

SOUTH AFRICA / JUDGMENT

Ndlangamandla v Road Accident Fund (3562/2014) [2015] ZAGPPHC 765 (26 October 2015) [2015] ZAGPPHC 765

COURT

North Gauteng High Court, Pretoria

BEFORE

NA Engelbrecht

CASE / FILE NUMBER

3562/2014

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

Source record

IN

**THE HIGH COURT OF SOUTH AFRICA
(GAUTENG
DIVISION, PRETORIA)****Case****number: 3562/2014**

Date:

5 Augustus
2015
In the

matter between:

THULANE
NDLANGAMANDLA
Applicant
And
ROAD
ACCIDENT
FUND
Respondent

JUDGMENT

ENGELBRECHT J A

[1] The plaintiff instituted action against the defendant for damages arising out of a motor vehicle collision. The parties agreed to separate the issue of merits from quantum and in terms of R 33 (4) I accordingly granted the order. The matter proceeded on the question of liability only.

[2] On 20 August 2011 shortly after 23h00 on Mandela Street Embalenhe the plaintiff sustained bodily injuries as a result of a motor collision. The plaintiff alleges that the insured driver was negligent in the following respects:

-the insured driver drove at a speed that was excessive in the circumstances;

-the insured driver failed to reduce speed when he ought to and could have done so;

-the insured driver failed to apply the brakes of the insured vehicle either timeously, adequately or at all;

-the insured driver failed to keep a proper lookout;

-the insured driver failed to keep a proper or effective control over the insured vehicle;

-the insured driver failed to adhere to the traffic regulations by leaving the road and directing his motor vehicle along the pavement.

[3] The defendant denies that the negligence of the unidentified insured driver was the cause of the collision. The defendant pleads that the sole cause of the collision was the negligence of the plaintiff in that the plaintiff:

failed to keep a proper lookout or;

he ran recklessly and heedlessly onto the road and into the path of the insured vehicle rendering a collision inevitable by affording the insured driver absolutely no time to avoid the collision or;

he failed to adequately have regard to what was happening in his immediate vicinity and more specifically had no time to avoid the

collision or;

he attempted to cross the road at a dangerous and inopportune moment or;

he failed to ensure that he was appreciably visible to all road users and in particular to the insured driver or;

he failed to avoid the collision, when by the exercise of reasonable care and consideration, he could and should have done so. And, in the alternative, if any negligence was found that it was as a result of the joint negligence of the unidentified insured driver and the plaintiff. In which case any claim that the plaintiff may have should be reduced in accordance with the provisions of the Apportionment of Damages Act 34 of 1956 as amended.

- [4] The plaintiff testified that on the above mentioned date and place he was a pedestrian walking on the pavement when he heard a loud sound behind him. Soon thereafter an unknown motor vehicle collided into him from the rear. He was flung into the air. Prior to landing on the ground and losing consciousness, he observed a white Golf motor vehicle. That is all that he recalls from the accident. He has no knowledge of an assault on his body following an alleged robbery incident. The lighting in the streets in the township is not good. There are lights fitted on the road but were not working at the time. He relied on an Apollo light close by.
- [5] At the time of the collision, the plaintiff said he was wearing dark clothing which was not easily visible to motorists. He is not familiar with the road that he used that day. It was not raining on the said day. He said the road was not busy. The pavement was approximately 1.2 metres wide and was slightly elevated in comparison to the road surface. As a result of his injuries the plaintiff was admitted to hospital. After his admission to the hospital a 'white gentleman' approached him regarding his hospitalization and because of their language differences confusion arose as to the time of the collision and also how it happened. He, plaintiff speaks isiZulu whilst the 'white gentleman' spoke English. No accident was reported to the police because he, plaintiff did not have any detail concerning the motorist.
- [6] In so far as the correctness or not of the documents discovered and filed as part of these proceedings, the plaintiff had the following to say:
- 6.1 at no point in time was he assaulted following an alleged robbery;
- 6.2 he lost consciousness after the motor vehicle accident and was hospitalized and admitted at Evander hospital and Witbank hospital respectively;
- 6.3 he recalls walking along the road just after 23h00 that evening when the incident occurred.
- 6.4 plaintiff relied on the information in the statement prepared by the 'white gentleman' in particular as regards:
- The time when the alleged incident happened namely 02h30 that morning and not 14h30 as per the hospital records and,
 - That he, plaintiff did not collide with an oncoming motor vehicle but that he was hit from the rear by an unknown motorist.

- [7] Counsel for the plaintiff contended that the hospital records discovered were relevant to the Quantum of damages only. And, if counsel for the defendant sought to rely on such evidence, they were to meet the requirements for relevance and admissibility.
- [8] Since neither counsel called the authors of the hospital records discovered in the course of preparation of this trial, such evidence remained hearsay, irrelevant and therefore inadmissible.
- [9] Plaintiff closed its case. The defendant closed its case without calling any witnesses.
- [10] Counsel for the plaintiff submitted that since there was nothing to gainsay the version of the plaintiff the Court should grant the order in favour of the plaintiff, and that costs should follow the result. Counsel for the plaintiff relied on an unreported decision namely that of Rofhiwa Falufhelo Kwatani and the Road Accident Fund Case No 71348/11 Dated 14/06/2013, North Gauteng High Court in which Chetty A J held that the defendant failed to call a witnesse(s) in support of its version. The court found that the defence failed to prepare adequately for trial despite being in possession of documents that would have assisted their defence.
- [4] Counsel for the defendant argued that plaintiff was dishonest. Counsel for the defendant denied the plaintiffs plea of negligence

and argued that plaintiff failed to prove his claim.

- [5] The only evidence before this court is that of the plaintiff. Plaintiff was cross examined as to how the collision took place. His response was that he was struck by an unidentified motor vehicle from behind and was not injured following an attempted robbery as was alleged by the defence. Plaintiff stuck by his version despite a lengthy cross examination.
- [6] Though Counsel for the defendant contended that the injuries the plaintiff sustained were not as a result of a motor vehicle accident, they failed to call any witnesses to support their contention. In the absence of any evidence to the contrary the only version before this court remains that of the plaintiff. Counsel for the defendant had ample time to arrange for the presence of the admission staff of the hospital to testify in

support of his contention. In fact all relevant documentation was made available to the defendant by the 3181 January 2014.

- [7] What this court has to determine is (1) whether plaintiff was involved in a motor vehicle accident; (2) whether the insured driver was negligent, and, (3) if there was negligence, whether it was a direct result of the joint negligence of the insured driver and the plaintiff and if so, that any claim the plaintiff may have be reduced in accordance with provisions of the Apportionment of Damages Act, Act 34 of 1956 as amended.

- [8] The following facts are not in dispute:

-that a collision had taken place

- The identity of the plaintiff;
 - The time and place of the alleged collision;
 - That plaintiff was wearing dark clothing on the day in question;
 - That the plaintiff walked with his back facing on coming traffic;
 - That it is not a busy road;
 - That the road was not well lit and plaintiff relied on a nearby Apollo light for lighting; and,
 - That he, plaintiff, was walking in the centre of the pavement when the collision from his rear happened.
- [9] The onus was on the plaintiff to show on a balance of probabilities that a collision took place. There is no evidence to the contrary and this court accepts the version of plaintiff on a balance of probabilities.
- [10] Furthermore, had the unidentified driver exercised proper or effective control over the insured motor vehicle he would in all probability not have mounted the pavement and collided with the plaintiff.
- [11] This court further finds that it was not necessary for the plaintiff to have taken any additional precautionary steps prior to the collision other than to ensure that he was walking on the pavement. That he was walking in the middle of the pavement was sufficient. Plaintiff testified that shortly prior to the collision he heard a loud noise but it was too late for him to do anything.

ORDER

In the result the following order is made:

1. The collision was caused by the unidentified driver.
2. The plaintiff is entitled to 100% of the damages he suffered as a consequence of the motor vehicle collision between him and the unidentified insured motor vehicle that hit him from behind whilst walking in the middle of the pavement along Mandela street, Embalenhle on 20 August 2011, with costs.

Acting Judge NA Engelbrecht

Case number :

3562/2014

Heard on

: 05 August 2015

For the Applicant Inc Attorneys :

ADV P LOURENS Instructed by Spruyt

For the Respondent :

ADV C DE AGRELLA Instructed by Lindsay Keller Attorneys.

Date of

Judgment

:..... 2015

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/ZAGPPHC/2015/765.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/ndlangamandla-v-road-unknown-topic-agpphc-2015>

Prepared on 12 October 2026 · Esheria