

SOUTH AFRICA / JUDGMENT

Mashae v Road Accident Fund (022280/2018) [2019] ZAGPJHC 422 (20 May 2019) [2019] ZAGPJHC 422

COURT

South Gauteng High Court, Johannesburg

BEFORE

Yacoob

CASE / FILE NUMBER

022280/2018

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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 022280/2018

DATE: 2019.05.20

In the matter between

THAPELO MASHAE

Plaintiff

and

ROAD ACCIDENT FUND Defendant

J U D G M E N T

YACOOB, J: The plaintiff has brought this action against the Road Accident Fund for various relief and the matter is before me only to determine the merits, in particular the negligence of the parties.

The plaintiff testified on his own behalf and the defendant called two witnesses; the first being the insured driver and the second being the assessor.

The plaintiff testified that he had stopped at a stop street before proceeding forward and while he was still in the intersection he saw the insured driver's car in front of him in the opposite direction and it suddenly came towards him. He then swerved towards the right and lost control of the car and then does not remember anything further. This was his initial evidence. Later in his testimony he stated that the insured driver's car

had collided with his. He also stated that it was a head-on collision.

The insured driver testified that he had stopped at the stop street before proceeding to turn right. He had noticed the plaintiff's vehicle some either 60 or 100 metres ahead. But he considered that he had time to turn right, particularly taking into account that the plaintiff would also be confronted with a stop street.

However, after he had almost cleared the intersection the plaintiff accelerated and hit the insured driver's car on the left rear.

In my view the plaintiff's version is inherently improbable. If he had stopped, then proceeded into the intersection and suddenly while he was crossing the intersection the insured driver had started to move into his path, that is the plaintiff had moved first, then the insured driver would have hit the plaintiff's car with the front of his car.

The only reason that the plaintiff would have had to try and swerve right in order to avoid the insured driver is if the insured driver's car was already in front of the plaintiff. In my view the likelihood is that the plaintiff did not stop at the stop street and that he did not keep a proper lookout.

Mr Baloyi suggested in argument that it was clear from the evidence that the plaintiff did not keep a proper lookout and that therefore there should be an apportionment of negligence in terms of the Apportionment of Damages Act. In my view this is not appropriate, because the negligence of the insured driver has not established.

My view is bolstered by the fact that the damage on the insured driver's car is on the rear left tail light and that this was undisputed, as was his evidence that the point of impact occurred after he had already almost cleared the intersection. This implies strongly that the insured driver had entered the intersection first and that the plaintiff simply went into the intersection negligently.

As a result I find that the collision was due solely to the plaintiff's negligence and I make the following order. THE PLAINTIFF'S ACTION IS DISMISSED WITH COSTS

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YACOOB, J

JUDGE OF THE HIGH COURT

DATE:

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