

SOUTH AFRICA / JUDGMENT

Manbamela v Road Accident Fund (RAF168/16) [2018] ZANWHC 18 (5 July 2018) [2018] ZANWHC 18

COURT

North West High Court, Mafikeng

BEFORE

GUTTA

CASE / FILE NUMBER

RAF168/16

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and SAFLII Policy

“IN THE HIGH COURT OF SOUTH AFRICA”

NORTH WEST DIVISION, MAHIKENG

CASE NUMBER: RAF168/16

REPORTABLE

In the matter between:-

JONAS THINGAHANGWI MANBAMELA Plaintiff

And

ROAD ACCIDENT FUND Defendant

JUDGMENT

GUTTA J.

A.

INTRODUCTION

- [1] Plaintiff, Thingahangwi Jonas Manbamela, instituted an action against the Road Accident Fund (RAF) for damages arising from a motor vehicle collision which occurred on the 30 May 2015 at the intersection of Nelson Mandela Drive and Berg Street in Rustenburg when the driver of the motor vehicle with registration number [...] YY GP, one K Maleshane (the insured driver) collided into plaintiff who was the driver of a motor vehicle with registration number [...] SM GP.
- [2] Merits and quantum were separated and the trial proceeded on merits only.

B. COMMON CAUSE

- [3] The following facts are common cause:

- 3.1 A motor vehicle collision occurred around 5am at the intersection of Nelson Mandela Drive and Berg Street in Rustenburg.
- 3.2 Plaintiff was driving a Renault Sandero along Nelson Mandela Drive;
- 3.3 Plaintiff was in the company of his colleague, Petrus Mphahlele (Mr Mphahlele) who was seated in the passage seat;
- 3.4 The insured driver, was the driver of a Polo Vivo vehicle, driving along Berg Street; and
- 3.5 The collision occurred at the intersection of Nelson Mandela Drive and Berg Street which is manned by traffic lights.

C. ISSUE

- [4] There are two issues for consideration, namely:
1. whether the insured driver was casually negligent in relation to the collision.
 2. Whether there was contributory negligence on the part of plaintiff.

D. EVIDENCE

- [5] Plaintiff, Mr Manbamela, testified that on the 30 May 2015, at around 5am he was driving his vehicle in the company of Mr Mphahlele who was seated in the passenger's seat of the vehicle. Plaintiff and Mr Mphahlele were both employed as security officers for Imvula Quality Protection. He was driving in the second lane from the right lane on Nelson Mandela Drive which is a one way street, with 4 lanes. He was wearing his seat belt.
- [6] He described the illumination as a bit dark but the sun was about to rise. The street lights illuminated the streets. He saw the insured driver's vehicle a distance of 16 paces away. He said when he was next to Berg Street, the traffic light turned green for him and he drove through the intersection. At the intersection, the insured driver collided into his vehicle on the left side of his vehicle. The impact caused him to lose control of his vehicle and drive into a TAB shop. He awoke at the Tlhabane Clinic. He made a statement to the police and

was later admitted at the George Mukhari hospital.

- [7] Under cross examination he said he has been driving for 10 years. He said he was driving at a speed below 60km/h when he was approaching Berg Street and when he was about to reach the traffic light, his speed was below 60km/h. He reduced his speed at the traffic light because he was going to stop the vehicle just beyond the traffic light so that Mr Mphahlele could continue driving the vehicle. He said he was able to see the insured driver 16 paces away because of the visibility from the street lights.
- [8] When questioned about the colour of the traffic light for the insured driver, he said he didn't take heed. He said he was concentrating on his road and also said "I could not see the robot for the insured driver". He said "once I have the right of way when the robot was green, it is not necessary to check the other vehicles because they are supposed to stand still as I have the right of way". He said "the cause of the accident is because the driver did not keep a proper lookout. Had he looked out the accident would not have happened because the robot turned green for me".
- [9] When asked what steps did he take to avoid the collision. He said he wanted to move into the fourth lane but realized that the insured vehicle was travelling at a high speed. Plaintiff did not know how many lanes Berg Street had or whether it was a one way street.
- [10] Plaintiff's second witness Mr Petrus Mphahlele (Mr Mphahlele) was subpoenaed to be in attendance. In brief he said he and plaintiff worked together at Mvula Security. He said on the 30 May 2015, he was a passenger in plaintiff's vehicle. He and plaintiff wore seatbelts. As they were approaching the traffic light at Berg Street, they were discussing that they need to change as drivers. Mr Mphahlele was going to take over as the driver. When they approached the traffic light, it was green. Plaintiff reduced his speed when he approached the intersection. When they were in the middle of the intersection a Polo Vivo emerged and collided into them and their vehicle moved a distance of 16 paces and hit a TAB shop.
- [11] He said they were transported to Tlhabane Clinic. Thereafter plaintiff made a statement at the police station and he was taken to Garankuwa Hospital. He said the insured driver caused the collision. They were on the second lane from the right and plaintiff was travelling at a speed less than 60km/h. He thinks the insured driver was travelling at a high speed because when the two vehicles

collided, the impact pushed their vehicle into the TAB shop.

- [12] Under cross examination he said he worked with plaintiff since 2013 or 2014. Although they are friends, they do not phone each other. He did not discuss this matter with plaintiff before he testified. He further said that, before plaintiff approached the intersection he was travelling at a speed between 50 and 60 km/h and at the intersection he estimated the speed to be 60km. He said the traffic light was green for plaintiff who had the right of way which means that the traffic light was red for the insured driver. He denied that he was working on assumptions and said if the traffic light was green for them it cannot be green for the

insured driver. He disputed that the insured driver could have been travelling at 60km/h and said if indeed he was travelling at that speed, the impact would have allowed them to remain on the road. He said they were in the middle of the road when the insured driver drove through the red light. The insured driver was “beating the robot”. He denied that the traffic light changed from green to orange while the insured driver had already crossed the road.

- [13] Defendant called the insured driver, Mr Maleshane. He said in May 2015 he was residing at Unicon Lodge on Berg Stree in Rustenburg. His lodge is 2 to 3 minutes drive away from the intersection of Nelson Mandela Drive and Berg Street.
- [14] He said on the day in question, he left his residential place and drove towards Nelson Mandela Drive. The traffic light was green for him when he reached the first lane in Nelson Mandela Drive, and then it changed from green to orange. On passing the second lane, he saw plaintiff’s vehicle already in the middle of the intersection. He tried to apply brakes but it was late and the accident occurred. He said he was travelling at a speed below 60 km/h when he left his place and when he approached the traffic light he “reduced his speed slightly”. He said plaintiff caused the accident because he drove through the red traffic light when it was his right of way as his traffic light was green and plaintiff did not keep a proper lookout.
- [15] Under cross examination he admitted that he lodged a claim with the RAF last year. When asked what caused the accident, he said it was because plaintiff travelled at a high speed and that it was too late to apply his brakes. He said he tried to avoid the accident by applying brakes. When it was put to him that he was travelling at an excessive speed, he replied that “I was the driver, I know the speed I was travelling. That is why the driver of the of the Sandero was travelling at high speed which caused the driver to lose control after the collision. The distance from where I reside to the robot is 2 – 3 minutes. It is not possible to travel at high in that distance”.

E.

SUBMISSIONS

- [16] Counsel for plaintiff, Mr Maluleka submitted the following;

16.1 The Court should apply the cautionary rule to the insured driver’s evidence as he is a single witness and his evidence was not corroborated[1].

16.2 The insured driver has lodged a claim with the RAF. He has an interest in this matter as the outcome will affect his claim with the RAF.

16.3 In *Moloto v RAF*[2], Mali AJ held that, even the slightest degree of negligence is sufficient to prove negligence.

16.4 Had the insured driver kept a proper look out he would have seen plaintiff and applied his brakes timeously and avoided the collision.

[17] Counsel for the insured driver, Ms Mongale submitted that the insured driver's version is more probable for the following

reasons:

17.1 Plaintiff testified that he did not see the colour of the traffic light on Berg Street which is the road the insured driver was driving on when the collision took place. Further, plaintiff did not know whether Berg Street was a one way or two way road. She submitted that plaintiff was only aware of the road he was travelling on and nothing else.

17.2 The insured driver explained that when he crossed Nelson Mandela Drive, the traffic light was still red for plaintiff and that when he crossed the first lane of Nelson Mandela Drive, there were no vehicles and it is only when he was in the second lane that plaintiff's vehicle emerged.

17.3 Plaintiff testified that he saw the insured driver's car 16 pace away before the accident took place and also confirmed during cross examination that there were street lights which allowed him to see the insured driver's car. At a distance of 16 pace, plaintiff had ample opportunity to prevent the accident and if indeed he reduced speed as he entered the intersection, he could have successfully slowed down and avoided the accident by allowing the insured driver to pass. The fact that this did not happen, means that plaintiff was driving at a high speed and was not keeping a proper look out of his surroundings.

17.4 The insured driver testified that when plaintiff's vehicle emerged at the traffic light, he was already on the second lane of Nelson Mandela or in the middle of the intersection, at that stage, he applied the brakes but he could not prevent the accident. Secondly, the traffic light turned from green to orange when the insured driver was already on the first lane, and this did not call for the insured driver to stop as he had a right of way.

17.5 It is improbable for the insured driver who was just staying 2 to 3 minutes away from the intersection to have been driving at an excessive speed when approaching traffic light. The fact that plaintiff's vehicle landed at the shop after the collision, is not conclusive proof that the insured driver was driving at high speed, the converse could be the case that plaintiff was driving at the high speed and when the impact occurred he lost control of the vehicle and hit the shop.

17.6 Should the Court find that the insured driver contributed to the accident, then apportionment of damages is in the discretion of the Court which must be exercised judicially as was held in *Eksteen v Gotze*[3]. The appropriate apportionment should be 80/20 against plaintiff.

F. THE LAW

[18] On the evidence there are two contradictory versions. The approach, when facing mutually destructive versions was set out in the case of *National Employers General Insurance Co Ltd v Jagers*[4], by Eksteen AJP when he stated:

“... where the onus rests on the plaintiff as in the present case, and where there are two mutually destructive stories, he can only succeed if he satisfies the court on a preponderance of probabilities that his version is true and accurate and therefore acceptable, and that the other version advanced by the defendant is therefore false or mistaken and falls to be rejected. In deciding whether that evidence is true or not the court will weigh up and test the plaintiff’s allegations against the general probabilities. The estimate of the credibility of a witness will therefore be inextricably bound up with a consideration of the probabilities of the case and, if the balance of probabilities favours the plaintiff, then the court will accept his version as being probably true. If however the probabilities are evenly balanced in the sense that they do not favour the plaintiff’s case any more than they do the defendant, the plaintiff can only succeed if the court nevertheless believes him and is satisfied that his evidence is true and that the defendant’s version is false.”

- [19] The duty of this Court therefore is to establish, on the balance of probabilities, which of the two versions is more probable and more likely. The procedure to be adopted in such a case has been aptly set out in *Stellenbosch Farmers’ Winery Group Ltd & Another v Martell et Cie & Others*[5], where the Court stated as follows:

“The technique generally employed by courts in resolving factual disputes of this nature may conveniently be summarized as follows. To come to a conclusion on the disputed issues a court must make findings on (a) the credibility of the various factual witnesses, (b) their reliability, and (c) the probabilities.”

- [20] In *Santam Bpk v Biddulph*[6], the Court stated that:

“However, the proper test is not whether a witness is truthful or indeed reliable in all that he says, but whether on a balance of

probabilities the essential features of the story which he tells are true.”

G. EVALUATION

- [21] Plaintiff was in my view a good witness who did not contradict his evidence in cross examination. Notwithstanding extensive cross examination his version of events was consistent. When questioned whether he saw the colour of the traffic lights in Berg Street, he was honest and replied that he did not observe and could not see the colour of the traffic light in Berg Street and only looked at the traffic lights on Nelson Mandela Drive. He also answered the Courts’ questions honestly that he didn’t know whether Berg Street was a one way street or how many lanes there were in Berg Street. I am of the view that he is a credible witness whose version of events was corroborated by his passenger Mr Mphahlele.
- [22] Mr Mphahlele made a good impression on the Court. He answered all questions put to him confidently and did not contradict his evidence. I am of the view that he is a credible witness. He admitted that his assumption that the insured driver was driving at a high speed because of the fact that after the impact their vehicle was pushed into TAB shop could similarly apply if plaintiff was travelling at a high speed. He however stressed that plaintiff was travelling at a speed of 60km/h.

[23] Mr Mphahlele corroborated plaintiff's evidence in the following material respects

1. He and plaintiff are colleagues;
2. He was a passenger in plaintiff's vehicle on the 30 May 2015;
3. He and plaintiff wore their seatbelts;
4. Plaintiff was travelling at a speed less than 60km/h on Nelson Mandela Drive;
5. He and plaintiff had a discussion that he will continue with the driving;
6. Plaintiff reduced his speed when he approached the intersection;
7. When plaintiff approached the traffic light at the intersection of Nelson Mandela Drive, the traffic light was green for plaintiff;
8. Plaintiff had the right of way;
9. The insured driver collided into them when they were in the middle of the intersection;
10. The impact of the collision caused their vehicle to hit a TAB shop.

[24] The insured driver, Mr Maleshane did not make a very good impression on the Court. He is a single witness and his evidence is treated with caution. He did not answer questions confidentially and changed his version when confronted with certain questions. Initially he testified that it was too late for him to apply his brakes. However he later, when questioned about the steps he took to avoid the collision, replied that he tried to apply his brakes. He was then prompted by his counsel whether he tried or in fact applied his brakes, and only then did he reply that he applied his brakes as set out hereinbelow:

Q what steps did you take to avoid the collision?

A I tried to apply brakes?

Q did you try or apply brakes?

A I applied brakes.

[25] The insured driver's evidence that he kept a proper look out is in my view improbable for the following reasons:

25.1 The insured driver alleged that on approaching the traffic light, he reduced his speed slightly. He was questioned:

Q were there any vehicles?

A there were no vehicles.

Q and on Nelson Mandela road?

A there were no cars.

Q when was the first time you saw plaintiff's vehicle?

A in the middle of Nelson Mandela intersection.

25.2 From the foregoing, it is apparent that the insured driver did not observe any cars when he was approaching the traffic light. He only observed plaintiff's vehicle when he was in the middle of the intersection. The insured driver testified that he observed that the traffic light on Berg Street was green and on Nelson Mandela Drive was red. Hence on the insured driver's version he took time to look at the traffic lights on both Berg Street and Nelson Mandela Drive but did not see plaintiff's vehicle approaching. It is common cause that it was approximately 5am and the sun was about to rise and there was illumination from the lights in the street. Plaintiff testified that he observed the insured driver a distance of 16 paces away. Hence the probabilities are that had the insured driver kept a proper lookout and was not travelling at a high speed, he would have observed plaintiff's vehicle on Nelson Mandela Drive. On his own version he only checked for other vehicles when he had already entered the intersection. He said "I was not travelling at high speed and that surely when I approached the first lane in Nelson Mandela Drive, I checked and when in the middle, I saw the Sandero approach".

25.3 The insured driver testified that on passing the second lane in Nelson Mandela Drive, he saw plaintiff's vehicle in the middle of the intersection. On probabilities if plaintiff was already in the middle of the intersection, it is the insured driver who drove into plaintiff's vehicle. Further evidence in support of this is that the insured driver collided into the passenger door of plaintiff's vehicle. The damage was on the side of plaintiff's vehicle and not in the front of plaintiff's vehicle. This is consistent with plaintiff and Mr Mphahlele's version that they were already in the middle of the intersection when the insured driver collided into them.

25.4 The Court cannot without evidence, attach any weight to the insured driver's version that it is not possible to drive at an excessive speed from his home to the point of impact. The insured driver was not able to explain to the Court what the distance in meters was from his home to the point of impact and was only able to give the distance in minutes. On his own evidence he lives 2 to 3 minutes away from the intersection. It is common cause that the speed limit was 60km/h. It is common knowledge that a driver of a vehicle can accelerate almost immediately after entering a road. There was no expert evidence or evidence of any other stop streets, traffic lights or obstructions such as speed bumps which would cause a driver to reduce his speed. Furthermore the evidence is that it was approximately 5am and there weren't many vehicles on the road.

[26] As stated supra, the insured driver initially testified that it was too late to apply his brakes and later changed his version to that he tried to apply his brakes and again after being prompted by counsel for defendant, he said he applied his brakes. When considering the totality of evidence supra, the probabilities are that the insured driver did not apply his brakes, he was driving at a high speed and failed to keep a proper

look out. If he kept a proper look out and reduced his speed, he would have observed plaintiff approaching on Nelson Mandela Drive and he would have been able to apply his brakes timeously and avoid colliding into plaintiff's vehicle.

[27] The fact that the insured driver has an interest in the outcome of this matter as he lodged a claim with the RAF and for him to succeed with his claim he will need to prove that plaintiff was negligent and caused the accident is clearly indicative of the fact that the insured driver has an interest in the outcome of this matter.

[28] The next issue for consideration is the question of contributory negligence and apportionment. Section 1(1) of the Apportionment of Damages Act 34 of 1956 reads:

"Where any person suffers damage which is caused partly by his own fault and partly by fault of any other person, a claim in respect of that damage shall not be defeated by reason of the fault of the claimant but the damages recoverable in respect thereof shall be reduced by the Court to such extent as the Court may deem just and equitable having regard to the degree in which the claimant was at fault in relation to the damage".

[29] The correct approach when considering apportionment, is for a Court to make a just and equitable decision having regard to, but not being bound by plaintiff's fault in relation to the loss[7]. The Court must assess the degree of fault in respect of each of the parties to the damage. The Appellate Division in *South British Insurance Co. Ltd v Smit*[8] stated at 835H as follows :

" ... it is, I think, plain from a consideration of the section as a whole that what the Court has to measure is the conduct of all parties

whose fault caused the damages. Postulating a single defendant, the determination of the 'degree in which the claimant was at fault in relation to the damage' will also automatically determine the degree in which the defendant was at fault in relation to the damage." issue."

[30] The Court of Appeal in *Nogude v Union And South West Africa Insurance Co. Ltd*[9] said that:

"A proper look-out entails a continuous scanning of the road ahead, from side to side, for obstructions or potential obstructions...Driving

with 'virtually blinkers on' (*Rondalia Assurance Corporation of S.A. Ltd v Gonya*, 1973

(2) S.A. 550 (A.D.) at p 554B) would be inconsistent with the standard of the reasonable driver in the circumstances of this case."

[31] The question of whether either of the drivers was negligent or not must be inferred from all proven facts. One does not draw inferences of negligence on a piecemeal approach. One must consider the totality of all the facts and then decide whether the driver has exercised the standard of conduct that the law requires. Defendant alleges that plaintiff contributed to the collision as he failed to keep a proper look out and drove at a high speed. He also relied

on the fact that plaintiff did not know the colour of the traffic light in Berg Street or that Berg Street was a one way street.

- [32] A reasonable driver in the position of plaintiff who was approaching a controlled intersection has a duty to keep a proper look out, exercise caution and take steps to avoid a collision. The evidence of plaintiff is that he reduced his speed when he approached the traffic light and he saw the insured driver 16 paces away. Hence, I am of the view that, he kept a proper look out as he was able to observe the insured driver approaching. Plaintiff and Mr Mphahlele both confirmed that plaintiff reduced his speed when he approached the intersection and further that the traffic light turned green for plaintiff when he approached the intersection. Plaintiff in my view acted as a reasonable driver. He was unable to move into another lane as the insured driver was travelling at a high speed.
- [33] The fact that plaintiff did not look at the traffic light on Berg Street and did not know if Berg Street was a one way or two way street and how many lanes were in Berg Street did not in my view contribute to the collision. I am of the view that the harmful event would still have occurred because of the insured driver's negligent conduct as stated supra.
- [34] The manner in which plaintiff drove his vehicle accorded with the standard as envisaged in the case of Nogude supra. Accordingly, I am of the view that plaintiff discharged the onus of proving that the insured driver was negligent and caused the accident.

H. ORDER

[35] In the result, it is ordered that:

- a) Defendant is held liable to compensate plaintiff for 100% of plaintiff's proven or agreed damages.
- b) Defendant is to pay the costs.

N. GUTTA

JUDGE OF THE HIGH COURT

APPEARANCES

DATE OF HEARING: 23 MAY 2018

DATE OF JUDGMENT: 05 JULY 2018

ADVOCATE FOR PLAINTIFF: ADV MALULEKA

ADVOCATE FOR DEFENDANT: ADV MONGALE

ATTORNEYS FOR APPLICANT: MOTLHABANI ATTORNEYS

(Instructed by: K Mokale Attorneys)

ATTORNEYS FOR RESPONDENT: MAPONYA INCORPORATED

- [1] WH Human v RAF, 62174/13 delivered GP 18 December 2016 Olivier AJ
- [2] [2015] ZAEPPHC 434 (10 July 2015) Case no. 34751/2011
- [3] 1979 (2) SA 1141 (CDD)
- [4] 1984(4) SA 437 (E) at 440 D - G
- [5] 2003(1) SA 11 (SCA), National Employer Mutual General Insurance Association vs Gany 1931 AD 187 at 199
- [6] 2004(5) SA 586 (SCA) at paragraph (10)
- [7] General Accident Versekeringsmaatskappy SA Bpk v Uijs 1993(4) SA 228 (A) 235 Fredsham v Aetria Insurance Co 1959(2) SA 27(A) 281
- [7] General Accident Versekeringsmaatskappy SA Bpk v Uijs 1993(4) SA 228 (A) 235 Fredsham v Aetria Insurance Co 1959(2) SA 27(A) 281
- [8] 1962(3) SA 542(A) at 835 H; also see: Jones NO v Santam Bpk 1965(2) SA 542 (A); Harrinton NO and another v Transnet Ltd and others 2007(2) SA 228 (C) at 253H.
- [9] 1975(3) SA 685 (A) at 668A - C

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZANWHC/2018/18.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/manbamela-v-road-unknown-topic-anwhc-2018--6a3ea5123b1caa912980a3b3>

Prepared on 10 October 2026 · Esheria