

SOUTH AFRICA / JUDGMENT

Mbokane v Road Accident Fund (2188/17) [2019] ZAGPPHC 7 (31 January 2019)

[2019] ZAGPPHC 7

COURT

North Gauteng High Court, Pretoria

BEFORE

C J Collis

CASE / FILE NUMBER

2188/17

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IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

(1)

REPORTABLE

(2)

OF INTEREST

TO OTHER JUDGES

(3)

REVISED.

CASE NO: 2188/17

In

the matter between:

DAVID
MBOKANE
Plaintiff
and
THE
ROAD ACCIDENT FUND
Defendant

JUDGMENT**COLLIS J****INTRODUCTION**

[1] The plaintiff, an adult male, has instituted a damages action against the defendant for certain bodily injuries he sustained in a motor vehicle collision on 31 March 2016. At the time of the collision, the plaintiff was the driver of a motor vehicle bearing registration letters and numbers [...], which collided with a truck bearing registration letters and numbers [...], referred to as the insured driver.

[2] In its particulars of claim, at paragraph 5 thereof, the plaintiff alleged as follows:

"The collision was caused by the sole negligence of the insured driver who was negligent in one or more of the following respects:

5.1 he failed to keep a proper lookout;

5.2 he travelled at an excessive speed regard being had to the prevailing circumstances;

5.3 he failed to drive with due skill, diligence, caution and/or circumspection;

5.4 he failed to take any alternatively sufficient cognisance of the presence, the actions and the visibility intended and/or alternative

probable further actions of the motor cycle driven by the plaintiff;

5.5 he drove his vehicle without due regard for other road users specifically those of the plaintiff;

5.6 he failed to exercise any or proper control over the motor vehicle he was driving;

5.7 he failed to apply the brakes of the motor vehicle he was driving timeously, adequately or at all;

5.8 he failed to avoid a collision whereby the exercise of reasonable care and caution he could have and ought to have done so;

5.9 he attempted to execute an inherently dangerous manoeuvre and did so in a reckless fashion;

5.10 he drove into the plaintiff's path of travel at a time when it was unsafe and/or inopportune to do so."

[3] In his plea, the defendant denied any negligence on the part of the insured driver and, in the alternative, had pleaded contributory

negligence on the part of the plaintiff.

THE DISPUTE

- [4] The matter comes before me for determination of the liability. The parties, by agreement, having applied to the court for a separation of the issue of liability to that of the quantum in terms of Rule 33(4). The Court upon application ordered such separation.

THE EVIDENCE

- [5] The plaintiff, Mr David Mbokane, testified that, on 31 March 2016, he was driving a motor cycle bearing registration letter and numbers [...] when he was involved in a collision with a truck. Prior to the collision, he was returning to his place of employment after having made a delivery to a customer. As he proceeded along the R40 road in Mbombela, he was following two other vehicles. They all approached an intersection with the traffic light facing them being in their favour. The two vehicles travelling ahead of him then entered the intersection and he proceeded to follow them. As he was busy traversing through the intersection, the insured driver approaching from his right also entered the intersection and a collision then occurred.
- [6] He described the road he was travelling on as consisting of four lanes with two compulsory right turning lanes at the intersection, with the other two lanes permitting vehicular traffic to travel straight. He also testified that the same road carried opposite lanes having the same directional arrows for traffic travelling from the opposite direction. Of the two lanes permitting traffic to travel straight, he testified that he was travelling in the extreme left of the two lanes. As he was already inside the intersection when the truck executed a right turn, he tried to apply his brakes and swerve to the left. He concluded his testimony in chief by stating that he was unable to determine at what speed he was travelling prior to the collision but that his speed would not have exceeded the maximum speed of 60 kilometres per hour permitted for a built up area.
- [7] During cross-examination, Mr Mbokane conceded that, as he was not looking at his speedometer prior to entering the intersection, he was unable to recall at what exact speed he was travelling immediately prior to entering the intersection. The witness further pointed out X on Exhibit A, as the direction from which the truck was travelling and point Y as the point of impact. He was adamant that he did observe the truck as he entered the intersection as he had right of way and never observed the truck indicating that it was about to execute a turn into the intersection. He further conceded that, had he been keeping a proper lookout, he would have observed that the truck driver wanting to execute a turn into the intersection. He testified that, upon approaching the intersection, he did not reduce his speed but qualified his answer that the traffic light facing him was in his favour and, therefore, he did not reduce his speed.
- [8] During the examination, he amplified his evidence-in-chief by testifying that this truck consisted of a horse and trailer and that he had collided with this truck on its horse side.
- [9] The plaintiff then closed his case.
- [10] The defendant closed its case without the tendering of any viva voce evidence.

ON MERITS

[11] The plaintiffs evidence was that the collision occurred as he was traversing through a traffic light controlled intersection where he had the right of way. This portion of his evidence is uncontroverted as no evidence in rebuttal was presented by the defendant.

LEGAL PRINCIPLES AND AUTHORITIES

[12] In the present matter it is important to consider the legal principles and some authorities when dealing with two important aspects relevant to the matter at hand, namely, a driver's duty to keep a proper lookout at traffic light controlled intersections and his or her duty when executing a turn to the right at such intersection.

[13] The following shall be borne in mind:

13.1 if collisions were to be avoided, all road users should keep a proper lookout;

13.2 the term "proper lookout" varies from case by case, depending on the circumstances;

13.3 priority of right of way does not confer an absolute right of way on a driver;[1]

13.4 a driver entering an intersection when the traffic light signal is green in his favour has to regulate his speed and entry so as not to endanger the safety of traffic which entered the intersection lawfully and which may still be in the intersection;[2]

13.5 a turn across the path of travel of oncoming or following traffic is an "inherent dangerous manoeuvre" and that a driver who intends executing such a manoeuvre bears a stringent duty to do so after satisfying himself that it is indeed safe and then choosing the right moment (often called the opportune moment) to do so.[3] It is, therefore, understandable why a driver turning right has a greater duty toward both the traffic following as well as traffic

approaching from the opposite direction;

13.6 a driver turning to the right must signal his intention clearly and avoid turning until an opportune moment presents itself;[4]

13.7 such a driver about to turn right should only turn to the right once he has satisfied himself that there is room enough between his motor vehicle and the approaching motor vehicles (in the present instance, the motor cycle) to allow him to complete the manoeuvre safely;[5]

13.8 a driver is entitled to assume that those who are travelling in the opposite direction will continue in their course and that they will not suddenly and inopportunately turn across the lane of traffic. This assumption may continue until it is shown that there is a clear intention to the contrary;[6]

13.9 drivers who see a driver signalling his intention to turn right are entitled to assume and accept that that driver will only execute his turn to the right at a safe and opportune moment. This is so because they are not obliged to guard against the unreasonable and negligent actions of a driver who signals his intention to turn to the right;

13.10 it therefore follows that a driver is only called upon to take precautions against reasonable foreseeable contingencies and not the reckless driving of other motorists.[7]

[14] Applying the principles dealt with above to the facts of the matter, the following becomes apparent:

14.1 Mr Mbokane testified that, as he was entering the intersection, he observed the insured driver and the latter gave no indication that he would enter the intersection and thereby not wait for the plaintiff to safely clear the intersection;

14.2 there was no reason for the plaintiff to expect that the insured driver would execute the right hand turn before he had cleared the intersection and thereby not allowing him to travel through the intersection before he turned right;

14.3 the plaintiff took all reasonable steps available to avoid the collision. He applied his brakes, although not to the full extent, and he swerved his motor cycle to the left, but all in vain;

14.4 a greater duty of care rested upon the insured driver than the plaintiff, given the circumstances of the case, to keep a proper

lookout and to take all reasonable measures to avoid the collision;

14.5 the plaintiff was entitled to proceed through the intersection in the manner which he did;

14.6 in the present case, Mr Mbokane was entitled to assume that the insured driver would obey the traffic light and turn only when it was safe and opportune to do so. In the absence of any rebuttal evidence presented by the defendant, this court only has the version of the plaintiff as to how the collision had occurred;

14.7 in the circumstances, there was no obligation or duty, in the circumstances of the plaintiff's case, for him to have kept a better

look out to guard against vehicles that might enter the intersection and turn to the right across his path of travel, even on Mr Mbokane's evidence in circumstances where he had noticed the insured driver when he entered the intersection.

[15] Counsel for the defendant spent a considerable amount of time on the speed at which the plaintiff was travelling immediately upon his approach into the intersection. During closing argument, counsel for the defendant had argued that if the plaintiff was not travelling at such a high speed he would have been able to have avoided the collision, and his failure to have avoided the collision is indicative of negligence on his part.

- [16] Before this court, however, there was no evidence presented to show that the collision could have been avoided had the plaintiff travelled at a reduced speed.
- [17] On the evidence presented, as well as the legal principles referred to above, I am persuaded that the insured driver was indeed the sole cause of the collision on the day in question, that the insured driver entered the intersection at an inopportune moment across the path of travel as the plaintiff was traversing through the intersection.
- [18] The insured driver is, as a result, therefore, liable to 100% of the plaintiff's proven or agreed damages.

ORDER

[19] In the result, I make the following order:

19.1 the defendant shall pay 100% of the plaintiff's proven or agreed damages;

19.2 the defendant shall pay the plaintiff's taxed or agreed party and party costs, inclusive of the costs of counsel and preparation of Trial bundles.

C J COLLIS

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

Appearances:

Counsel for the plaintiff: Adv A van Staden

Instructed by:

Pieter Nel Attorneys

Counsel for the defendant: Adv L Mashilane

Instructed by:

Matabane Inc

Date of hearing:

11 September 2018

Date of judgment:

31 January 2019

[1] S v Desi 1969 (4) SA 23 (T)

[2] Santam Insurance Company Ltd v Gouws 1985 (2) SA 630 (A) at 634

[3] AA Mutual Insurance Association Ltd v Moneka 1976 (3) SA 45 (AD) at 52E

[4] Welt v Christner 1976 (2) SA 170 (N)

[5] R v Court 1945 TPD 133 at 134

[6] Van Staden v Stocks 1936 AD 18

[7] Rondalia Versekerings Korporasie van SA Beperk v De Beer 1976 (4) SA 707 at 711

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Prepared on 13 October 2026 · Esheria