

SOUTH AFRICA / JUDGMENT

Rakimana v Road Accident Fund (66397/2017) [2019] ZAGPPHC 412 (30 August 2019) [2019] ZAGPPHC 412

COURT

North Gauteng High Court, Pretoria

BEFORE

Phahlane

CASE / FILE NUMBER

66397/2017

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

Source record

REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH
AFRICA
GAUTENG DIVISION, PRETORIA
CASE
NO: 66397/2017
30/8/2019
In

the matter between:

RAKIMANA
NGWAKO
CASNAT
PLAINTIFF
and
ROAD
ACCIDENT
FUND
DEFENDANT

JUDGMENT

PHAHLANE, AJ

- [1] This is an action for damages in which the plaintiff seek recourse against the defendant as a result of the accident which occurred between a motor vehicle with licence disc number[.....], driven by the plaintiff and a motor vehicle with registration numbers and letters [... ...], driven by Mr Baloyi Khashane Steven (Insured driver) along the Nwamankena to Giyani (R81) road, on the 15th day of October 2016.
- [2] At the commencement of the trial, the parties could not agree on separating any of the issues and as such, Advocate Seima on behalf of the plaintiff informed the court that the trial should proceed only on the merits
- [3] Counsel also informed me that the plaintiff Mr Rakimana will present viva voce evidence in support of his case.
- [4] The dispute between the parties is predominantly premised on the question, whether the insured driver was the main cause of the accident by his sudden stop, without any warning to the plaintiff.

EVIDENCE

- [5] The plaintiff testified that on Sunday the 15th of October 2016, and at around 18h00 he was driving behind the insured driver at a speed of between 80-100 kilometres per hour in a 120km zone. While driving along the road going towards Giyane, he collided with a red Ford driven by the insured driver. He said when he was about a few metres away, which were calculated to be about 15 paces away from the insured driver, he realised that it had stopped in the middle of the road without any prior warning - meaning that the insured driver suddenly stopped without indicating the intention to stop. The plaintiff said he tried to avoid the accident

by swerving to the left side of the road, but there was a hole and he could also not swerve to the right side because there was oncoming traffic. He applied the brakes but as a result of the negligent driving of the insured driver who suddenly stopped, there was nothing that he could do and could therefore not avoid the collision from happening. According to him, if the insured driver could have indicated his intention in time that he was stopping, he would have averted the collision.

- [6] Under cross-examination, he testified that there were five occupants in his motor vehicle and confirmed that they were driving towards Giyane. The plaintiff was referred to the accident report which is on page 15 of the court bundle where it is noted that:

- (1) the road conditions were good; (2) the road surface was flat and (3) there was a sudden stop by the other driver. This is noted on the paragraph titled - 'vehicle manoeuvre/what driver was doing: paragraph thereof indicates that Driver 'B', who is the insured

driver, came to a sudden stop'. The plaintiff responded in the affirmative and confirmed the contents of the accident report as

being correct. He said he was driving on a tar road and the point of the impact was after the Gandlanani road. It was put to him that he did not keep a safe following distance between himself and the vehicle in front of him and that is why he collided with the vehicle in front of him. The plaintiff disputed that saying he kept a safe distance which could have been about fifteen paces between his vehicle and the vehicle in front of him.

- [7] It was further put to him that he was negligent and the plaintiff still stood by what he said in examination in chief, that the insured driver did not make any indication that he was going to stop. He explained that he only saw the brake lights of the insured driver when it was already late to avoid the accident. The plaintiff was referred to paragraph 2 of his section 19(f) affidavit where he stated that his motor vehicle was 'knocked from the side' by the vehicle driven by the insured driver who failed to stop at a junction along Nwamankena/Giyani road'. It was put to him that his evidence in court differs from what appears on his affidavit. The plaintiff responded by saying that when he wrote his affidavit, he was asked what could have caused the accident and that he was merely explaining that in his mind, he thought that the insured driver had missed or had already passed the junction where he was supposed to turn, and as such, decided to stop, and that is how his vehicle got damaged. It was further put to him that there was nothing the insured driver could have done to avoid the accident, and the plaintiff still insisted that the insured driver did not give an indication that he was going to stop. The plaintiff closed his case. The defendant did not call any witnesses and consequently, it tendered no version supported by any evidence. The effect of the defendant's failure to tender evidence is that the evidence of the plaintiff in relation to how the accident happened remains unchallenged as it is the only evidence before the Court.

- [8] It is of course competent for a court to find in favour of a party on the strength of the evidence of a single witness. Section 16 of the Civil Proceedings Evidence Act 25 of 1965 provides that: "Judgment may be given in any civil proceedings on the evidence of any single competent and credible witness".

- [9] In *Daniels v General Accident Insurance Co Ltd* 1992 (1) SA 757 (CJ) the court stated that:

"Although there is apparently no "cautionary rules" in civil cases as is in criminal matters where proof beyond reasonable doubt is required, the single witness more particularly where he is one of the parties, must be credible to the extent that his uncorroborated evidence must satisfy the court that on the balance of probabilities is the truth."

[10] It is trite law that the onus is on the plaintiff to prove on a balance of probabilities that the insured driver was negligent and that his negligence was the cause of the collision.

[11] The foreseeability test in the determination of negligence as enunciated by the court in *Kruger v Cotzee* 1966

(2) SA 428 (A) is that:

For the purpose of liability culpa arises if -

(a) a reasonable person (*diligens paterfamilias*) in the position of the defendant:

(i) would foresee the reasonable possibility of his conduct injuring another in his person or property and causing him patrimonial loss, and

(ii) would take reasonable steps to guard against such occurrence and

(b) The defendant failed to take such steps

[12] Failure to act in accordance with the above principle is tantamount in law to negligence. See in this regard *Minister of Safety and Security v Van Dulvenboden* (2002) 3 ALL SA 741 (SCA)

[13] It is generally accepted that every road-user owes a duty of care and consideration to other road-users. That duty requires of every driver to drive like a reasonable man, who would be able to reasonably foresee the possibility of unforeseen consequences and act in accordance with such appreciation.

[14] It is common cause that this this was a rear-end collision where the plaintiff collided with the insured driver in front of him.

[15] This court will reiterate on what the court said in *Ninteretse v Road Accident Fund* (29586/13) [2018] ZAGPPHC 439 (2 February 2018) at para 24 that:

"The general approach to adopt when dealing with rear-end-collision is set out by HB Kloppers in *The Law of Collision in South Africa* (7th Edition) page 78 as follows:

"A driver who collides with the rear of a vehicle in front of him is prima facie negligent unless he or she can give an explanation indicating that he or she was not negligent."

And at para 25 that:

"The driver who collides with another from the rear can escape prima facie liability for negligence by providing an explanation that shows that the collision occurred because of the negligence of the driver of the other vehicle or due to other intervening circumstances".

- [16] The plaintiff testified that where the collision occurred, there were no side-road junctions or turns which would have allowed a vehicle to make a turn. He explained that they had already passed the junction which he thought might have been the reason why the insured driver in front of him had to stop. He further explained that he was driving at a speed of between 80-100 km/h and he could therefore not stop or avoid the collision because of the sudden brakes applied by the insured driver.
- [17] It was agued on behalf of the plaintiff that, by stopping in the middle of the road where he was not supposed to, the insured driver was negligent under the circumstance as he failed to act like a reasonable person would have. Further that the only undisputed evidence before the court is that of the plaintiff and should as such, be accepted as the defendant did not tender any evidence to rebut his version.
- [18] Advocate Mbalati on behalf of the defendant argued that the stop by the insured driver did not constitute a sudden emergency. He insists that if the plaintiff would have kept a safe following distance of about 15 paces as he testified, then he would have been able to avoid the collision.
- [19] I agree with the submission made by the plaintiff's counsel. It is clear from the evidence of the plaintiff that, at the area where the accident occurred, there was no road which would have allowed any vehicle to either turn to the right or left. In my view, the 80-100 km speed with which the plaintiff was driving, would not have allowed him the opportunity to avert the accident, while there was no indication from the vehicle in front of him that it was making a sudden stop. Put differently, the plaintiff would not have known that the vehicle in front of him would suddenly stop, especially where there was no indication of such.
- [20] While the defendant's counsel put to the plaintiff that the insured driver came to a sudden stop, the defendant still wants to escape liability by alleging that the plaintiff was not aware of his surroundings because he did not realise that the vehicle in front of him was stopping.
- [21] When clarification was sought from the plaintiff as to who was giving the information to the officer who completed the accident report, the plaintiff said it was the insured driver. This is also evident from the accident report itself where the insured driver explained how the accident happened. It would therefore be wrong to suggest and conclude that the insured driver, having admitted on the accident report and as also put to the plaintiff by the defendant's counsel, - that the plaintiff was negligent in colliding with the insured driver from the rear.
- [22] Advocate Mbalati argued and submitted that the plaintiff gave two conflicting versions relating to the same incident and that aspect affects his credibility. I do not agree with this submission because the plaintiff gave an explanation as to why he gave an explanation which he did in his affidavit. I cannot find any fault in the explanation given by the plaintiff in his section 19(f) affidavit. In my view, the plaintiff gave a reasonable explanation and it is as such accepted.

- [23] The plaintiff testified under cross-examination that there were no obstacles on the road which could have contributed to the cause of the collision. This explanation or evidence by the plaintiff remains unchallenged. I already indicated that no version was put to the plaintiff and that there was also no evidence by the defendant to challenge the evidence of the plaintiff. This court accepts the explanation given by the plaintiff as to why he could not avert the accident, as being the truth. This, supported by the fact that counsel on behalf of the defendant had already put to the plaintiff that the insured driver came to a sudden stop.
- [24] In my view, the plaintiff would not have known and could not have foreseen that the insured driver would come to a sudden stop. It is also my considered view that the insured driver was negligent in that he failed to act like a reasonable man and foresee that by his sudden emergency stop, this conduct would cause harm or patrimonial loss to other road users, and in particular, the plaintiff. He also failed to take reasonable steps to guard against damage from occurring.
- [25] I find that the plaintiff has satisfied the court in proving that there was no negligence on his part in causing the accident and that no contributory negligence can be attributed to the plaintiff. It is therefore my view that the defendant was the sole cause of the collision which occurred on 15th October 2016.

In the circumstance, I make the following order:

1. The Defendant is found to be the sole cause of the accident
2. The Defendant is ordered to pay the costs of suit.

P. D PHAHLANE

Acting Judge of the Gauteng Division, Pretoria

Heard on

: 27 August 2019

For the Plaintiff : Adv Seima

Instructed by

: RASEASALA ATTORNEYS

For the Defendant : Adv Mbalati

Instructed by

: MALULEKA MSIMANG & ASSOCIATES

Date of Judgment : 30 August 2019

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/2019/412.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/rakimana-v-road-unknown-topic-agpphc-2019>

Prepared on 9 October 2026 · Esheria