

SOUTH AFRICA / JUDGMENT

Magagula v RAF (2093/2016) [2017] ZAGPPHC 931 (30 November 2017)

[2017] ZAGPPHC 931**COURT**

North Gauteng High Court, Pretoria

BEFORE

Legodi

CASE / FILE NUMBER

2093/2016

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IN THE HIGH COURT OF SOUTH AFRICA, GAUTENG DIVISION, PRETORIA [FUNCTIONING AS
MPUIYIALANGA CIRCUIT COURT, MBOMBELA]

CASE NUMBER 2093/2016

30/11/2017

MAGAGULA SIMON SYDNEY

PLAINTIFF

And

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

LEGODI J,

- [1] A two motor vehicle collision that occurred on 25 October 2015 between Pienar Trust and Kabokweni at about 15h00 became the subject of the dispute before me. At the heart of the dispute, the question was whether the plaintiff was the sole cause of action. Put differently the question was whether the insured driver contributed to the cause of the collision.
- [2] The plaintiff was travelling on a single tarred lane with a yellow lane. From the opposite direction the insured driver was travelling on a double lanes and was occupying the slow lane. According to the plaintiff, a car on the yellow lane in the direction to where he was travelling, suddenly encroached onto his single travel lane when he was just too close to do anything. He avoided the collision with the vehicle aforesaid by swerving to his right and in the process lost control of his vehicle. He blames the cause of the collision on the vehicle

which he says was on the yellow lane which allegedly moved to his lane when he was too close to it.

- [3] The insured driver was not led on whether the other vehicle referred to during evidence as Tazz moved from the yellow lane to the lane of the plaintiff's travel. What was said by the insured driver is that the plaintiff was overtaking the Tazz. This version, that is, that the plaintiff was overtaking the Tazz was specifically denied by the plaintiff. Therefore, it was reasonably expected that the insured driver will be led to testify on whether the Tazz vehicle moved from the yellow lane into the drive lane in the face of the plaintiff's vehicle. That not having been done, there is no basis to find that the plaintiff's version in this regard is false. I therefore find that the Tazz vehicle suddenly moved onto the lane of travel of the plaintiff. He was therefore faced with sudden emergency.
- [4] The next question is whether the plaintiff could have avoided the collision with Tazz without losing control of his vehicle or without swerving out of the road to his right. As a start, there was an ample space on the right hand side. First, the fast lane from the opposite direction, second the slow lane, provided a proper look out of the insured vehicle was kept. It was not the plaintiff's version that he collided with the insured driver as he was trying to avoid head-on collision with it. Rather, his evidence unfolded more or less as follows:

"I did not see the bakkie (referring to the insured vehicle) when I was outside. I thought I avoided the Tazz on the road and swerved to my right of the road."

- [6] This answer was in a response to the question if he ever made some means to avoid the accident with the insured vehicle. Clearly the answer to the question suggested he kept no proper look as he was swerving to his right out of the road. If indeed he did not see the bakkie, the next question is why he moved out of the road instead of moving on the slow lane from the opposite direction or at least on the fast lane.
- [7] I mention the fast lane last because suddenly during cross-examination, he sought to give an explanation that there was a quantum vehicle which was travelling on the fast lane from the opposite direction. The question was why he did not mention the presence of the quantum taxi vehicle earlier in his evidence and his response was that he was not asked about the other vehicle on the fast lane. Of course this cannot be correct. Right at the start of his evidence, his attorney asked him to explain to the court what

happened on the date in question when he was involved in the collision. He was expected to tell the story step by step. Instead he omitted to mention why he could not just simply have passed Tazz vehicle by driving on the fast lane from the opposite direction also taking into account that this was a straight tarred road and it was during the day.

[8] His version about the presence of the quantum taxi vehicle is unsatisfactory and remains a fact that the plaintiff has failed to prove. That being so, the question is why then swerved out of the road. The version by the insured driver was that the plaintiff's car was very fast about 120 to 130 km per hour. This is a more probable version explaining why the plaintiff found himself outside

the road to his extreme right. If indeed he was not so fast and was driving at the speed of 60 km per hour, he could have been in a position to keep his vehicle under control. He could not because he was fast and or failed to keep a proper look out. The damage to his car as explained by him and the insured driver in my view speaks volumes. For example, it was squeezed backwards from the front. According to the insured driver, the plaintiff's vehicle was damaged beyond repair. I therefore find that the plaintiff contributed to the cause of the collision.

[9] The next question is to what extent the plaintiff contributed to the cause of the collision. Ms Ramarumo on behalf of the plaintiff

contended that 60%- 40% in favour of the plaintiff would be appropriate. On the other hand, on behalf of the defendant it was contended that 80%-20% against the plaintiff will be appropriate. For this purpose evaluation of the insured driver's version is important.

[10] She was driving on the slow lane at the speed of about 60 km per hour when she first saw the plaintiff's car overtaking the Tazz. Then when the plaintiff's vehicle was about 10 to 15 metres from her vehicle, she realised that the plaintiff lost control of his vehicle. In an attempt to avoid head on with the plaintiff's vehicle, she moved to her left, that is the direction to which the plaintiff's vehicle was moving. This alone must be found to have constituted negligence on her part.

[11] Furthermore, the insured driver did not apply brakes. She just simply moved to her right. She could not satisfactory explain why she did not stop instantly when she saw that the other car had lost control. Judging by the front damages on the front portion of both cars, that is, the plaintiff's vehicle front left portion and insured vehicle's front right portion, it was like the plaintiff's vehicle almost passed in front of the insured driver's vehicle. Therefore, in all probabilities the plaintiff's vehicle could have passed across the insured vehicle had the insured driver have brought her vehicle to a stand- still when she observed that the plaintiff's vehicle was out of control.

[12] I am prepared to accept that he insured driver was also faced with sudden emergency occasioned by the plaintiff's vehicle. However, she could also have avoided the collision by swerving to her right taking also into account the fact that on her own version there was no other car on the fast lane. The other factor to be considered is that the insured driver observed at an early stage that the plaintiff was overtaking the Tazz at a very high speed taking into account the fact that the speed limit at the spot is 60km per hour. So, one would have expected her to be on the alert even before the plaintiff's vehicle came out of control, of which she observed only when she was about 10-15 metres from it.

[13] She too should be found to have contributed to the cause of the collision. In the current circumstances I find that the plaintiff and insured driver contributed 50% each towards the cause of the action. The parties required this court to deal only with merits and quantum to be dealt with at a later stage.

[14] Consequently I make an order as follows:

14.1 The defendant is hereby found liable to compensate the plaintiff 50% of his proven damages.

14.2 Costs to be costs in the cause relating to finalisation of the damages claim.

MF LEGODI

JUDGE OF THE HIGH COURT

DATE OF HEARING: 09 NOVEMBER 2017

DATE OF JUDGMENT: 30 NOVEMBER 2017

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