

SOUTH AFRICA / JUDGMENT

Rein v Road Accident Fund (6433/2015) [2017] ZAGPPHC 955 (14 December 2017)

[2017] ZAGPPHC 955

COURT

North Gauteng High Court, Pretoria

BEFORE

MNGQIBISA-THUSI

CASE / FILE NUMBER

6433/2015

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.: 6433/2015

14/12/17

Not

reportable

Not

of interest to other judges

Revised.

14/12/2017

In

the matter between:

P

H

REIN

Plaintiff

and

ROAD

ACCIDENT

FUND

Defendant

JUDGEMENT

MNGQIBISA THUSI, J

[1] Mr Pieter Andre Rein ("Mr Rein"), has instituted an action against the defendant, the Road Accident Fund ("RAF") in terms of section 17 (1)(a) of the Road Accident Fund Act[1] ("the Act") for damages suffered as a result of injuries sustained in a collision which occurred on 24 June 2013. At the time of the collision Mr Rein was the driver of a motor bike bearing registration number CBS 24637. Mr Rein's motor bike collided with a motor vehicle, a Land Rover, bearing registration number CBS 18776 and driven by a certain Mr J Van Ransburg ("the insured driver"). The collision occurred on 15th Avenue, Mosselbay. Mr Rein alleges that the collision was caused by the sole negligence of the insured driver.

[2] As a result of the collision, Mr Rein sustained injuries to his right knee and right side of his chest.

[3] In his particulars of claim Mr Rein is claiming compensation from the RAF in the sum of R500 000.00 made up as follows:

3.1 Past medical expenses

R 5,000.00

3.2 Future medical expenses

R195, 000.00

3.3 Past loss of income

R 20,000.00

3.4 Future loss of income

R180, 000.00

3.5 General damages

R100, 000.00

[4] In its plea the RAF denies that the insured driver negligently caused the collision in which Mr Rein was injured and that Mr Rein was the sole cause of the collision. Further, the RAF pleads that it is not liable for any loss suffered by Mr Rein as a result of the injuries sustained in the collision and that Mr Rein's claim be dismissed with costs. In the alternative the RAF pleads that if it is found that the insured driver was negligent, the RAF pleads that Mr Rein's negligence contributed to the cause of the collision and requests the court to order an apportionment of damages in terms of the Apportionment of Damages Act[2].

[5] The following facts are common cause:

5.1 the road along which the collision occurred has two lanes , with one lane in each direction;

5.2 the road conditions were good and visibility was clear at the time of the collision; and

5.3 the speed limit in the area was 60km/h.

[6] The parties agreed on a separation of issues in terms of Rule 33 (4) of the Rules of Court. Accordingly, the matter proceeded on merits.

[7] The issue to be determined is whether the insured driver was negligent and if so whether this negligence caused the collision

resulting in Mr Rein sustaining injuries. If the finding is that the insured driver was negligent then the next issue to be determined is whether Mr Rein's negligence, if any, contributed to the collision.

[8] It is not in dispute that Mr Rein bears the onus of proving on a balance of probabilities that the injuries he sustained are as a result of the negligence of the insured driver. In order to succeed, Mr Rein has to satisfy the court upon a preponderance of probabilities that his version is probably true and therefore acceptable, taking into account the facts of the case.

[9] Mr Rein's evidence is as follows. On the day in question he was travelling on his motor bike along 14th Avenue moving towards 15th Avenue which runs from north to south. At the time of the collision, he was travelling at a speed of approximately 30 km/h in a 60 km/h zone. As he turned towards 15th Avenue, he saw the insured vehicle in front of him, traversing the two lanes of the road and moving diagonally towards a T-junction which was on his right hand. Mr Rein testified that as he came around the corner, he also saw some people talking on the pavement which was on the left side of the road he was travelling in. As he came around the corner, he tried to move out of the insured vehicle's path but ended up colliding with it. According to Mr Rein the collision happened so fast that he was unable even to apply his brakes. Furthermore, Mr Rein testified that he noticed the insured vehicle when it was approximately 9 paces away from him. Mr Rein testified that when he turned at the corner, he was travelling at a speed of 30km/h. Further that there were no road markings or traffic signs.

[10] During cross examination, Mr Rein indicated the point of impact on a sketch plan he drew. He maintained that as he was turning onto 15th Avenue he was travelling slowly but could not avoid colliding with the insured vehicle as there were no lanes marked on the road and the collision happened very quickly. He testified that even if he had tried to apply his brakes he would still have collided with the insured motor vehicle.

[11] Mr Rein admitted that even though he was driving a superbike (a Honda 650 cc, special edition) he did not have a valid licence to drive a motorbike. Mr Rein further admitted that as a result of the collision he had paid a guilty fine of R2,

500.00. However, Mr Rein denied any knowledge of the basis of the guilty fine.

- [12] The version of the RAF's witness was put to Mr Rein for comment. It was put to Mr Rein that the witness would testify that he was sitting at the back, inside the insured driver's motor vehicle when he saw Mr Rein on his motor bike coming from the 14th Avenue , turning into 15th Avenue at high speed towards or in the direction of the insured motor vehicle. The insured driver tried to avoid a collision by swerving towards and driving on the pavement. Mr Rein responded that at the time of the collision the insured vehicle was not even on the pavement but was travelling from the left lane towards the point of impact. He further testified that he hit the insured vehicle .on its right rear side. Furthermore that after the collision his motor-bike was lying next to the insured vehicle and his daughter, who was riding pillion on his motorbike, was lying just next it. Mr Rein denied that the point of impact was on the lower part of the insured vehicle and that he was unable to stop because of the sharp curve at the corner and because of the speed he was travelling at, he was unable to control his motorbike and ended up colliding with the insured driver. Mr Rein did not comment to the statement put to him by the defendant's counsel that the reason he is denying knowing why he paid the fine is because he knows it would indicate that he was responsible for the collision.
- [13] After the evidence of Mr Rein, the plaintiff closed its case.
- [14] At the start of the hearing the RAF had indicated that the insured driver was not available to testify. Instead the RAF called Mr Kethabile- Joseph Selewane ("Mr Selewane"), who was a passenger in the insured vehicle at the time of the collision.
- [15] Mr Selewane testified that he was a passenger in the insured vehicle. He testified that he was sitting on the right rear side of the vehicle, behind the insured driver. He testified that the insured vehicle was travelling along 15th Street in a westerly direction. As they were approaching a stop sign and as he was looking through the right rear passenger window, he saw a motorbike emerging from the right side of the insured vehicle as though it was intending to turn left. The motorbike which was travelling at high speed collided with the insured vehicle whilst it was travelling on its correct lane. The motorbike collided with the right rear side of the insured vehicle, landing on the right side of the road, in the insured driver's lane. He further testified that as the motorbike came towards the insured vehicle, the insured driver swerved to the left towards some gravel on the shoulder of the tarred road. When both the insured vehicle and Mr Rein's motorbike came to a standstill, Mr Rein approached the insured driver and said he was sorry. Mr Selewane further testified that he was able to see how the collision occurred as he was sitting close to the window and the visibility outside was good. Mr Selwane pointed out the point of impact and where the vehicles ended up after
- the collision from exhibit 'C', a photo album.

- [16] During cross-examination Mr Selewane reiterated that the motorbike came towards the insured vehicle at high speed and that the insured vehicle had swerved to the left in order to avoid colliding with the motorbike. He denied that the collision occurred on the right side of the road, in the insured vehicle's incorrect lane.
- [17] After Mr Selewane testified, the RAF closed its case.
- [18] The test for determining negligence involves the questions whether
- (a) a reasonable person in the defendant's position would foresee the reasonable possibility of his or her conduct causing harm resulting in patrimonial loss to another; (b) would take reasonable steps to avert the risk of such harm; and (c) the defendant failed to take such reasonable steps[3].
- [19] In argument it was submitted on behalf of Mr Rein that 'Mr Selewane, was not a credible witness and that his version was not probable in that it is not possible for him to have observed how the two vehicles involved in the collision participated in causing the collision. Further it was argued that Mr Selewane was a secondary witness and his evidence should not be accepted as no explanation was given as to why the insured driver did not testify.
- [20] On behalf of the RAF it was argued that there were two mutually destructive versions before court as to how the accident occurred. In this regard reference was made to Stellenbosch Farmers' Winery Group Ltd and Another v Martell et Cie and Others. Counsel submitted that the evidence of Mr Selewane was reliable in that he had from the window observed how the events occurred which culminated in the collision. Counsel further submitted that Mr Selewane was a credible witness in that unlike Mr Rein who was asked leading questions, Mr Selewane presented his evidence in accordance with his recollection of what he had observed. Counsel argued that Mr Rein has not discharged the onus on him to prove that the insured driver's negligence was the cause of the collision. In the alternative it was argued that in the event that a finding is made that the insured driver was negligent, the court must also make a finding that Mr Rein was also negligent and therefore contributed towards the negligence which caused the collision.
- [21] Mr Rein's evidence is that he was driving slowly along 14th Avenue, about to negotiate a 90° left turn when, just as he was about to turn, he saw the insured vehicle traversing the road he was entering and that there was no opportunity for him to take evasive action in order to avoid the collision. On the other hand Mr Selewane's evidence was that whilst the insured driver was travelling on his correct side of the road along 15th Avenue, Mr Rein had made a turn into the road in which the insured driver was travelling at high speed, lost control of his motorbike and as a result collided with the insured vehicle.
- [22] There are two mutually destructive versions before the court. In dealing with the issue of mutually destructive versions, the court in Stellenbosch Farmers' t.-Winery Group Ltd and Another v Martell et Cie and Others[4] stated that:

"[5] ... The technique generally employed by the courts in resolving factual disputes of this nature may conveniently be summarised as follows. To come to a conclusion on the disputed issues a court must make findings on (a) the credibility of various factual witnesses: (b) their reliability and (c) the probabilities. As to (a), the court's finding on the credibility of a particular witness will depend on its impression about the veracity of the witness. That in turn will depend on a variety of subsidiary factors, not necessarily in order of importance, such as (i) the witness's candour and demeanour in the witness-box, (ii) his bias, latent and blatant, (iii) internal contradictions in his evidence, (iv) external contradictions with what was pleaded or put on his behalf, or with established fact with his own extra curial statements or actions, (v) the probability or improbability of particular aspects of his version, (vi) the calibre and cogency of his performance compared to that of other witnesses testifying about the same incident or events. As to (b), a witness's reliability will depend, apart from the factors mentioned under (a) (ii), (iv) and (v) above, on (i) the opportunities he had to experience or observe the event in question and (ii) the quality, integrity and independence of his recall thereof. As to (c), this necessitates an analysis and evaluation of the probability or the improbability of each party's version on each of the disputed issues. In the light of its assessment of (a), (b) and (c) the court will then, as a final step, determine whether the party burdened with the onus of proof has succeeded in discharging it. The hard case, which will doubtless be the rare one, occurs when a court's credibility findings compel it in one direction and its evaluation of the general probabilities in another. The more convincing the former, the less convincing the latter. But when all factors are equipoised probabilities prevail"[5].

[23] Mr Selewane, the RAF's witness, came across as a credible witness when he testified about the events leading to Mr Rein's motor bike colliding with the insured vehicle and his evidence is accepted as being true and reliable. Mr Selewane did not contradict himself even under cross-examination. His evidence was clear that on the day in question, the insured driver was driving at a normal speed when suddenly Mr Rein emerged from the corner at high speed and collided with the insured vehicle. Mr Selewane's evidence that the insured driver had swerved to the left in order to avoid Mr Rein colliding with his vehicle was not convincingly disproved. Mr Rein was not an impressive witness. He was not convincing in asserting that he was driving slowly when he negotiated the corner but was unable to avoid colliding with the insured vehicle as everything happened too fast. I am of the view that Mr Rein's evidence as to how the collision happened is not plausible given the fact that if he was to be believed that he was travelling at a very slow speed, and given Mr Selewane's uncontroverted evidence that the road as well as the visibility was clear, how possible is it that Mr Rein could not have avoided colliding with the insured driver. Mr Selewane was able to testify about the exact position of the motorbike and the insured vehicle at the time of the collision. Further, Mr Selewane was also unequivocal as to the point of impact.

[24] Even though the insured driver was not available to testify, I am of the view that this matter does not fall within the purview of the *Galante v Dickinson*[6] principle.

- [25] I am not convinced that Mr Rein has discharged the onus of proving that it was the insured driver's negligence which was the cause of the collision.
- [26] I am satisfied that the RAF's version as to the events leading to the collision is more probable and I accept it and reject Mr Rein's version as highly improbable. Taking into account the evidence before the court, the conclusion I come to is that Mr Rein was driving at a fast speed, was unable to control his motorbike when he turned into 15th Avenue and as a result ended up colliding into the insured vehicle.
- [27] Further, I am satisfied that Mr Rein has not discharged the burden of proving his claim against the defendant on a balance of probabilities.
- [28] There was an issue about costs reserved on 4 August 2017. Counsel for the defendant argued that there was no judge available to hear the matter was called and if it were to be heard later, there was a possibility that the trial would not conclude on that day.
- [29] Accordingly the following order is made:
1. Mr Rein's claim is dismissed with costs.
 2. No costs occasioned by the postponement on 4 August 2017 are awarded.

NP MNGQIBISA-THUSI

Judge of the High Court

Appearances

For Plaintiff: Adv W Dreyer

Instructed by: Van Zyl Le Roux Attorneys For Respondent: Adv B Mphela Instructed by: Diale Mogashoa Attorneys

- [1] Act 56 of 1996.
- [2] Act 34 of 1956.
- [3] Kruger v Coetzee 1966 (2) SA 429 (A).
- [4] 2003 (1) SA 11 (SCA).
- [5] See also National Employers General Insurance v Jagers 1984(4) SA 437 (E) at 4400-G where the court stated that "... that in any civil case, as in any criminal case, the onus can ordinarily be discharged by adducing credible evidence to support the case of the party on whom the onus rests. In a civil case the onus is obviously not as heavy as it is in a criminal case, but nevertheless where the onus rest on Mr Rein as in the present case, and where there are two mutually destructive stories, he can only succeed if he satisfies the Court on a preponderance of probabilities that his version is true and accurate and therefore acceptable, and that the other version advanced by the defendant is therefore false or

mistaken and falls to be rejected. In deciding whether that evidence is true or not the Court will weigh up and test Mr Rein's allegations against the general probabilities. The estimate of the credibility of a witness will therefore be inextricably bound up with a consideration of the probabilities of the case and, if the probabilities favour Mr Rein, the Court will accept his version as being probably true. If however the probabilities are evenly balanced in the sense that they do not favour Mr Rein's case more than they do the defendant's, Mr Rein can only succeed if the Court nevertheless believes him and is satisfied that his evidence is true and that the defendant's version is false."

- [6] 1950 (2) SA 460 (A). The Appellate Division as then was held at 465 that: 'But it seems fair at all events to say that in an accident case where the defendant was himself the driver of the vehicle the driving of which the plaintiff alleges was negligent and caused accident, the court is entitled, in the absence of evidence from the defendant, to select out of two alternative explanations of the cause of the accident which are more or less equally open on the evidence, that one which favours the plaintiff as opposed to the defendant.'

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/2017/955.html>

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

Prepared on 25 October 2026 · Esheria