

SOUTH AFRICA / JUDGMENT

Mashao v Road Accident Fund (16867/2004) [2006] ZAGPHC 179 (2 May 2006) [2006] ZAGPHC 179

COURT

High Courts - Gauteng

BEFORE

Botha

CASE / FILE NUMBER

16867/2004

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IN THE HIGH COURT OF
SOUTH AFRICA
(TRANSVAAL
PROVINCIAL DIVISION)

DATE: 2/5/2006

CASE NO: 16867/2004

UNREPORTABLE

In the matter between:

MATSHIDISHO CHARLOTTE
MASHAO PLAINTIFF
vs.
THE ROAD ACCIDENT
FUND DEFENDANT

JUDGMENT

BOTHA J:

This is a so-called third party matter in which I, at the request of the parties, directed in terms of Rule 33(4) that the issues of negligence and causation, be adjudicated first and separately.

In the particulars of her claim the plaintiff relies on a collision that took place on 16 September 2000 at about 01h00. She alleges that she was a passenger in a vehicle with registration number BLH 159 GP that it was travelling in Nelson Mandela Drive, and that it collided within the insured vehicle, a vehicle with registration number DBN 744 N.

The defendant raised a special plea that was abandoned at the commencement of the trial. On the merits the plea in essence amounted to a denial.

The plaintiff gave evidence herself and called inspector Mojela of the South African Police Service, Polokwane. The defendant closed its case without calling any witnesses.

The scene of the collision can be seen on photograph 3 on page 27 of exhibit A. In the background one can see Polokwane. The road is Nelson Mandela Drive. It leads from Polokwane to Seshego. It has two lanes of traffic either way. The two carriage ways are divided by a traffic island. Where the collision occurred there is a gap in the island. On the Polokwane side of the gap there is a third lane, a compulsory right turn lane. The position seems to be the same on the other side of the gap.

The plaintiff testified that she was involved in a collision on 16 September 2000. According to her she was involved in the collision

between 23h30 and 01h00. It appears from hospital records that she and her fellow passenger were admitted to the Polokwane hospital in the early hours of 17 September 2000. It also appears from the accident report that the collision was investigated on the 1st September 2000 early in the morning. According to the plaintiff she went to Polokwane at about 20h00 on a Saturday evening. The 16th September 2000 was a Saturday. It is therefore clear that the collision took place on the 17th September 2000 round about 01h00.

The plaintiff testified that she and her friend Khomotso Setate were given a lift by the driver of a red Toyota Corolla. She sat next to the driver. Her friend sat behind her. They were travelling in the right hand line in Nelson Mandela Drive. They were travelling in the direction of Seshego. They were travelling between 80 and 90 kilometers per hour. When they approached the intersection that can be seen on photograph 3 of A27, she saw a white vehicle stationary where the male person can be seen standing on photograph 3 of A27. When they came closer, she saw two persons pushing the white vehicle from behind. Its lights were not on. The driver of the red Toyota tried to avoid a collision by swerving to the right. At a stage the persons pushing the white vehicle fell flat on the tarred road.

A collision followed. When she got out of the vehicle, she saw how the two persons lying on the road got up and ran away. She and her friend were taken to the Seshego hospital.

When she saw the white vehicle the first time it was 14 paces away. The driver of the red Toyota also saw it. She shouted when she saw the white vehicle. She could not say whether the white vehicle was stationary or moving when she saw it the first time. The white vehicle, which was a Ford, was damaged at the back. The red Toyota was damaged on the left front side.

The Ford vehicle moved into the lane of travel of the Toyota. She did not see anyone inside the Ford.

Inspector Mojela testified that he completed the accident form, A5-12. He arrived on the scene at 01h40. He only found the vehicles on the scene. The drivers were not there. Traffic officials explained to him what had happened.

The explanation he obtained was that the Toyota collided with the Ford from behind. The Ford was damaged on its back and the Toyota on its front.

The road towards Polokwane was downhill.

He was not the investigating officer.

At the time Nelson Mandela Drive was a through road at the intersection. There were stop signs on the side road.

He confirmed the damage to the vehicles as shown in paragraph 38 of the accident report (A9). That shows the damage to the Ford as being on the back right, the back centre and the back left. The damage to the Toyota was on the right front, the left front, the front centre and the bonnet.

It would not have been possible for the Ford to move uphill.

When he found the vehicles they were facing each other. They were not head on. He inferred that the Ford had spun after the collision.

Mr De Wet, who appeared for the plaintiff argued that it was possible that the Ford could have turned and thus sustained damage from the rear. He pointed out that the Toyota had the right of way. He submitted that even if the Toyota was only pushed, it was sufficient to render the defendant liable.

Mr Leopeng, who appeared for the defendant, argued that it was improbable that the Ford could have turned if it was only pushed. He submitted that if the Ford was pushed as described by the plaintiff, the damage to it would have been on the side. He submitted that the driver of the Toyota was not keeping a proper lookout, because he had to be alerted by the plaintiff.

Section 20(1) of the Road Accident Fund Act 1996 (Act 56 of 1996) reads as follows:

“(1) For the purpose of this Act a motor vehicle which is being propelled by any mechanical, animal of human power or by gravity or momentum shall be deemed to be driven by the person in control of the vehicle”.

In my view Mr de Wet's submission that the pushing of the vehicle, as described by the plaintiff, would fall under the deeming provision contained in section 17(1), is correct.

The question is whether the plaintiffs evidence must be rejected in view of the evidence of inspector Mojela that the Ford was damaged on its rear.

To begin with, one must consider the evidence of the plaintiff in its totality. It cannot be doubted that she was injured in a collision that night. She was in the company of a friend who subsequently died. She had been given a lift by the driver of the Toyota. She was sitting next to him. They were travelling from Polokwane to Seshego. A collision occurred at the intersection that can be seen on photograph 3 on A27.

She says that the Ford had been stationary or almost stationary in what seems to be the compulsory right hand land of the opposite carriage way. Then it moved into the line of travel of the Toyota, being pushed by two persons.

There is nothing impossible in her version so far. It is not a common occurrence that vehicles are pushed, but it is inconceivable that the plaintiff would have invented such a version. It is not unlikely that if the Ford was pushed, with no one behind the steer, it could have turned instead of going straight.

The question is whether it would have turned to the right, thus exposing its rear to the Toyota. The argument was that it would then have moved uphill which is improbable because the two persons pushing it had stopped pushing it. Obviously they were not still pushing it when the collision occurred. It can also be added that the plaintiff did not observe a turn to the right by the Ford vehicle.

In my view the damage to the Ford is not irreconcilable with the plaintiff's evidence.

First of all one must remember that she was not expecting anything. She was also not the driver of the Toyota. On her own evidence she was shocked because she said that she shouted to the driver. I do not think that in that state of agitation she would necessarily have focussed on the exact movements of the Toyota.

Although there is an incline towards Seshego, it seems to be moderate. Then it would appear that for the first few meters the Ford could have been pushed downhill and then transversely. It is not impossible that in the gap, being rudderless, it swerved to the right, and that the persons pushing it let go for their own safety.

I want to return to the point I made about it being inconceivable that the plaintiff would have invented her version of the Ford being pushed by two persons. She could not have been mistaken about it, because afterwards she saw the two persons get up from the tarmac and run away. What is important is that she could never have seen them push the vehicle if she did not, at some stage, have a lateral view of the vehicle. That means the vehicle must have been moved through the gap in the island into the line of travel of the Toyota.

For all these reasons I find that the version of the plaintiff has been proved on a balance of probabilities. On that version there is no doubt that the persons in control of the Ford were negligent and that their negligence was a cause of the collision.

In the result the following order is made:

1. It is declared that the collision in which the plaintiff was involved on 17 September 2000 was caused by the negligence of the persons in control of vehicle DBN 744 N, who are in terms of section 20(1) of Act 56 of 1996 deemed to have driven it,
2. The defendant is to pay the costs of this stage of the case.

C.BOTHA

JUDGE OF THE HIGH COURT

HEARD ON: 25 APRIL 2006.

FOR THE APPLICANT/PLAINTIFF: ADV

FOR THE RESPONDENT/DEFENDANT: ADV

DATE OF JUDGMENT: 2006.

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