

SOUTH AFRICA / JUDGMENT

Scheepers v Road Accident Fund (A436/2018) [2021] ZAGPPHC 579 (28 August 2021)

[2021] ZAGPPHC 579

COURT

North Gauteng High Court, Pretoria

BEFORE

C Sardiwalla, L M Molopa-Sethosa, D S Fourie

CASE / FILE NUMBER

A436/2018

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IN THE HIGH COURT OF SOUTH
AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO.:A436/2018

20/8/2021

In

the matter between:

CORLETTE
SCHEEPERS
Appellant
and
ROAD
ACCIDENT FUND
Respondent

JUDGMENT

SARDIWALLA J:

Introduction

[1] This is an appeal against the whole of the judgment and order by Brand AJ brought by the appellant.

Background[1]

[2] The issue arose on 20 September 2012 when the appellant was the driver of a motorcycle. At approximately 17h10 between Schurmann Avenue and Willie Behrends Street, Pretoria an accident occurred between the appellant's motorcycle and a motor vehicle with registration letters and numbers [...] driven by a certain Van Zyl. It is common cause that the appellant collided with the rear of the vehicle driven by van Zyl. The appellant alleged that an unidentified insured driver executed an unforeseen and unexpected manoeuvre with his/her vehicle thereby causing an obstruction to the flow of traffic following him or her. She alleged that this was as a result of the negligence of the unidentified insured driver. In

consequence the appellant claimed to have sustained multiple injuries. Following the accident and the resultant bodily injuries

the appellant on 10 February 2014 lodged a claim with the RAF.

[3] Thereafter, on 23 May 2015 the appellant caused summons to be issued in the high court against the RAF for the damages she had allegedly sustained. In paragraph 3 of her particulars of claim the appellant

listed 2 vehicles and the one owner thereof. She contended that collision was caused by the sole negligence of the unidentified

insured driver, alternatively was caused by the sole negligence of the identified insured driver Mr J A Van Zyl. The parties went on trial before Brand AJ who dismissed the claim with costs.

Grounds of appeal

[4] The appellant's grounds of appeal in essence are: -

1. The Court erred in not taking into account the circumstances relating to the collision on 20 September 2012;
2. The Court erred in not finding negligence on behalf of the unidentified

insured driver who executed a sudden manoeuvre, which manoeuvre caused a disruption and obstruction to the flow of traffic;

3. The Court erred in not finding negligence on behalf of the insured driver in not having a proper lookout regarding the traffic following him;
4. The Court erred in not taking into account the version of the insured driver regarding the actions of the unidentified insured driver into consideration specifically that he did not indicate to turn;
5. The Court erred in finding that the insured driver could not see the appellant because she was driving too close behind him for him to notice her;
6. That the court erred in not finding that the insured driver failed to keep a proper lookout for the flowing traffic; and
7. The court erred in not finding negligence on behalf of both the insured driver and the unidentified insured driver to a combined value of 50%.

Issues

to be determined

[5] This Court is called upon to determine the following: -

- 6.1 Whether the Court a quo erred in dismissing the plaintiffs case;
- 6.2 Whether the plaintiff proved negligence on part of the unidentified insured driver; and
- 6.3 Whether the plaintiff discharged the onus required in rear-end collisions.

Appellant's case

[6] The appellant submitted that the insured driver conceded that the unidentified insured driver executed an unexpected and unforeseen manoeuvre and did not indicate when doing so, which caused an obstruction to the flow of traffic and therefore constituted negligence. The finding that the insured driver reduced his speed was not consistent with the evidence and the mechanics of the collision. Further that a reasonable driver in the insured driver's position would have had a proper look-out for vehicles following him and therefore should have seen the appellant following closely behind him. The insured driver admitted that he only saw the appellant's scooter after the collision even though she was following behind him and therefore this should have constituted negligence on part of the insured driver in not keeping a proper look-out. The appellant

contended that the Court should have found contributory negligence on part of both the insured driver and the unidentified insured driver of a combined total of 50%.

Respondent's case

[8] The principal argument on behalf of the respondent was that the appellant's evidence was that unidentified motor vehicle did not disturb her driving as she was not even sure if it was stationary or not and therefore it could not have contributed to the collision. Further that the appellant closed her case without proving any negligence on part of the unidentified motor vehicle and her evidence eliminated the unidentified motor vehicle as the source of the collision. It was also argued that the appellant failed to explain why she didn't reduce speed when she testified that she saw the driver of the insured motor vehicle reducing speed and therefore the appellant was negligent in not keeping a proper look-out. It was then

submitted that the insured driver also did not contribute or was the source of the collision as the insured driver testified that he did not stop suddenly but rather than he first slowed down and then applied his brakes. Further that he testified that the manoeuvre by the unidentified motor vehicle was not unexpected because they knew he was going to do something. The appellant failed to prove her onus in a rear end collision.

Common Cause Facts

[9] It is common cause, alternatively not disputed that

9.1 A collision occurred in the late afternoon on 20 September 2012 along Gustav Adolf Intersection and Schurmann Avenue, Pretoria, between an Isuzu bakkie driven by J A Van Zyl and a motorcycle driven by the

appellant;

9.2 At the time of the collision the road was very busy with traffic;

9.3 The appellant was driving behind Mr Van Zyl and does not know if the unidentified insured vehicle was stationary;

9.4 Mr Van Zyl applied his brakes and the appellant collided with the Isuzu bakkie;

9.5 The appellant was travelling at approximately 40 kilometres an hour and travelled in the middle lane;

9.6 Mr Van Zyl was travelling at a speed of 30 kilometres an hour;

9.7 The appellant conceded that she was travelling at a close distance behind the Isuzu bakkie; and

9.8 This was a rear-end collision the appellant's vehicle having collided with the rear of Mr Van Zyl's Isuzu bakkie.

Legal Principles

- [10] It is trite that road users especially drivers are under a duty to, inter alia, keep a proper look out, drive at a reasonable speed given the prevailing circumstances, to maintain a safe following distance and be able to stop within one's range of vision. A driver must drive in such a manner that he can avoid a collision should the vehicle in front of him suddenly stop and must therefore keep sufficient distance between himself and the vehicle in front of him.
- [11] A driver who collides with the rear of a vehicle is prima facie negligent[2] unless he can give an adequate explanation indicating why he was not negligent[3].

The Evidence and Findings

- [12] The appellant's version is that when she stopped at the intersection there was an Isuzu bakkie in front of her that had also stopped. She indicated that the driver of the Isuzu bakkie turned right in a westerly direction in Schurmann Avenue which has one lane. She continued travelling behind the Isuzu bakkie and from the corner of her eye she saw a vehicle on the left hand side of the road as they were travelling. She also indicated that she could not state whether the other vehicle was stationary or travelling. The Isuzu bakkie in front her suddenly applied brakes and as she was travelling more or less a car distance away from the bakkie she could not stop in time and collided with it. There was no indication that the driver of the Isuzu bakkie intended braking and she collided with the tow bar of the vehicle and sustained injuries. Eventually she conceded under cross-examination that she was travelling too close to the bakkie and that this caused the collision and therefore she was unable to swerve to avoid the collision.
- [13] Mr Van Zyl's version was that he was travelling in Schurmann Avenue and that he stopped at the intersection with Gustav Adolf Street and proceeded across the intersection on Schurmann Avenue. He indicated that when he stopped at the intersection there were no vehicles in front of him but that he eventually gained on vehicles in front of him as they were travelling at a slow speed. There were two vehicles in front of him a sedan and then a bakkie. He stated that he got the impression

that the driver of the bakkie intended doing something but that he did not know. Eventually he conceded that the driver of the bakkie turned unexpectedly but that he was still travelling at a slow speed. The bakkie then turned left and he would have been able to proceed travelling without a collision. He also indicated that he recalled that the sedan in front of him carried on without any impediment. He indicated that he never saw the motor cycle before the collision and that he could not see the motor cycle in his side mirrors. It was put to him that if he looked at the inside rear view mirror he would have seen the motorcycle. He could not recall if the bakkie in fact turned left or if it used indicators. He was travelling at a speed of 30 kilometres an hour when the collision occurred.

[14] Both drivers confirmed that the road was very busy and that there was a lot of traffic. A motorist ought to have kept in mind the possibility that there must be a greater degree of care during peak traffic hours especially at busy traffic intersections. In addition, both parties testified that they used the road every day and were fully aware of the need to travel at a reduced speed and keep a proper look out. On Mr Van Zyl's evidence he was travelling at 30 kilometres per hour and

kept a safe following distance. The court a quo accepted that there were discrepancies between the evidence of the two witnesses but indicated that they were not material and accepted Mr Van Zyl's evidence.

[15] The fact that both vehicles had been travelling some distance and Mr Van Zyl testified that he never once saw the motorcycle raises some doubt on his version. However, the court a quo found him to be a reasonable driver who kept a proper look out based on the fact that his vehicle had a canopy and as the appellant travelled too close to him concluded that for this reason he would not have seen the appellant on his inside rear view mirror. It was also common cause that the appellant was not travelling at an excessive speed. However, the court relied solely on the fact that he reduced his speed because he did not know what the bakkie in front intended doing and therefore excluded him from being negligent. The court a quo was of the view that the appellant could have stopped her vehicle if she wasn't so close to the Isuzu bakkie and she kept a proper look out at the vehicles in front.

[16] Being a rear-end collision, the appellant had to rebut the prima facie inference of negligence by providing an acceptable explanation. On the available evidence, the appellant had failed to provide an explanation sufficient to rebut the inference that her negligence was the sole cause of the collision. By stating that the unidentified insured driver caused an obstruction to the traffic flow which led to Mr Van Zyl braking suddenly or reducing his speed, is also not a sufficient reason to find any negligence on the part of the unidentified driver or van Zyl. It was peak traffic hour and the vehicles were moving slowly. It is normal to expect a "stop and go" pattern that time of the day. The only reasonable inference to be drawn is that the appellant did not keep a proper look out and, in our view, that appears to be the sole cause of the collision. We are consequently of the view that the appeal cannot succeed.

ORDER

In the result I propose an order that the appeal be dismissed with costs.

C SARDIWALLA

Judge of the High Court, Pretoria.

I agree, and it is so ordered

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L M MOLOPA-SETHOSA

Acting Deputy Judge President of the High Court, Pretoria.

I agree .

D S FOURIE

- [1] This judgment deals with the appeal against the judgment in the court a quo. It therefore proceeds on the premise that the reader is familiar with that judgment. In the interest of brevity evidence led before the court a quo will not be repeated in this judgment in any great detail unless material to the conclusions reached. Readers of this judgment are referred to the judgment of the court a quo and the record if any additional details are required. To facilitate reading, the same terminology as adopted in the court a quo will be followed to ensure consistency and help fully ease of understanding.
- [2] *Goldstein v .Jackson 's Taxi Service* 1954(4) SA 14 (N); *Union and South West Africa Insurance Co Ltd v Bezuidenhout* 1982 (3) SA 957 (A)
- [3] *Fig Brothers (Pty) Ltd v South African Railways and Harbours & another* 1975(2) SA 207 (C) at 211 H

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