

SOUTH AFRICA / JUDGMENT

Masila v Road Accident Fund (7718/2017)

[2024] ZALMPPHC 203 (11 December 2024)

[2024] ZALMPPHC 203**COURT**

Limpopo High Court, Polokwane

BEFORE

Mashamba

CASE / FILE NUMBER

7718/2017

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Policy**REPUBLIC OF SOUTH****AFRICA****IN****THE HIGH COURT OF SOUTH AFRICA****LIMPOPO DIVISION,****POLOKWANE****CASE****NO:7718/2017****(1) REPORTABLE: YES/NO****(2) OF INTEREST TO THE****JUDGES: YES/NO****(3) REVISED.****DATE: 11-12-2024****SIGNATURE:**

In the matter between:

MASILA, MF

PLAINTIFF

And

ROAD ACCIDENT FUND

DEFENDANT

JUDGEMENT

MASHAMBA AJ:

INTRODUCTION

[1] The plaintiff, Masila, Maalabe Florah, a female person, born on the 09th December 1971, has instituted an action against the Road Accident Fund (“the defendant”) for damages resulting from

personal injuries sustained on the 6th December 2014, in the vicinity of Seokodibeng, Praktiseer district, Polokwane, Limpopo Province. The plaintiff was a driver of a motor vehicle with registration numbers and letters, G[...], which vehicle knocked a donkey, which was crossing the road. The plaintiff claims delictual damages from the defendant, the Road Accident Fund (hereinafter referred as “the defendant”).

[2] The claim was lodged on the 20th July 2017 the summons was subsequently issued against the defendant on the 15 November 2017. On the 06th December 2017 the defendant entered his notice of intention to defend. The defendant served its plead on the 17th January 2017.

[3] The matter was setdown for hearing on the 28th October 2024, for both merits and quantum. The plaintiff was legally represented and no one appeared on behalf of the defendant.

[4] Before the trial the court examined whether the matter is ripe to be heard for both merits and quantum. The court finds that the plaintiff’s medical reports were of age, the plaintiff was assessed by an Orthopaedic surgeon on the 03rd February 2017, Occupational Therapist, on the 30 May 2017 and Clinical Psychologist on the 23 June 2017. The plaintiff was not ready to proceed with quantum in this matter. The court separated the issues of merits and quantum.

[5] The court proceeded to hear the evidence on merits.

ISSUES TO BE DETERMINED BY COURT

[6] This court is called to determine the cause of the accident in question?

PLAINTIFF’S EVIDENCE

[7] The plaintiff was the only witness to give her viva voce evidence in support of her case against the defendant. She testified that on the 06th December 2014, she was driving the motor vehicle with registration numbers and letters G[...]. She further testified that she was driving at the speed of 80 km per an hour when she realised a donkey which was crossing the road. She could not avoid the collision because the donkey was very close at approximately 8 metres away. She unfortunately knocked the donkey and her motor vehicle lost control and capsized. The plaintiff testified that she could not see the donkey because another unknown motor vehicle, driven by an unknown driver brightened its lights when

she was at a distance of approximately 8 metres away from the donkey.

- [8] The plaintiff further testified that the brightness of the lights of the unknown insured motor vehicle blinded her eyes, therefore, she could not see the donkey which was in front of her crossing the road. She testified that after the passing of the said unknown motor vehicle, she released that a donkey which was at approximately 8 metres away was crossing the road and she could not avoid the collision because the donkey was too close. She further testified

that the driver of the unknown insured motor vehicle was the cause of the accident because of the fact that the driver turned his lights too bright which has caused her not to see the donkey in front.

- [9] The plaintiff further testified that the motor vehicle she was driving was seriously damaged beyond repair. She further testified that she was seriously injured and she is still feeling the pain. She

indicated that she was taken to the hospital by an ambulance for medical treatment.

- [10] The plaintiff submitted short heads of argument but the heads do not address the issues of merits, the reasons thereof, is not known. The court will proceed to make its finding based on the alluded evidence.

COURT'S FINDINGS

- [11] In the particulars of claim, the plaintiff alleged that the unknown insured motor vehicle was negligent in one or more of the following

respect that; he failed to keep a proper look out, He failed to keep his motor vehicle under control, he drove in the excessive speed, he drove his motor vehicle with bright lights, he failed to reduce or beam the lights, he failed to consider the other users of the road when driving his car. The accident report did not show or indicate that there was an unknown motor vehicle which caused the accident, instead, the accident report shows that the plaintiff's motor vehicle knocked a donkey[1]. The statement by police officer did not mention an unknown motor vehicle which has caused the accident but mentioned that the plaintiff knocked a donkey[2].

- [12] This matter was lodged after the lapsed of two (2) years and according to the plaintiff, the insured motor vehicle is unidentified, this mean that this matter could be classified as a hit and run case. The law is settled that hit and run should be lodged within two (2) years failing which the matter prescribed. The plaintiff did not address the court why this matter should be treated as a valid claim. The accident occurred on the 06 December 2014 and it was lodged on the 20th July 2017, the court finds that although this issue was not brought to the attention of the court, this claim is not valid.

[13] In terms of section 17(1)(b) of the Road Accident Fund Act[3] (hereinafter referred as “RAFA”), the RAF shall be liable, subject to any regulation made under section 26, in case of a claim for compensation under this section arising from the driving of a motor vehicle where the identity of neither the owner nor the driver thereof has been established, and be obliged to compensate any person. The plaintiff did not identify the motor vehicle she alleges that it caused the collision.

[14] In the case of *Ndlamini v The Road Accident Fund and Others*,[4] Moshwana J, had to mention when interpreting section 17(1)(b) of RAFA that;

“In order to fall under the parameters of the above section, it must be alleged and proven that (a) a motor vehicle was driven; (b) the identity of the owner or driver of that motor vehicle has not been established. To the extent that Dlamini alleges that a motor vehicle was driven, he bears the onus to prove that allegation. It does not follow that because a claimant alleges that the identity of a driver or owner was not established then a motor vehicle was driven and wrongfully for that matter. Proving that a motor vehicle was driven does not require the ipse dixit of the claimant. What is required is evidence. In law, evidence means any of the material items or assertions of fact that may be submitted to a competent tribunal as a means of ascertaining the truth of any alleged matter of fact under investigation before it.”

[15] In dealing with similar provisions applicable to the Canadian law, the Court in *Leggett v Insurance Corp. of British Columbia* (Leggett[5], per the learned Mr. Justice Taylor stated the following:

“As the trial judge recognized, the protection against fraudulent claims is only one of the purposes of the requirement that the claimant show inability to identify the other driver and owner as a condition of being able to claim under the section. In my view the overall purpose of the section is to limit the exposure of the corporation to claims brought by persons who, in the matter seeking to identify those responsible for accident, have done everything they reasonably could to protect what ordinarily would be their own interest, and which, by virtue of the section, become the interests of the corporation. The corporation’s exposure under the section is limited to claims brought by those who could not have ascertained the identity of the parties responsible. It does not, in my view, extend to claims by those who have chosen not to do so.”

[16] The plaintiff was a single witness and did not call the investigating officer or any other person or provide further evidence to corroborate her version, what stands not proven is whether the said unknown insured vehicle was driven and with a bright light which caused the accident. The plaintiff had an onus to prove her case. One will not suggest that as long as it has been stated, it is true, the plaintiff has a duty to prove her case on the balance of probabilities. In *National Employers’ General Insurance Co Ltd v Jagers* (Jagers)[6], the erudite Eksteen AJP confirmed that discharging the onus on the balance of probabilities simply means that the court must be satisfied, on the balance of probabilities, that the plaintiff was telling the truth and his version was therefore acceptable. The fact that there is no contrast version does not necessarily transmute the uncorroborated version to be true and acceptable.

[17] The plaintiff testified that she was driving at the speed of 80km per hour when the oncoming insured motor vehicle brightened its lights while she was too close to the donkey which was crossing the road, at approximately 8 (eight) metres away. In my view this mean that before the alleged bright lights, if any, at a distance of over 8 metre the plaintiff should have realised that there is a donkey in front of her unless she drove her motor vehicle without a proper look out, or her

motor vehicle lights were not functional. It is not proven that at the time of accident there was an insured motor vehicle with a bright light, and even if it was present and had a bright light but in my view the cause of accident is not the bright lights from unknown insured motor vehicle but it's a donkey on the road which she could not abruptly realised. In my view the plaintiff is the one who drove her motor vehicle without a proper lookout at the circumstances.

[18] The plaintiff did not succeed in proving her case against the defendant, therefore, this matter should be dismissed. Since the defendant did not participate in this trial proceedings, no cost order should be awarded.

[19] In the circumstances, the following is the Order of this Court:

1. The plaintiff's action is dismissed with no order to cost.

E MASHAMBA

ACTING JUDGE OF THE HIGH COURT,

POLOKWANE; LIMPOPO DIVISION

APPEARANCES

FOR THE PLAINTIFF : ADV ANTON KNOETZE

INSTRUCTED BY : PE MASHOLA & CO INC

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FOR THE DEFENDANT : NO APPEARANCE

INSTRUCTED BY :

DATE OF HEARING : 28th October 2024

DATE OF JUDGEMENT : 10th December 2024

[1] Index Notices Vol 3, page 198

[2] Index Notices Vol 3, page 219

[3] Act 56 of 1996 as amended

[4] (7658A/2008)

[2024] ZAGPPHC 277 (20 March 2024) par 22

[5] 1992 CanLII 1263 (BC CA)

[6] 1984

(4) SA 437 (E) at 440D-G

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Prepared on 11 October 2026 · Esheria