

SOUTH AFRICA / JUDGMENT

# Dodd v Road Accident Fund (5975/2019) [2023] ZAWCHC 139 (12 June 2023)

**[2023] ZAWCHC 139****COURT**

Western Cape High Court, Cape Town

**BEFORE**

Wille, J

**CASE / FILE NUMBER**

5975/2019

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IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

Case Number: 5975 /2019

In the matter between:-

MARK STUART DODD Plaintiff and THE ROAD ACCIDENT FUND Defendant

Coram: Wille, J

Heard: 5 June 2023

Delivered: 12 June 2023

**JUDGMENT**

WILLE, J:

**Introduction:**

- [1] This is a trial about the alleged negligence of the driver of the motor vehicle insured by the defendant through legislative intervention.[1] For the purpose of clarity, the parties will simply be referred to as the plaintiff and the defendant. The defendant's legal representatives made no appearance at the trial. After the plaintiff had closed its case, I was told that an attorney for the defendant was waiting outside the court venue.[2]

- [2] The plaintiff is a fifty-two-year-old self-employed male businessman who manufactures rubber stamps. The plaintiff instituted action against the defendant for damages arising from a motor collision on 22 September 2017. The plaintiff allegedly suffered significant bodily injuries, including a below-the-knee amputation of his left leg as a direct result of this collision.
- [3] The merits of the claim were separated from the quantum issues, and this trial dealt only with the merits of the plaintiff's claim. The plaintiff commenced his action through a summons issued in April 2019, and in July 2019, the defendant filed its plea to the plaintiff's claims as formulated.

Overview:

- [4] The plaintiff's claim was lodged with the defendant on 4 October 2018. The claim presented included the vanilla claim forms, plaintiff's medical records, an accident report with accompanying photographs, the identity documents of the plaintiff and a collection of bank statements as well as the customary special power of attorney.
- [5] The defendant objected to the claim because the treating doctor had not completed the medical section of the claim form.[3] It had been completed after considering all the hospital records by another medical practitioner[4]. After that, the summons was served on the defendant without the objection having been attended to by the plaintiff.
- [6] The defendant served and filed their plea without raising any issue regarding the objection. The defendant pleaded a denial of the allegations formulated by the plaintiff, put the plaintiff to the proof thereof, and reserved the right to lead evidence in rebuttal. After that, further pre-trial processes followed, including discovery, the examination of the plaintiff by the defendant's own medical experts, the exchange of expert reports (as well as a joint minute by the orthopaedic surgeons), a court directive to hold a pre-trial conference (which the defendant did not attend), as well as the making of an offer of settlement on the merits.
- [7] The objection was again featured (telephonically) by the defendant's claims handler four years later and six weeks before trial. The objection was immediately responded to by filing another vanilla medical form completed by the first attending doctor. Thus, the objection has been attended to and there has since been no repudiation of the plaintiff's claim and neither has this issue been raised formally in any of the defendant's pleadings. It

was argued by the plaintiff that in order to constitute a repudiation, the repudiation must be clear, unambiguous and unequivocal and ought to be in writing as it constitutes a formal executory act. On this, I agree.

[8] It was argued by the plaintiff that there had been substantial compliance as the statutory purpose of a correctly completed claim form was to ensure that, before being sued for compensation, the defendant was possessed of sufficient particulars about the claim to give it sufficient time and to enable it to consider and decide whether to resist the claim or to settle it before any costs of litigation are incurred. A correctly

completed and accurate claim form enables the fund to investigate the claim before making its decision.[5]

[9] As a matter of pure logic, the test is objective. It begs the question of whether, by looking at the form itself, one can see whether or not, on all the information contained in it relating to the accident, a reasonable insurer would be prevented by the inaccuracy therein from adequately investigating the claim and determining its attitude towards it.[6]

Context:

[10] The accident happened on Friday, 22 September 2017, in the late afternoon when the plaintiff (who had been working in Cape Town at his business premises), was returning on his motorcycle to his home on the West Coast. The plaintiff was riding a motorcycle on the West Coast road and immediately prior to the accident, he was approaching a service station. He was following a pick-up truck which had been ahead of him for some distance and travelling within the speed restriction which was enforced by way of an average speed prosecution gantry.

Evidence:

[11] The first witness was an accident reconstruction expert with considerable experience.[7] His main findings may be summarized as follows: (a) both the plaintiff and the defendant had sight distances to the front and the right and left exceeding the distance of a hundred meters; (b) the plaintiff observed the defendant's vehicle to his left waiting at the stop sign, and he slowed down as he was a short distance behind the vehicle ahead of him; (c) the defendant driver had a clear view of the oncoming traffic from his right but for some reason did not see the plaintiff's motorcycle and attempted to cross the intersection when the vehicle ahead of the plaintiff's motorcycle passed the intersection in front of the defendant driver;

(d) there was no opportunity for the plaintiff to have avoided the collision and, (e) this version supports the damage to the right front and the front of the defendant's vehicle.

[12] Based on all the information at his disposal, including the re-construction drawings, the photographs and the location of the plaintiff's motorcycle after the collision, he recommended that the driver of the defendant's vehicle should be held fully responsible for the cause of the collision as he failed to keep a proper lookout and entered the intersection when it was unsafe to do so.

- [13] The plaintiff testified that from about a distance of one hundred and fifty meters as he approached the intersection he noticed the defendant's vehicle which was stationary on the left side of the intersection in the vicinity of the stop line at the intersection. The vehicle ahead of him went through the intersection unscathed.
- [14] After that, the driver of the defendant's vehicle moved into the intersection from his left-hand side into the plaintiff's path of travel. According to the plaintiff, the driver of the defendant's vehicle was looking in a northerly direction scouting for oncoming traffic but not in the direction the plaintiff was travelling. Further, the plaintiff says he had about ten meters of space to react. He thought about swerving to his left-hand side and passing behind the defendant's vehicle but decided against it because by doing so, he could have collided with road signs placed on the left of the intersection.
- [15] Ultimately, he decided to accelerate and steered to the right in an attempt to pass in front of the defendant's vehicle but was unsuccessful, and the defendant's vehicle collided with him on the left side of his motorcycle, causing him to lose control and pushing him diagonally to the right across the intersection. He lost control of his motorcycle and came to rest on vacant land some twenty meters away. The first person to attend to him was an off-duty paramedic, and he recalls the paramedic holding his foot together as there had already been a traumatic amputation at this stage. The police were summoned to the scene as well as an ambulance, and both the plaintiff and the driver of the defendant's vehicle were transported to a hospital.

Consideration:

- [16] The evidence overwhelming demonstrates that the driver of the defendant's vehicle entered into the intersection without establishing that it was safe to do so and without looking to his right and establishing whether there was oncoming traffic from the direction in which the plaintiff was travelling. There is a duty on a driver to act reasonably. By the same token, a driver is entitled to assume that other road users will also act reasonably.
- [17] Undoubtedly, this assumption is only valid until it appears that there is a danger of a collision occurring due to unreasonable conduct. Thus, when that realisation occurs, a driver must take all reasonable steps to avoid the collision.[8]
- [18] By way of application, a driver travelling along a 'through' road can assume that a driver at a stop line at the intersection will timeously heed the stop sign and enter the intersection only when it is safe for him to do so.[9] This notwithstanding, a driver on the through road does not have an unconditional and exclusive right of way. Put another way, he is still required to keep a proper lookout and to take all reasonable steps to avoid a collision. However, such a driver is not required to make absolutely sure that it is safe to enter the intersection.[10]
- [19] Again, by way of application, the plaintiff did assume that it would be safe to continue following the vehicle ahead of him through the intersection and that the vehicles stopped at the stop line would not enter the intersection. The driver of the defendant vehicle entered

the intersection without sufficient reaction time and space for the plaintiff to avoid the collision. While it is so that the plaintiff was riding a motorcycle without a licence at the time of the accident, he testified that he was an experienced rider and had completed an advanced riding skills course over eight days, which involved the training in dealing with the high-speed control of a motorcycle. In my view, this legality issue only becomes relevant if it demonstrates a lack of the necessary degree of skill and experience required to operate a motorcycle in daily traffic conditions.

[20] The plaintiff's conduct falls to be assessed based on the reasonable driver test. This is not an ex post facto determination but relates to an analysis as to how the reasonable person would have acted under the same conditions compared to the experience of the motorcyclist whose conduct falls to be similarly scrutinised.[11]

[21] Thus, on the facts of this case, no basis exists for holding that a licensed motorcyclist would have reacted differently when confronted by the defendant's vehicle entering the intersection. In the circumstances, there is no room for any apportionment of negligence on the part of the plaintiff.

Order:

[22] In all the circumstances of the matter, the following order is granted:

1. That the merits are separated from the quantum determination.
2. That the defendant is liable to compensate the plaintiff for all such damages as he may in due course prove or as may be agreed between the parties arising out of the motor collision on 22 September 2017 and as more fully particularised in the plaintiff's particulars of claim.
3. That the defendant is ordered to pay the plaintiff's costs of trial on the merits, such costs to include:

3.1 the costs associated with procuring the report by Cira Collision Investigation & Reconstruction Agency.

3.2 the reasonable costs of attending the trial by the witness Mr Clack.

3.3 the reasonable costs of the colour photographs depicting the collision scene as evidenced in the trial bundle.

3.4 the reasonable travel and accommodation costs of the plaintiff's legal representatives in attending consultations with the plaintiff on 4 October 2019.

3.5 the reasonable travel and accommodation costs of the plaintiff's legal representatives in attending to two inspections in loco held on 21 August 2018 and 5 April 2023.

3.6 the reasonable travel and accommodation costs incurred by the plaintiff's legal representatives in attending the trial on 5 June 2023.

4. That the defendant is ordered to pay interest on these costs at the rate of interest determined by the Prescribed Legal Rate of Interest Act No, 55 of 1975, such interest to commence running from the date fourteen days after the taxation thereof, to date of payment, both days inclusive.

E.D.WILLE

(Cape Town)

- [1] Road Accident Fund Act, 56 of 1996 (the 'Act').
- [2] This was at 11h45 on the day of the trial.
- [3] This in terms of Section 24 (2) (a) of the Act (the 'objection').
- [4] Dr Olivier.
- [5] Nkisimane and Others v Santam Insurance Co Ltd 1978 (2) SA 430 A at 434 F- G.
- [6] AA Mutual Insurance Association Ltd v Gcanga 1980
- (1) SA 858 A
- [7] Mr Clack.
- [8] Steenkamp v Steyn 1944 A.D. 5364.
- [9] AA Mutual Insurance Association Ltd v Nomeka 1976
- (3) SA 45 A at 52 E-G.
- [10] SA Eagle v Harford
- [1992] ZASCA 42; 1992
- (2) SA 786 A.D.
- [11] Santam and African Guarantee and Indemnity Co v Moolman 1952
- (2) pH 016 A.D.

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