

SOUTH AFRICA / JUDGMENT

Mostert v Road Accident Fund (72/2017)

[2017] ZAFSHC 222 (7 December 2017)

[2017] ZAFSHC 222

COURT

Free State High Court, Bloemfontein

BEFORE

NM MBHELE

CASE / FILE NUMBER

72/2017

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE HIGH COURT OF SOUTH AFRICA,

FREE STATE DIVISION, BLOEMFONTEIN

Case No: 72/2017

In the matter between:-

GERHARDUS BURGER MOSTERT

PLAINTIFF

and

THE ROAD ACCIDENT FUND

DEFENDANT

CORAM: MBHELE, J

HEARD ON: 24 OCTOBER 2017

DELIVERED ON: 07 DECEMBER 2017

- [1] On 01 September 2014 on the R82 near Sasolburg, a collision occurred between a motor cycle driven by Plaintiff and an insured vehicle driven by one S. Mofokeng.
- [2] The Plaintiff instituted an action against the defendant for damages suffered as a result of the collision. The Plaintiff alleges that the collision occurred as a result of the sole negligence of the insured driver who was negligent in one or more of the following respects:
- he failed to keep a proper look out;
 - he failed to have due regard to the presence of other road users;

- he failed to obey a stop sign;
- he failed to give due consideration to the traffic conditions at the time of the collision;
- he entered the R82 at the dangerous and inopportune time;
- he failed to avoid collision when, by the exercise of reasonable care and skill he could and should have done so;
- he failed to keep the insured vehicle under proper control.

The defendant has denied the allegations of negligence against the driver of the insured vehicle. Defendant did not plead contributory negligence. During trial Me. Nhlapo, on behalf of the defendant, prayed for apportionment of damages , in the event of a finding of negligence on the part of the defendant.

[3] As per agreement between the parties I ordered separation of the quantum and merits. The matter is before me for the determination

of merits with specific reference to the aspect of negligence.

[4] He testified, inter alia, to the effect that he works at Vereeniging and stays at Kragbron. He was driving a 125 cc motor cycle which he describes as a very small calibre motor cycle. He was travelling at 80 kilometres per hour and reduced his speed to 60 kilometres per hour when he was travelling uphill approaching the intersection where the collision occurred. As he was approaching the uphill he saw lights at a distance of about 100 metres on the side road joining the R82 from the left.

[5] The lights disappeared some distance before the T-Junction and he assumed that the vehicle might have stopped at the side of the road or turned in the direction he was travelling to.

When he was in the middle of the intersection he was hit by the vehicle which entered the intersection from the left. The vehicle's lights were off.

[6] When he first saw the insured driver's vehicle it was already upon him, about 2-3 metres from him, and there was no time to swerve to the right or apply breaks. The insured driver did not stop at the stop sign. It was dark in the area and the insured vehicle did not have its head lights on. The insured driver's vehicle collided with the Plaintiff's motorcycle on the left centre. The Plaintiff was familiar with the road; he travelled on it daily for at least 3 years before the collision.

[7] In cross examination, the Plaintiff reiterated that there is not much traffic on that specific part of the road, it was dark and impossible for him to see a vehicle travelling without lights. He did not have time to jump on the breaks nor could he swerve or take any other action to avert collision.

[8] The defendant closed its case without calling witnesses.

Applicable Law

[9] A motorist is required to take reasonable precautions against harm being caused to another if the likelihood of such harm would have been foreseen by the reasonable prudent driver. He need not take precautions against a mere possibility of harm not amounting to such likelihood as would be realised by the prudent person. (See *Wasserman v Union Government* AD 228 at 231 also See *Manderson v Century Insurance CO LTD* 1951 (1) SA 533 A at 544).

[10] Road users have a duty to exercise care and act reasonably on the road. This duty entitles drivers to assume that other drivers will also exercise care and act reasonably.

One expects and is entitled to expect reasonableness rather than unreasonableness, legality rather than illegality, from other road

users. (See *Moore v Minister of Posts and Telegraphs* 1949 (1) SA 815 AD on p 826).

[11] In *The Law of Collisions in South Africa*, 7th Edition at 72, Klopper explains the general duties and rights of drivers on public roads as follows:

"Because a driver is under a duty to act reasonably, he is entitled to expect other road users to do the same. This principle translates into certain assumptions a driver of a motor vehicle is justified to make when his duties and driving skills are considered. These justified assumptions are inherent in the process of establishing whether a driver was negligent in not complying with the various duties imposed on a driver. However, the existence of justified assumptions does not relieve a driver from the duty to appreciate that other drivers may act unreasonably and to provide for such a contingency by taking all possible reasonable steps to avoid a collision occasioned by another driver's unreasonable behaviour. A driver will be negligent if the unreasonable conduct is generally foreseeable and he does not take reasonable preventative action to avoid a collision."

[11] The plaintiff's evidence stands unchallenged that the insured vehicle failed to stop at a stop sign and joined the intersection with its lights off. Plaintiff was driving at 60 Kilometres per hour, uphill when approaching an intersection. He saw lights of a vehicle approaching the intersection from the left at a distance of about 100 metres which disappeared as he drew closer to the intersection. He assumed that the vehicle that was approaching the intersection stopped by the road side or turned in the direction he was travelling. The vehicle driven by the insured driver travelled without lights at night and failed to stop at a stop sign. Plaintiff had a right of way. It was not reasonably expected of him to keep an eye on the vehicle that disappeared into the dark. As a reasonable driver and road user he expected a vehicle travelling at night to have its lights on and to stop at the stop sign. Me. Nhapo's argument that the plaintiffs ability to see the insured vehicle would not have been affected because the plaintiffs bright headlights could cover a distance of 20-30 metres ahead of him, is not supported by the available evidence. The evidence shows that the lights projected into the front of the plaintiff's motor cycle and it would not have been easy to spot a vehicle driving

without lights in the dark. It is clear from the evidence that the insured driver joined the intersection at an inopportune time without observing the stop sign. The collision was sudden and unexpected. It made it difficult for the plaintiff to do anything to avert it.

[13] My view is that although the plaintiff had a duty to exercise precaution, and the law imposes a duty on drivers to be mindful of "unreasonable drivers", the evidence before me does not suggest that the plaintiff drove his motorcycle negligently and that such negligence contributed to the collision.

[14] Consequently the following order is made:

ORDER

- (a) Defendant is liable for 100% of such damages as the plaintiff may prove to have suffered as a result of the collision that occurred on 01 September 2014.
- (b) The question of quantum will stand over for determination on a date to be arranged with the Registrar.
- (c) The defendant is ordered to pay costs attendant upon the hearing of this matter.

NM MBHELE, J

On behalf of the plaintiff: Adv MD Steenkamp

Instructed by:

Symington & De Kok

BLOEMFONTEIN

On behalf of the defendant: Adv K Nhlapo

Maduba Attorneys

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAFSHC/2017/222.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/mostert-v-road-unknown-topic-afshc-2017>

Prepared on 13 October 2026 · Esheria