

SOUTH AFRICA / JUDGMENT

Harcus v Road Accident Fund (43607/12)

[2014] ZAGPPHC 71 (14 February 2014)

[2014] ZAGPPHC 71**COURT**

North Gauteng High Court, Pretoria

BEFORE

KGANYAGO

CASE / FILE NUMBER

43607/12

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Policy**REPUBLIC OF SOUTH AFRICA****IN THE HIGH COURT OF SOUTH AFRICA****(NORTH GAUTENG, PRETORIA)****CASE NO.: 43607/12****DATE: 14 FEBRUARY 2014**

In the matter between:

KARIN

HARCUS.....Plaintiff

And

ROAD ACCIDENT

FUND.....

Defendant

JUDGMENT

KGANYAGO AJ

[1] The plaintiff is claiming damages arising out of a motor vehicle accident. According to the plaintiff, the accident occurred on the 29th July 2007. Even though the defendant in their plea, has denied that the collision has occurred, at the end of their closing arguments, they conceded that the collision has occurred.

- [2] The plaintiff was a passenger in the motor vehicle with registration number R[...]. The driver of the motor vehicle in which the plaintiff was a passenger, was Mr GJH Harrison.
- [3] It is alleged that the driver of the vehicle which the plaintiff was a passenger, collided with another vehicle driven by a certain Mr Hunkin, when Mr Harrison was forced to take evasive actions in order to avoid a collision with a speeding white Mercedes Benz, which the identity of the owner or driver is unknown to the plaintiff. According to the defendant, the accident was caused by the sole negligence of Mr Harrison.
- [4] At the commencement of the trial, the parties agreed to the separation of merits and quantum of the plaintiffs damages. I accordingly ruled that the matter will proceed on the issue of merits of the claim only.
- [5] The parties further agreed that the issue of Tp 2 form which was signed and submitted by the plaintiff, will be argued at a later stage in the form of a point in limine to be raised by the defendant.
- [6] Two witnesses testified for the plaintiff: the plaintiff and Mr Harrison the driver of the vehicle in which the plaintiff was the passenger.
- [7] The plaintiff testified that she is an architect. On the 29th July 2007 she was a passenger in the motor vehicle driven by Mr Harrison. They were from the parkade of Eastgate Mall, joining the main road. Whilst on the main road, Mr Harrison indicated to move from the left lane to the right lane.
- [8] As he was attempting to move to the right lane, he saw a Mercedes Benz coming at high speed (insured driver). He moved back to the left lane and in the process he knocked the vehicle that was driving in front him in the left lane.
- [9] During cross examination, she stated that the weather condition was good. The traffic was clear. They were travelling in the region of 35 to 40 km per hour. She denied that Mr Harrison was negligent, but that the accident was caused by the negligent driving of the speeding insured driver. She conceded that at the time when the driver of the vehicle in which she was a passenger, was attempting to move to the right lane, the insured driver could have been behind them, but that it was unlikely that the insured driver could have been close to them.
- [10] Mr Harrison testified that at the time of the accident, he was the driver of motor vehicle with registration number R[...]. The plaintiff was a passenger in that vehicle. At the time of the accident, he was engaged to the plaintiff and they are now married.
- [11] The plaintiff was injured during the accident. The accident happened at Bradford road, which is a 60 km area zone. He was driving in the region of 3 0 to 3 5 km per hour.
- [12] There was a car which was driving in front of them. When he looked on the mirror, he saw the insured driver who was about 80 metres behind them. He indicated to enter into the right lane. As he was in the process of entering the right lane, he saw that the insured driver

was now behind them at about 10 metres from them. In order to avoid colliding with the insured driver, he swerved back to the left lane and that is when he collided with the vehicle that was in front of him. The vehicle that was driven by the insured driver was a Mercedes Benz and it was coming at high speed.

[13] Under cross - examination, he stated that the vehicle that was driving in front of him was driving slowly at the same speed he was driving. He stated that before he attempted to move to the right lane, he had checked whether it was safe to do so. He was evasive to state whether the insured driver had a right of way or not.

[14] Section 17(1) of the Road Accident Fund Act, 1996 as amended, ("the Act") reads as follow:

"(1) The fund or an agent shall -

- a) Subject to this Act, in the case of a claim for compensation under this section arising from the driving of a motor vehicle where the identity of the owner or driver thereof has been established;
- b) Subject to any regulation made under section 2, in the case of a claim for compensation under this section arising from the driving of a motor vehicle where the identity of neither the owner or driver thereof has been established,
- c) Be obliged to compensate any person (the party) for any loss or damage which the third party has suffered as a result of any bodily injury to any other person, caused by or arising from the driving of a motor vehicle by any person at any place within the Republic, if the injury or death is due is due to the negligence or other wrongful act of the driver or of the owner of the motor vehicle or of his or her employee in the performance of the employee's duties as employee "

[15] The plaintiff was a passenger in motor vehicle with registration number R[...] and is required to prove 1% negligence on the side of the defendant's insured driver or against Mr Harrison who was the driver of the vehicle in which she was a passenger.

[16] The issues which must be determined by the court are the following:

16.1 whether the insured driver was negligent;

16.2 whether Mr Harrison, the driver in which the plaintiff was a passenger was negligent;

16.3 whether both the insured driver and Mr Harrison are to blame for the accident.

[17] Both the plaintiff and Mr Harrison testified that Mr Harrison was driving in the region of 30 to 35 km per hour, and that the

vehicle that was driving in front of them was driving slowly. The version of the two witnesses is that the alleged insured driver came from behind at a high speed and caused Mr Harrison to swerve back to the left lane. However, both witnesses are in agreement that Mr Harrison had not yet moved into the right lane and was still in the process of moving to the right lane when the insured driver came from behind.

[18] Mr Harrison has testified that before he indicated to move into the right lane, he saw the insured driver which was about 80 metres from him. He was surprised when he wanted to enter the right lane, the insured driver's car was now 10 metres behind them, and that forced him to swerve to the left lane and he in the process collided with the vehicle that was in front of him.

[19] The question is whether the driving of the insured driver has any direct link in causing Mr Harrison to collide with the vehicle that was driving in front of him.

[20] In the case of *Grove v The Road Accident (74/10)* [2011] ZASCA 55 at paragraph 13 the court said the following:

"A useful guide is found in *Weis & another v Shield Insurance Co Ltd & others* where Corbet C J stated:

'In searching for some limit lying between direct causation and the vast and unrestricted field of the *causa sine qua non*, the Court must, I think, be guided by a consideration of the object and scope of the Act and by notions of common sense. Broadly the object of the Act is to provide protection by way of compulsory insurance to all members of the public who suffer loss by reason of bodily injury or death resulting from negligence or other unlawful conduct in connection with the driving of motor vehicles. The negligence or unlawful conduct may consist of some act or omission on the part of the driver in the actual course of driving, such as driving at an excessive speed or failing to keep a proper look-out, or it may consist of some antecedent or ancillary act or omission on the part of the driver or the owner of the vehicle or the servant of the owner, such as failing to maintain the vehicle in a roadworthy condition or overloading the vehicle. The death or bodily injury for which compensation is claimed must be causally related to this negligent or otherwise unlawful act and also to the driving of the vehicle. Where the direct cause from the point of culpability is the same act or omission on the part of the driver in the actual driving of the vehicle then it would generally be found that the death or injury was 'caused by' the driving. Where the direct cause is some antecedent or ancillary act, then it could not normally be said that the death or injury was 'caused by' the driving; but it might be found to arise out of the driving. Whether this would be found would depend upon the particular facts of the case and whether, applying ordinary, common-sense standards, it could be said that the causal connection between the death or injury and the driving was sufficiently real and close to enable the Court to say that the death or injury did arise out of the driving. I do not think that it is either possible or advisable to state the position more precisely than this, save to emphasise that, generally speaking, the mere fact that the motor vehicle in question was being driven at the time death was caused or the injury inflicted or that it had been driven shortly prior to this

would not, of itself provide sufficient causal connection. Thus the injury suffered by a passenger aboard a bus as a result of being assaulted by a bus conductor could not be said to arise from the driving of the bus, even though the bus was being driven at the precise moment when the assault was committed. Similarly, in the illustration already given of X who stepped off the bus into a hole in the pavement, it could not be said, that the injury arose out of the driving merely because driving (in the ordinary sense) had taken place immediately prior to this'

- [21] Mr Harrison has not yet completed moving into the right lane but was still in the process. The car that was in front of him was moving and not stationary. In my view, if Mr Harrison was keeping a safe following distance and at the speed which he was driving, it was going to be easy for him to swerve back to the left lane without colliding with the vehicle in front of him. Therefore it is my considered view that Mr Harrison was not keeping a safe following distance. As Mr Harrison was not keeping a safe following distance, he was unable to swerve back to the left lane without causing the accident with the vehicle in front of him.
- [22] Mr Harrison has testified that he first saw the insured driver at a distance of 80 metres behind him. If indeed that was true, he would have finished moving into the right lane and if indeed the insured driver was travelling at a high speed, it would have collided with him from behind. In my view, Mr Harrison has misjudged the distance of the insured driver, and when he realised that it was nearer to him, he swerved back to the left lane. As he was not keeping a safe following distance, he collided with the vehicle in front of him in the process of swerving back to the left lane.
- [23] It is the duty of every driver to make sure that before they change the lanes, they must check whether it is not dangerous to do so, however, in my view Mr Harrison has failed to keep a proper lookout before he decided to change the lanes. He had misjudged the distance of the insured driver and decided to change lanes when it was dangerous to do so, and that resulted in him colliding with the vehicle that was driving in front of him.
- [24] With the evidence that was presented, I could not find that the accident was caused by the negligent driving of the insured driver. The accident was caused by the sole negligence of Mr Harrison who has failed to keep a proper following distance and who has also misjudged the distance of the insured driver when he tried to change lanes. I could also not find any contributory negligence on the part of the insured driver. There was therefore no causal nexus between the driving of the insured driver and the accident.
- [25] The plaintiff's counsel has submitted that since the defendant has denied that a collision has occurred in their plea, but only admitted that during their closing argument, they should be ordered to pay the costs of the plaintiff. The defendant has been arguing that the insured driver was not the cause of the accident and they have succeeded in that. I therefore don't find any ground to grant a costs order against them.

[26] No expert witnesses were during the trial, merits and quantum has been separated. I therefore don't find any reason why I should make an order that the defendant should pay the costs of expert witnesses.

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

27.1 The accident was caused by the sole negligence driving of Mr Harrison GJH;

27.2 The defendant is liable to pay 100 % of the plaintiffs proven or agreed damages;

27.3 Each party to pay her or their own costs.

M F KGANYAGO

ACTING JUDGE OF THE HIGH COURT

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