

SOUTH AFRICA / JUDGMENT

Doona v Road Accident Fund (380/2015)

[2022] ZALMPPHC 20 (22 April 2022)

[2022] ZALMPPHC 20**COURT**

Limpopo High Court, Polokwane

BEFORE

Kganyago

CASE / FILE NUMBER

380/2015

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Policy**REPUBLIC****OF SOUTH AFRICA****IN****THE HIGH COURT OF SOUTH AFRICA****LIMPOPO****DIVISION, POLOKWANE****CASE****NO: 380/2015****REPORTABLE: YES/NO****OF****INTEREST TO OTHER JUDGES: YES/NO****REVISED****In**

the matter between:

MMAMAGANA

RAYMOND DOONA

PLAINTIFF

And

ROAD

ACCIDENT FUND

DEFENDANT

JUDGEMENT**KGANYAGO J**

- [1] The plaintiff is claiming damages arising out of a motor vehicle accident which occurred on 2nd June 2012. At the time of the accident, the plaintiff was the driver of motor vehicle with registration number [...] which collided with motor vehicle with registration number [...], driven by Modjadji Jones Makgakga (insured driver).
- [2] The defendant had defended the plaintiff's action and had also filed its plea to the plaintiff's particulars of claim. In its plea the defendant is denying liability. However, on the date of the hearing of this matter, the defendant was in default despite been properly notified of the date. The matter proceeded in the absence of the defendant. The plaintiff applied for separation of the merits and the quantum of the plaintiff's damages. I accordingly ruled that the matter will proceed on the issue of merits of the claim only.
- [3] The plaintiff took the witness stand and testified under oath. He testified that on 2nd June 2012 he was the driver of motor vehicle with registration number [...] which was involved in a motor collision with motor vehicle with registration number [...] driven by the insured driver. The plaintiff testified that the accident occurred in the morning, and that at the time of the accident there was fog and visibility was not clear, and he could only see the vehicles that were near him.
- [4] According to the plaintiff, he was driving on Nelson Mandela drive road from the direction of Seshego township towards Polokwane town. The plaintiff was driving at a speed of below 80km per hour, but above 60km per hour. The plaintiff avers that Nelson Mandela drive is a two-way lane road for vehicles going towards Polokwane. When he approached the robot at Madiba Park, the robot was green for him, and he was driving in the extreme left lane. After the plaintiff had passed the robot, a certain truck passed him on the right hand side on the middle lane also going to the same direction of Polokwane. That truck after it had passed the plaintiff, changed the middle lane to the extreme left lane. The plaintiff was now following that truck at a distance of one and half vehicles.
- [5] As he was following that truck, another bakkie came from behind the plaintiff, and started driving parallel the plaintiff on the middle lane. Suddenly, the plaintiff saw the brake lights of the truck that was in front him, and in order to avoid colliding with the truck that was in front of him, the plaintiff swerved to the emergency yellow lane and started driving in the emergency lane. Immediately on entering the emergency lane, he found a stationary bakkie without its hazards lights on, and collided with it. The plaintiff then realized that he could not drive back to the main lanes as there were other cars which were already driving on those lanes, and he swerved to the gravel where he lost his consciousness. According to the plaintiff the accident was caused by the truck which had applied brakes abruptly whilst its brake lights were not that clear, and also the stationary bakkie that did not put its hazards lights on.

- [6] That concluded the plaintiff's evidence and he closed his case. Counsel for the plaintiff argued that this was a case of sudden emergency, and that the plaintiff was left with no other alternatives, and that that plaintiff's claim on merits should succeed.
- [7] It is trite that RAF is obliged to compensate for bodily injury caused by or arising from the driving of a motor vehicle. The casual link that is required is essentially the same as the casual link that is required for Aquilian liability. There can be no question of liability if it is not proved that the wrongdoer caused the damage of the person suffering the harm. Whether an act can be identified as a cause, depends on a conclusion drawn from available facts and relevant probabilities. The important question is how one should determine a causal nexus, namely whether one fact follows from another. (See *Grove v The Road Accident Fund*[1]).
- [8] There are two prerequisites of liability upon RAF to compensate for loss or damage suffered by a third party as a result of bodily injuries which were formulated in *Wells & Another v Shield Insurance Co. LTD. & Another*[2], and which are: (i) that the bodily injury was caused by or arose out of the driving of the insured motor vehicle, and (ii) that the bodily injury was due to the negligence or other unlawful act of the driver of the insured vehicle or the owner thereof or his servant.
- [9] According to the plaintiff's particulars of claim, on the date of the collision, it was misty, the plaintiff was driving at a slow speed and following two vehicles, a van and a truck when the driver of the van suddenly applied brakes of his vehicle. Further that the plaintiff then tried to move out of the road to avoid a collision, unfortunately there was an unlighted and reflectorless municipal vehicle parked of the road and he collided with it and thereafter do not know what happened next because he was unconscious.
- [10] However, when the plaintiff testified in court, he stated that it was the truck that applied its brakes and the brake lights were not that clear. The plaintiff further testified that he was driving behind the truck, whilst the bakkie was driving parallel him, hence he could not swerve to the middle lane when the truck in front him suddenly applied brakes. The plaintiff's testimony in court, materially differs from the version as put in his particulars of claim as to how the accident occurred. The plaintiff's particulars of claim are the basis upon which his cause of action is based, and must therefore stand and fall by them.
- [11] The vehicle which the plaintiff had collided with was not parked on any of the lanes normally used by moving vehicles, but in the emergency lane. No evidence was led as to in which way was the driver who had parked that vehicle in the emergency lane was negligent, except to say that its hazards lights were not on. If they were on, in what way would that have had prevented the accident since the plaintiff could not have swerved to the middle lane as there was a bakkie that was travelling parallel to his vehicle.
- [12] There is duty upon a driver who drives behind another vehicle to follow it at a safe distance for any eventualis. According to the plaintiff he was following the truck at a distance of one and half cars. As it was misty at the time of the collision, the plaintiff was reasonably

expected to drive with extra caution as visibility was not clear. No evidence was led as to what prevented the plaintiff to apply brakes at that following distance as the truck in front of him was moving and not stationary. In my view, at that distance, and at the speed that he was travelling with, a reasonable person in his position would first have applied brakes, more especially that there is no evidence that the road surface was slippery.

[13] There was no sufficient evidence led regarding the negligent driving of the insured driver. The plaintiff has failed to prove negligence on the part of the insured driver, and therefore liability of the defendant has not been proved or established at all.

[14] In the result I make the following order:

14.1 The plaintiff's claim is dismissed.

14.2 No order as to costs

JUDGE OF THE HIGH COURT OF SOUTH

AFRICA, LIMPOPO DIVISION, POLOKWANE

APPEARANCES: Counsel for the plaintiff : Mabotja LM Instructed by : Makwela Mabotja
Attorneys Date heard : 19th April 2022 Date delivered : 22nd April 2022

[1] [2011] ZASCA 55 (31 March 2011) at para 7

[2] 1965

(2) SA 865 (C) at 867H

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Prepared on 10 October 2026 · Esheria