Shipping* respectively.
- [8] It is common cause that the R61 National Road on which Mr Sikefile was driving is a busy road. It is a single carriage way. He was caught up in a situation of overtaking vehicles on his correct

side of the road which manoeuvre necessitated crossing the barrier line and driving on the incorrect side. In doing so he had a duty to keep a proper look-out to ensure that driving on the incorrect side would be safe until he reverted to his correct side. That safety entailed his ability to avoid any possible collision on his incorrect side of the road. However, the high speed at which he drove his vehicle on the incorrect side did not afford him an opportunity to avoid colliding with the plaintiff's vehicle which had been travelling on its correct side. In the circumstances the only conclusion to be drawn from the proved facts is that a reasonable person in his position

would have foreseen a possibility of his conduct injuring another and take steps to avoid the collision. However, Mr Sikefile failed to take such steps.

[8] In applying the but for test as stated in *International Shipping Co (Pty) Ltd v Bently*, supra, to the facts of this case the plaintiff would not have been injured but for the negligent driving on the part of Mr Sikefile the injuries eventuated. It appears from the facts of this case that the vehicle of the plaintiff, and no other person, was affected by the negligent driving of Mr Sikefile. I find, therefore, that the driving of motor vehicle WF [...] GP on the incorrect side of the road that caused harm to plaintiff whilst driving on his correct side are sufficiently linked events that must safely lead to a conclusion that the defendant is liable to make good the damages suffered by the plaintiff.

[9] The costs incurred in these proceedings must follow the result.

[10] The following order is made:

1. The defendant be and is hereby liable to compensate the plaintiff for such amount of damages as may be proved in due course.
2. The defendant to pay costs associated with the determination of the issue of liability.
3. The hearing on the issue of quantum be and is hereby postponed sine die.

Z. M. NHLANGULELA

DEPUTY JUDGE PRESIDENT OF THE HIGH COURT

MTHATHA

Counsel for the plaintiff : Adv. Z. Badli

Instructed by

: Jojo Incorporated

MTHATHA.

Counsel for the defendant : Adv. D.C. Botma

: Smith Tabata Attorneys

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