

SOUTH AFRICA / JUDGMENT

Maya v Road Accident Fund (2451/2017)

[2024] ZAMPMHC 65 (4 December 2024)

[2024] ZAMPMHC 65**COURT**

Middelburg High Court, Mpumalanga

BEFORE

S O Vele

CASE / FILE NUMBER

2451/2017

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Policy**IN THE HIGH COURT OF****SOUTH AFRICA****MPUMALANGA DIVISION,****MIDDELBURG****CASE NO: 2451/2017****(1)****REPORTABLE: /NO****(2)****OF INTEREST TO OTHER JUDGES: /NO****(3)****REVISED: /NO****DATE: 04/12/2024****SIGNATURE****In the matter between:**

MAYA

SIZAKELE MARIA

PLAINTIFF

and

ROAD

ACCIDENT FUND

DEFENDANT

JUDGMENT

Vele AJ

- [1] The plaintiff, Ms Maria Sizakele Maya, has issued summons against the Road Accident Fund (hereinafter referred to as “the RAF” or “the defendant”) for the payment of R3 000 000.00 as general damages arising from the motor vehicle accident that occurred on 12 March 2017, next to Embalenhle Primary school, in Secunda, Mpumalanga Province. The plaintiff was a pedestrian, when motor vehicle bearing the registration numbers and letters P[...] 3[...] G[...] driven by one Noel Bunguane (hereinafter referred to as “the insured driver”) collided with her. Prior to instituting the proceedings, the plaintiff complied with the statutory requirements as set out in the Road Accident Fund Act 56 of 1996 (“the Act”).
- [2] The plaintiff alleged that the sole cause of the collision was the negligent driving of motor vehicle P[...] 3[...] G[...] by the insured driver, resulting in the plaintiff sustaining the following bodily injuries: Injuries to her head and her right leg. The RAF defended the action as it denied that it was liable to compensate the plaintiff, alleging that the sole cause of the collision was the plaintiff’s conduct.
- [3] During the pre-trial meeting, the parties agreed to separate the merits from quantum, and proceed only with the merits portion, whilst the quantum portion stands over for adjudication at a later stage.
- [4] The Plaintiff gave evidence that could be summarised as follows. At the time of the accident she was residing at house number 1[...] Ext [...] E[...], in Secunda, Mpumalanga. On 12 March 2017, at around 01h00, she was engaged in a verbal fight with her partner, whom she met in company of another woman along the street. They were outside the roadway next to the storm water drainage. She did not see the insured driver’s motor vehicle, but just heard tyre screeches and attempted to jump away to evade colliding with the said vehicle, but it was too late. The motor vehicle collided with her rendering her unconscious, only to regain consciousness in hospital.
- [5] She further testified that they were standing on the side of the road. Her guess was that the insured driver could have been travelling at high speed and lost control of the vehicle and collided with her on the pavement. The streetlights were on and provided some light. She heard that police arrived at the scene after the ambulance took her to Evander Hospital. She confirmed making a statement to the police. She confirmed that Exhibit “A”, the accident report, reflected the accident she was in. She denied being negligent and stated that she tried jumping out of the way.
- [6] She was cross-examined and confirmed that she was awake at all times prior to the accident, as she was from Graceland Casino, where she was gambling since the previous night. She confirmed that they were on the left side of the road arguing, when the vehicle collided with her. The drawing in Exhibit “A”, which depicts two individuals who were lying in the middle

of the road, was brought to her attention to comment on. She confirmed being found in the middle of the road but explained that she was flung there by the motor vehicle from the side of the road. She denied having consumed any alcohol on the night in question. She confirmed that the only injuries she had were her head and swollen right knee.

- [7] This was her evidence in a nutshell. She did not call any witnesses and closed her case. The following documents were marked as exhibits. The hospital admission form was marked as Exhibit “B”. Ambulance report as Exhibit “C”. The plaintiff’s affidavit in terms of section 19(f) of the Act, as Exhibit “D” and the copy of plaintiff’s identity document as Exhibit “E”.
- [8] The RAF also closed its case without calling any witnesses, nor giving any explanation as to why the insured driver was not called.
- [9] The plaintiff’s claim arises from the negligent driving of a motor vehicle, which ended up in a collision with her, resulting in her sustaining personal injuries to her head and right leg. The Act prescribes that in an instance where injuries are sustained as a result of a motor vehicle accident, a copy of the police docket with all witness statements and the accident report by the police officer who attended the scene, which includes the sketch plan of the scene, must be part of the documents lodged with the claim form.
- [10] The plaintiff did not call the police officer who attended the scene and opened the case docket, nor did she produce same as part of her evidence. Only the accident report was made available to the court, and no explanation for failure to produce the entire docket was given. In her section 19(f) statement, the plaintiff stated that the matter was before court, with the insured driver thereof being charged with reckless and negligent driving, under police CAS number 104/03/2017 in Embalenhle Police Station, with her as a witness in the matter.
- [11] In terms section 19(f)(ii) of the Act, provides as follows:
- “The Fund or an agent shall not be obliged to compensate any person in terms of section 17 for any loss or damage –*
- (f) if the third party refuses or fails –
- (i) ...
- (ii) to furnish the Fund or such agent with copies of all statements and documents relating to the accident that gave rise to the claim concerned, within a reasonable period after having come into possession thereof.”
- [12] Section 19(f)(ii) provides that the claimant is to ensure that all documents relevant to the claim are made available for consideration in the assessment of the claim. This is a mandatory requirement for the claimant to be successful in claiming any form of compensation.

- [13] In terms of the regulations to the Act, the accident report, which contains the versions of both drivers and the sketch plan, forms part of the supporting documents attached to claim Form 1, which is a requirement in terms of section 24(1)(a) of the Act. The accident report has shed some light into what the scene was like and the position in which the pedestrians were found lying on the roadway. The plaintiff disputes that more than one person was hit by the motor vehicle. She has the onus to ensure that all the witness statements in the docket are made available in order to paint a clear picture of what transpired. The draughtsman of the said sketch drawing is the most valuable person to clear this confusion, but the plaintiff elected to close her case without calling him or her and the reason was never advanced. When confronted with this, the plaintiff's attorney failed to give any tangible reason. To make the matter worse, the defendant also closed its case without calling the insured driver and no reason was advanced for such a move.
- [14] It was argued on behalf of the plaintiff that she has discharged the onus put on her on the balance of the probabilities, which was challenged by the defendant.
- [15] The RAF is liable to compensate any third party, injured due to the negligent conduct of the insured driver. The plaintiff must prove the causal link between the conduct of the insured driver and consequences she suffered. In the matter of *Lee v Minister for Correctional Services*,^[1] causation was set out as follows:
- "[38] The point of departure is to have clarity on what causation is. This element of liability gives rise to two distinct enquiries. The first is a factual enquiry into whether the negligent act or omission caused the harm giving rise to the claim. If it did not, then that is the end of the matter. If it did, the second enquiry, a juridical problem, arises. The question is then whether the negligent act or omission is linked to the harm sufficiently closely or directly for legal liability to ensue or whether the harm is too remote. This is termed legal causation."*
- [39] This element of liability is complex and is surrounded by much controversy. There can be no liability if it is not proved, on a balance of probabilities, that the conduct of the defendant caused the harm. This is so because the net of liability will be cast too wide. A means of limiting liability, in cases where factual causation has been established, must therefore be applied. Whether an act can be identified as a cause depends on a conclusion drawn from available facts or evidence and relevant probabilities."
- [16] On the plaintiff's version, she was standing on the side of the road when the motor vehicle appeared from nowhere and veered off the road towards the pavement where she was standing with other people. It then collided with her alone and causing her to land on the roadway, where the paramedics found her. Although she denied having entered the roadway during their spat, her explanation of how she ended up on the roadway remains legendary as it is not supported by any evidence. She was not honest with the court, as she denied that someone else also sustained injuries in the said collision. The accident report reflects the contrary, in that it mentioned her partner as the other person who was injured.

- [17] It is interesting that the accident report that she produced in support of her case reflects two people found lying in the middle of the road. In the part where the details of the injured persons were recorded, it reflects the details of two people, whose addresses were given as Stand 1[...], Ext 0[...], E[...], which is in line with her evidence that she was engaged in an altercation with her partner. What a coincidence! If both of them were on the side of the road, it means that they were all hit by the motor vehicle and flung into the roadway, a fact that the plaintiff disputed.
- [18] The onus is on the plaintiff to prove that the damages she suffered solely resulted from the insured driver's negligent or other unlawful conduct. The plaintiff relied only on her evidence and the police's accident report but did not call the police officer who attended the scene to state how it looked, despite being aware of who this person was, as it is the information contained in both the accident report and the case docket that was easily available but never produced.
- [19] The onus is on the plaintiff to prove that the insured driver's negligent or reckless driving of the motor vehicle was the sole cause of the collision. The plaintiff's evidence does not get any support from the contents of the accident report or any of the other exhibits submitted in support of her case. Mere perusal of the sketch plan does not show that the motor vehicle was ever out of the roadway. When put to her that the paramedics wrote in their report that she was found lying on the roadway, she had no reply. She then somersaulted and said that the motor vehicle flung her to the middle of the road from the pavement, this is not supported by the sketch plan, which reflect the vehicle on the left side of the roadway with two people lying in front of it.
- [20] When confronted with the fact that the paramedic who transported her to the hospital recorded that she smelt of alcohol, she simply stated that she did not consume alcohol. The fact that the plaintiff and her partner were found lying next to each other in the roadway in front of the motor vehicle, as per the sketch plan, is proof that the collision occurred in the roadway and not on the pavement as she alleged.
- [21] The provisions of regulation 316 of the Regulations to the National Road Traffic Act 93 of 1996 are as follows:

"Duties of pedestrians

- (1) ...
- (2) A pedestrian on a public road which has no sidewalk or footpath abutting on the roadway, shall walk as near as is practicable to the edge of the roadway on his or her right-hand side so as to face oncoming traffic on such roadway, except where the presence of pedestrians on the roadway is prohibited by a prescribed road traffic sign, (3) ...
- (4) ...

- (5) No pedestrian on a public road shall conduct himself or herself in such a manner as to or as is likely to constitute a source of danger to himself or herself or to other traffic which is or may be on such road.”
- [22] The plaintiff, in her own evidence, stated that she was walking on the left-hand side of the road, in contravention of regulation 316(2), which prescribes that she should walk on the right-hand side facing oncoming traffic. As she stated in her evidence, the vehicle approached her from behind.
- [23] The plaintiff further conducted herself in a manner that was against the provisions of regulation 316(5), which require her not to conduct herself, in any manner which is likely to constitute danger to herself or other traffic using the road. She could not explain why she did not see the motor vehicle as its headlamps and streetlights were on. The only logical

conclusion

is that she did not see the motor vehicle approaching as they were already in the roadway, engaged in a fight, in total disregard of the vehicular traffic travelling on that part of the road. A reasonable man does not expect to find people in the middle of the road at such an ungodly hour.

- [24] Before calling the defendant to rebut her evidence, she must have placed a prima facie case, that if left unchallenged, she must succeed merits. This is not the case here, as her evidence, which was uncorroborated in any way, and accident report she provided contradicts each other. It is highly improbable that the insured driver's vehicle would have left the road, collided with the plaintiff, flung her into the roadway, and ended up being stationary in the roadway, with both the plaintiff and her partner in front of it. The position in which the plaintiff and her partner were found lying in the roadway suggests that the collision could not have happened at a place other than the roadway. The injuries she sustained are inconsistent with someone who was hit by the motor vehicle, flung into the air, and landed on the hard tarmac road.
- [25] The question is whether the plaintiff complied with the requirements of section 19(f), which required her to place all the information mandatory to adjudicate her claim? The answer to the above is a big no! As she did not provide the copy of the docket, which made it difficult for the RAF to consider her claim. She did not give any reasonable explanation for such an omission. On this ground alone, the plaintiff's action cannot succeed.

[26] In the result, the following order is made:

1. The plaintiff's action is dismissed.
2. The plaintiff is to pay the defendant's costs on party and party scale.

S O VELE AJ

ACTING JUDGE OF THE HIGH COURT

APPEARANCES

On behalf of the Plaintiff: Mr V Nsibande Instructed by: Kgomo & Nsibande INC, Middelburg On
behalf of the Defendant: Mr LW Maponya Instructed by: The Office of State Attorney, Mbombela
HEARD ON: 25 OCTOBER 2024 DELIVERED ON: 04 DECEMBER 2024

[1] Lee v Minister for Correctional Services 2013

(1) SACR 213 (CC) paras 38 and 39.

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