

SOUTH AFRICA / JUDGMENT

Naude v Road Accident Fund (69514/2013) [2016] ZAGPPHC 959 (22 August 2016) [2016] ZAGPPHC 959

COURT

North Gauteng High Court, Pretoria

BEFORE

Barnes

CASE / FILE NUMBER

69514/2013

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IN

THE HIGH COURT OF SOUTH AFRICA

(GAUTENG

DIVISION,PRETORIA)

14/9/16

Case

No: 69514113

In

the matter between:

J

D

NAUDE Plaintiff

and

THE

ROAD ACCIDENT

FUND Defendant

Date

of Hearing: 22 August 2016

Date

of Judgment:

JUDGMENT**BARNES AJ**

1. This is a judgment In respect of the merits portion of a trial arising out of a motor vehicle accident, the Court having ruled that the matter was not ready to proceed in respect of quantum.
2. It was not disputed by the Defendant that the Plaintiff, Mr Johannes Naude, was Involved in a motor vehicle accident on 30 April 2012 at approximately 21h45 on C R Swart Drive, Waverley, Pretoria while driving a Nissan tow truck with registration number MHM 311 GP.
3. The Plaintiff gave evidence as did his brother, Mr Jacob Naude, who witnessed the accident.
4. The Plaintiff testified that he and his brother, both tow truck drivers, had left an accident scene on Duncan street in Hatfield and were on route to the Harvey Miller circle via C R Swart Drive in Waverley. The Plaintiff and his brother were driving alongside one another, the Plaintiff in the left hand lane and his brother in the right hand lane. The brothers were on their way to the Harvey Miller circle where they intended to wait until their services were required. They were travelling fairly slowly, in the region of 50km per hour.
5. The Plaintiff became aware of a V W Polo travelling at speed behind him and flashing its lights. The Plaintiff decided to move into the right hand lane in front of his brother's vehicle in order to allow the Polo to pass. The Plaintiff indicated his intention to do so. As the Plaintiff commenced moving into the right hand lane, the Polo passed the Plaintiff and then suddenly swerved to the right, in front of the Plaintiff a vehicle.
6. The Plaintiff, in order to avoid a collision with the Polo and his brother's vehicle, swerved sharply to the right. In the process the Plaintiff lost control of his vehicle and collided with a tree in the traffic median in the centre of the road. The Polo did not stop.
7. The Plaintiff's brother corroborated his version in all material respects. The Plaintiffs version was not seriously challenged in cross examination. In particular, it was not contested that the Polo suddenly swerved in front of the Plaintiff's vehicle. Nor was it contested that there was nothing the Plaintiff could have done to avoid the collision, other than swerve to the right as he did. Indeed, the overwhelming likelihood, had the Plaintiff not swerved to the right, is that he would have collided with the Polo, his brother's vehicle or both. This too was uncontested.
8. The evidence therefore clearly establishes, on a balance of probabilities, that the accident was caused by the sole negligence of the driver of the Polo. In the circumstances, the Defendant is liable to pay 100% of the Plaintiff's proved damages.
9. I accordingly make the following order:

9.1 On the merits, the Plaintiffs claim for 100% (one hundred percent) of damages (the quantum of which remains to be proved), to be paid by the Defendant, is upheld.

9.2 The Defendant is ordered to pay the costs of the trial.

BARNES AJ

Appearances:

For the Plaintiff: Adv P Vermeulen Instructed by Hagerman & Associates

For the Defendant Adv N Soviti-Zwadela instructed by Nozuka Nxusano Inc

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