

SOUTH AFRICA / JUDGMENT

Ndou v Road Accident Fund (54221/15) [2017] ZAGPPHC 730 (23 November 2017)

[2017] ZAGPPHC 730

COURT

North Gauteng High Court, Pretoria

BEFORE

I D Cox

CASE / FILE NUMBER

54221/15

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

IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

23/11/2017

CASE NO: 54221/15

Reportable: No

Of interest to other judges: No

Revised: Yes

In the matter between:

T S NDOU PLAINTIFF

and

ROAD ACCIDENT FUND DEFENDANT

The plaintiff in this matter was involved in a motor vehicle accident on 22 August 2013. The accident happened at 04H 45 on the M 20 road at Akasia, Pretoria, Gauteng.

He was the driver of a taxi bearing the registration number SD V 746GP. He had sustained certain injuries during the incident. He now claims a total amount of R750, 000 from the Road Accident Fund.

It was agreed between the plaintiff and defendant that merits and quantum will be separated. This court therefore only has to adjudicate upon the merits of this matter. The plaintiff presented the court with the evidence of a single witness after which he closed his case. The defendant on the other hand presented the court with the evidence of two witnesses.

The plaintiff in this matter is Mr Solomon Ndou. In his evidence he admitted to being the driver of the vehicle as stated above. It was his testimony that he drove an Isuzu taxi on the M 20 road in Soshanguve in the direction of Rosslyn Pretoria at 04H45 on the aforementioned date. It was his evidence that he travelled at a speed of 60 to 70 km/h. He was unable to say at what speed he travelled when the accident actually happened. The headlights to his vehicle were switched on. The road on which he travelled was tarred with no pavement. The sides of the road was gravel. It appears that a pavement were being constructed at the time. There was therefore something which was described as atrench/ ditch on the side of the road where the construction was taking place.

He testified that he saw a red bakkie entering the lane where he was driving when the vehicle was approximately 45 m from his vehicle. The two vehicles were approaching each other from opposite directions. As the two vehicles were approaching each other, the oncoming insured vehicle ended up in the same lane in which the plaintiff was travelling. He signalled the oncoming vehicle by flashing his headlights at it when that vehicle was approximately 20 m from his vehicle. It was the evidence which is corroborated by the photographs which forms part of the court bundle that the road upon which the vehicles travelled was straight for many metres ahead. After he had signalled to the driver of the oncoming vehicle nothing happened and therefore the plaintiff decided to swerve his vehicle to the left in order to avoid a head-on collision.

Subsequently the taxi which he drove left the road and went onto the gravel next to the road, striking the ditch which was referred to earlier and the vehicle subsequently rolled. The Plaintiff could not recall much of the accident except to say that he found himself outside of the vehicle, he sat down, and realised that he was bleeding from his face. An Ambulance as well as the police arrived on the scene.

The plaintiff in the matter was then transported to hospital where he received treatment for the injuries sustained during the accident.

Counsel for the Defendant had great difficulties in cross-examining the complainant as counsel for the Plaintiff made things very difficult for him. The main problem was that the Defendant did not make any factual averments in their pleadings.

In the pleadings that the defendant did not deny the existence of another motor vehicle which would have caused the accident referred

to. Neither did the defendant aver in its papers either originally or in the amendment of its plea that a tyre of the taxi burst which caused the driver to lose control of the vehicle. The defendant concentrated in its amended plea on the setting out of the grounds on which it would rely to show that the plaintiff in this matter was negligent when the accident occurred. The grounds of negligence as set out in the said paragraph was however not substantiated by any

facts.

Therefore when the defendant's counsel proceeded in cross-examining the Plaintiff, wanting to put its case before the court, counsel for the plaintiff objected to it on the basis that it had not pleaded such case. The court partially sustained the objection in that it disallowed the defendant to place before the court facts which were not pleaded in the matter. The court went so far as to hint to counsel for the Defendant that perhaps he should concentrate on the grounds of negligence which they set out in paragraph 5 to the amended plea and use that as a basis for cross-examining the Plaintiff. That was done in order to prevent a grave injustice from happening.

Despite that counsel for the Defendant had difficulties in cross-examining the plaintiff. In the end the defendant was unsuccessful in placing a version to the Plaintiff.

The two witnesses that testified on behalf of the Defendant were both passengers in the taxi of the Plaintiff when it was involved in the accident. These witnesses were Mr Sano and Mr Skosana. It was their evidence that no other vehicle was involved in, nor caused the accident in which they were involved. They alleged that one of the tyres to the taxi had burst where after the Plaintiff had lost control of the vehicle, it veered off the road indeed negotiated a slight ditch/ trench where after it rolled. Important in their evidence however, is that they were asked which tyre of the taxi had burst. Mr Sono testified that it was the left front tyre of the taxi that had burst whereas Mr Skosana testified that it was the right front tyre of the vehicle that had burst.

This contradiction is inexplicable due to the fact that both these witnesses were seated in the first seat behind the taxi driver. What makes matters worse is the fact that they were seated next to each other in this taxi. It is therefore to be expected that their observation on that score would be the same. There was no reason for them to confuse the issue. One would have expected them to at least agree with each other on which tyre allegedly burst. That did not happen. The Court wishes to add that the cross-examination as well as the argument of Mr Lourens on this score was what I would refer to as nonsensical.

The contradiction referred to between the two defence witnesses in the circumstances of this matter is indeed crucial and destructive to the defence case. It is of such importance that the court must find that I would not be able to rely on their version in that regard. As already indicated above the evidence is also not borne out by the pleadings in this matter. I would thus be unable to rely on it in order to make a finding.

Counsel for the Plaintiff argued that the court should accept the version of the Plaintiff and find that there was no contributory negligence on the side of the Plaintiff and that the court should find that the other insured driver was 100% negligent in the causation of the accident.

For the Plaintiff to succeed he had to prove that the accident had been caused solely by the negligence of the insured driver or,

alternatively that the insured driver was also negligent to an extent. That is the onus that the appellant had to discharge.

If reliance was placed on contributory negligence, then both the Plaintiff and the Defendant had to discharge the onus relating to contributory negligence.

Counsel for the Defendant requested the court to find that the Plaintiff was contributory negligent in the causation of the accident and that the court should find that his negligence equated to 50%.

I am in agreement with the argument of Mr Lourens that the court must paste its finding on the version which was presented to the court by the plaintiff. Mr Lourens further argued that the defendant has failed to prove contributory negligence and based on that fact, the court must find in favour of the Plaintiff.

Surely it cannot be expected of the court to ignore negligence on the part of the Plaintiff when such negligence is pertinent, upon an evaluation of the evidence presented to the court by the Plaintiff. The court would fail in its duty to serve justice if it ignores negligence indicated in the evidence of the Plaintiff itself.

I fail to understand why the driver of the taxi failed to do anything in avoiding a collision with the red bakkie before the vehicle was almost upon him. Why did he not slow down, flash the headlights of the taxi and moved to the left of the road. That is what a reasonable man in the shoes of the Plaintiff would have done. The Plaintiff waited too long before he attempted to avoid an accident with the approaching vehicle. That does not make him 50% liable.

Based on the aforementioned I therefore find that the plaintiff in the matter was contributory negligent in the causing of the accident and further to the above I find that his actions contributed 25% of the negligence. Court therefore finds that the insured driver was 75% negligent

In the result the following order is made:

1. The Defendant is ordered to pay 75% of the Plaintiff's proven or agreed damages;
2. The Defendant is ordered to pay the costs of the action.

I. D COX

ACTING JUDGE OF THE GAUTENG DIVISION

PRETORIA

23 NOVEMBER 2017

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/2017/730.html>

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

Prepared on 24 October 2026 · Esheria