

SOUTH AFRICA / JUDGMENT

Raymond v Road Accident Fund (RAF362/2015) [2017] ZANWHC 41 (6 June 2017) [2017] ZANWHC 41

COURT

North West High Court, Mafikeng

BEFORE

R D Hendricks

CASE / FILE NUMBER

RAF362/2015

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IN THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION, MAHIKENG

CASE NO: RAF 362/2015

In the matter between:

DAVID RAYMOND Plaintiff

and

ROAD ACCIDENT FUND Defendant

HENDRICKS ADJP

DATE OF HEARING : 12 DECEMBER 2016

DATE: REQUEST FOR REASONS : 06 JUNE 2017

DATE OF JUDGMENT : 15 JUNE 2017

COUNSEL FOR APPELLANT : ADV. SWART SC

COUNSEL FOR THE RESPONDENT : ADV. MOAGI

REASONS

FOR JUDGMENT/ORDER

HENDRICKS J

Introduction

[1] On the 12th day of December 2016 this matter was tried on the issue of liability (merits) only. After the Plaintiff presented evidence, I granted an order that the Defendant is liable for 100% of Plaintiff's proven damages and costs, including the reserved costs. On the 06th day of June 2017 a request for reasons for the judgment/order was filed with the Registrar of this Court, which landed on my desk on 09th June 2017. I don't know why there was such an inordinate delay to request reasons for the judgment/order. Had it been done earlier, same would have been supplied without delay. Be that as it may, here follows the reasons for the judgment/order.

[2] On 08th September 2013 a collision occurred on the R104 road next to Majakaneng involving two motor vehicles. The Plaintiff was the driver

of one of the motor vehicles. He allege that the collision occurred solely as a result of the negligent driving of the driver of the other motor vehicle. The Plaintiff sustained bodily injuries as a result of the said accident. The driver of the other motor vehicle is alleged to be an insured driver and consequently the claim for damages against the Road Accident Fund (Defendant). The Defendant denied liability. The merits (liability) and quantum were separated and the matter only proceeded on the merits.

[3] The Plaintiff testified. His evidence is to the effect that on 08th September 2013, he was driving his motor vehicle, a white Mercedes Benz bearing registration numbers and letters H[...] NW from Mooinooi to Mojakaneng. He had three (3) passengers inside his motor vehicle. The road on which he travelled has a bent. The motor vehicle of the insured driver was approaching from the front, in other words travelling in the opposite direction. By then it was already after sunset and the lights of his motor vehicle was switched on dim. The lights of the motor vehicle of the insured driver was switched on bright. The motor vehicle of the insured driver encroached into the lane in which the Plaintiff was driving and collided with Plaintiff's motor vehicle. The Plaintiff, amongst others, was injured as a result of the accident.

[4] During cross-examination by Adv. Moagi on behalf of the Defendant, it was put to the Plaintiff that it was said that he had passed away as a result of the accident. This was denied by the Plaintiff stating that he is still alive, as we all could see and he even quote his identity document number. Furthermore, he reiterate that it was dark and the lights of both motor vehicles were switched on. The sole cause of the accident was because the motor vehicle of the insured driver drove into the lane in which the Plaintiff was travelling. In other words, the motor vehicle of the insured driver drove in the incorrect lane or side of the road.

- [5] The case for the Plaintiff was closed after his testimony. The case for the Defendant was closed without any evidence been tendered. The maxim ‘res ipsa loquitur’ find application in this matter. According to the uncontested evidence of the Plaintiff, the insured driver was solely the cause of the collision when he encroached into the lane of oncoming traffic at the bent in the road. The insured driver was therefore 100% negligent. It is for this reason that I found that the Defendant is liable for 100% of Plaintiff’s proven damages.
- [6] With regard to costs, there is no plausible reason why costs should not follow the result and be awarded to the successful litigant, the Plaintiff. The costs that were reserved should also be paid by the Defendant. Adv. Swart SC who appeared on behalf of the Plaintiff,

indicated that the Plaintiff was on the previous occasion ready to proceed with the matter whereas the Defendant was not. The matter

stood down in order for the Defendant’s legal representative to get hold of the witnesses who were supposed to testify on behalf of the Defendant, but to no avail. Resultantly, the matter had to be postponed. The same scenario repeated itself on the subsequent appearance. That is why no evidence was tendered for and on behalf of the Defendant. It for the aforementioned reasons that I granted the order mentioned in paragraph [1], supra.

R D HENDRICKS

ACTING DEPUTY JUDGE PRESEIDENT OF THE HIGH COURT

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