

SOUTH AFRICA / JUDGMENT

Mnisi v Road Accident Fund (36079/31) [2017] ZAGPPHC 809 (5 December 2017)

[2017] ZAGPPHC 809**COURT**

North Gauteng High Court, Pretoria

BEFORE

Tshabalala

CASE / FILE NUMBER

36079/13

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Source record**IN****THE HIGH COURT OF SOUTH AFRICA****GAUTENG****DIVISION, PRETORIA)****Case****No. 36079/13****Date:**

05 December 2016

In

the matter between:

BEAU

SHONDO

MNISI Plaintiff

and

ROAD

ACCIDENT

FUND Defendant

JUDGMENT**TSHABALALA AJ**

- [1] The Plaintiff's action arises out of a motor vehicle accident that allegedly took place on the morning of 29 November 2010 at approximately 02h41 in Lavender Road, Bon Accord.
- [2] The Plaintiff testified that he was driving from the direction of Hammanskraal to Pretoria. The road had two lanes. It was night time. It was dark except for the light provided by vehicles. The Plaintiff further testified that his vehicle had its head lights switched on.

- [3] The Plaintiff further testified that he saw a vehicle coming from the opposite direction, it was overtaking another vehicle, the insured vehicle was approximately 30 metres away. The Plaintiff saw the said vehicle [insured vehicle] in his lane. The Plaintiff was travelling between 80 and 60 kilometres an hour. The Plaintiff had to make an instant decision how to deal with the situation. The Plaintiff swerved to go left to avoid a head-on collision. He was approximately ten metres away from the insured vehicle. He applied brakes but collided with a stationary truck that was parked in the emergency lane. The lights of the truck were off but it had reflectors at the back. There was no reflecting triangle placed behind the truck to warn road users of the presence of the truck.
- [4] The Plaintiff testified that there was no other way he could have avoided the accident having regarding to the prevailing circumstances. The road did not have lights, it was a dark road.
- [5] Under cross-examination the Plaintiff testified that he was travelling from Hammanskraal to Pretoria "towards the north". He was travelling at a speed of approximately 60 and 80 kilometres per hour. The truck was approximately 25 meters when he saw it.
- [6] Counsel for the Defendant put to the Plaintiff that the Plaintiff could have avoided the collision if he was moving at 60 kilometres per hour. The Plaintiff responded that he tried. [Those were the words of the Plaintiff].
- [7] It was further put to the Plaintiff that he failed to keep the vehicle under control. The Plaintiff replied that he does not think so. The Plaintiff testified that he tried to apply brakes but the distance was close.
- [8] Counsel for the Defendant put to Plaintiff that Plaintiff was travelling at a high speed. Plaintiff responded that he tried his best. It was not put to Plaintiff what speed he was travelling at.
- [9] It was further put to Plaintiff by the Defendant's counsel that Plaintiff could have foreseen the prospects of colliding with the stationary vehicle given the speed he was travelling at. Plaintiff testified that he saw the reflectors of the truck, but was not aware that the truck was not moving.
- [10] was asked why he could not avoid the vehicle if it was 30 metres away and he was travelling at 60 kilometres per hour. Plaintiff responded that he applied brakes. Plaintiff was asked whether he applied brakes timeously and responded positively.
- [11] Plaintiff testified that he did his best to keep a proper lookout. Plaintiff further testified that he could have driven into the bush if he was aware that the truck was stationary.
- [12] Plaintiffs counsel argued that Plaintiff could have approached the situation in one or two ways; either to collide head-on with the other vehicle or swerve to his left. Plaintiff had to make a sudden decision. Plaintiff was not negligent or did not contribute to negligence.

- [13] Counsel for the Defendant argued that Plaintiff testified under cross- examination that he was travelling at 60 kilometres per hour.
- [14] The defence submitted that Plaintiff became irritable and posed questions to counsel.
- [15] Defendant submitted that Plaintiff was not sure about the lanes.
- [16] Defendant argued that Plaintiff should be found equally negligent for the following reasons:
- 16.11 He failed to keep his vehicle under control.
- 16.12 He failed to avoid the collision by not exercising reasonable care and should have done so.
- 16.13 He failed to apply brakes timeously or at all.
- [17] Defendant is asking that the Court finds that there was contributory negligence on the part of Plaintiff, it was not argued that Defendant is not liable for the accident. Defendant asserts that Plaintiff could have avoided the collision by applying brakes timeously having regard to the speed of 60 kilometres per hour.
- [18] The Court accepts that the accident happened as Plaintiff testified or according to Plaintiff's version. It is clear that Plaintiff does not understand geographic directions such as the cardinal points, south, north etc. the foregoing however does not affect the veracity of the testimony of Plaintiff.
- [19] There was no evidence led on behalf of Defendant. The Court only has the version of Plaintiff.
- [20] The Court finds that Plaintiff acted like a reasonable person would have acted having regard to the evidence in this matter.
- [21] I also find that Plaintiff was faced with a situation of sudden and imminent danger, he could not have acted otherwise in this situation. Plaintiff testified that he was driving between 60 and 80 kilometres, even under cross-examination.
- [22] The Court finds that Defendant is solely responsible for the accident and that there was no contributory negligence on the part of Plaintiff. Therefore, Plaintiff has proved on a balance of probabilities that Defendant is liable to compensate Plaintiff for 100% of Plaintiff's proven damages.
- [23] The Defendant is ordered to pay costs of this action on a party and party scale, including costs of 2 November 2016, 4 November 2016 and 5 November 2016.

It is so ordered.

TSHABALALA

ACTING JUDGE OF THE HIGH COURT

13 December 2016

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