

SOUTH AFRICA / JUDGMENT

Senosi v Road Accident Fund (59269/2014) [2015] ZAGPPHC 911 (17 December 2015) [2015] ZAGPPHC 911

COURT

North Gauteng High Court, Pretoria

BEFORE

M W Msimeki

CASE / FILE NUMBER

59269/2014

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IN THE HIGH COURT OF SOUTH AFRICA /ES

(GAUTENG DIVISION, PRETORIA)

CASE NO: 59269/2014

DATE: 17/12/15

IN THE MATTER BETWEEN

OMPHEMETSE SENOSI PLAINTIFF

AND

ROAD ACCIDENT FUND DEFENDANT

JUDGMENT

MSIMEKI J

INTRODUCTION

- [1] This is an action in which plaintiff is suing defendant for damages which he suffered as a result of injuries that he sustained in a motor accident at 15:00 on 1 September 2013. Plaintiff was using the R510 road which runs between Thabazimbi and Rustenburg. The action is defended.

BRIEF BACKGROUND FACTS

- [2] On the said day and on the said road plaintiff met with an accident. He was driving a motor vehicle with registration particulars [...]. Driving at a speed of approximately 100kph he attempted to overtake a white Volkswagen Polo motor vehicle bearing registration letters and numbers [...] which at the time was driven by a traffic officer one Thabo Molemane. He drove on the left side of the road which has a lane on each side moving in each direction. He, while attempting so to overtake, noticed a motor vehicle emerging from a side road which was on his right hand and entering the main road. The identity of the motor vehicle and its driver is unknown. The main road was tarred while the side road was a gravel road. Realising that a collision was just about to occur he veered to his left in an attempt to get back to his correct side of the road. As this was unexpected he lost control of his motor which overturned and landed outside the road on the left side of the road. The accident, according to plaintiff and his witness, was solely caused by the insured driver of the unidentified motor vehicle.
- [3] Plaintiff called a witness while defendant called no witness resulting in no version from its side.
- [4] Adv R A Slater ("Mr Slater") appeared for the plaintiff while Adv F Matika ("Mr Matika") represented defendant. Merits and quantum were separated in terms of the provisions of the Uniform Rules of Court. Rule 33(4).
- [5] Plaintiff's evidence was as I have indicated in paragraph 2 above. It was plaintiff's testimony that there would have been no accident had the driver of the unidentified motor vehicle stopped at the stop sign before joining the main road. Visibility according to plaintiff was good and the road was dry. He testified that he avoided colliding with the unidentified motor vehicle as well as that of Molemane. He denied that he had caused the accident or that his driving contributed to the occurrence of the accident.
- [6] Thabo Molemane ("Molemane"), a traffic inspector, was called by plaintiff to testify on his behalf. In the main he confirmed

plaintiff's evidence. His testimony was that the sole cause of the accident was the driving of the unidentified motor vehicle by the unidentified driver who failed to stop behind the stop sign before joining the main road. He testified confirming plaintiff's evidence that plaintiff had done all he could to avoid the accident which was caused solely by the negligent driving of the unidentified driver when he failed to stop where he was supposed to stop. Molemane's evidence was that plaintiff was attempting to overtake two motor vehicles ie his and the one which was in front of his. It transpired during his testimony that plaintiff, while following Molemane's motor vehicle, was seeing Molemane's motor vehicle. It may well be that plaintiff only saw the motor vehicle in front of Molemane's only while he was attempting to overtake. The fact that plaintiff would have overtaken two motor vehicles would not have resulted in the accident as the accident, according to Molemane, had been caused solely by the driving of the unidentified driver of the unidentified motor vehicle. What requires mentioning is that Molemane is a traffic inspector. He knows what he was testifying about. He saw the unidentified motor vehicle not stopping behind

the stop sign of the side road. He immediately could tell who had caused the accident. Molemane testified that he had been driving at 70-80kph when plaintiff attempted to overtake him.

[7] Upon the closing of plaintiff's case, Mr Matika, on behalf of the defendant, applied for absolution from the instance. Applying the test formulated in *Claude Neon Lights (SA) Ltd v Daniel* 1976 4 SA 403 (A) and followed in *Gordon Lloyd Page & Associates v Rivera* and another 2001 1 SA 88 (SCA) at 92E-93A. I refused the application. See also *De Klerk v Absa Bank Ltd and others* 2003 5 SA 315 (SCA) and *Gafoor v Unie Versekeringadviseurs (Edms) Bpk* 1961 1 SA 335 (A) at 340D-G.

[8] Plaintiff succeeded in establishing a prima facie case before he closed his case. Evidence adduced up to the close of plaintiff's case indeed called for a rebuttal from defendant.

Evidence cried out for an answer and I could not, as a result, grant absolution from the instance. I refused the application.

[9] Defendant, consequent upon my refusal of its application, also closed its case.

[10] Mr Slater and Mr Matika addressed the court. Plaintiff's evidence which was duly supported by his witness Molemane was never controverted. Defendant basically had no evidence to offer. Plaintiff's cross-examination did not advance defendant's case. Plaintiff's case was bolstered by the evidence of the independent witness, Molemane. Plaintiff and Molemane made a good impression on the court. Their evidence is good, credible and reliable. As against this good and instructive evidence the court has no evidence proffered by defendant. Plaintiff's evidence was that he was travelling at 100kph when he attempted to overtake Molemane. Molemane testified that the accident occurred in a rural area where the speed limit is 120kph. Visibility was good.

[11] It appears that plaintiff cannot be faulted in his driving on the day of the accident. He did everything he was supposed to and could do. He even avoided colliding with Molemane's motor vehicle as well as that of the unidentified driver. He, indeed, did his best.

[12] Evidence at the disposal of the court demonstrates that there is no contributory negligence on the part of the plaintiff. No apportionment of fault finds application according to the facts of the case. It is clear that the driver of the unidentified motor vehicle joined the main road when it was not safe for him to do so. Plaintiff, according to evidence, seems to have found himself in a position which was unavoidable. The evidence of Molemane on this aspect is instructive. Defendant had no witness who could controvert plaintiff's

version. Plaintiff's version in the circumstances of this case stands. The effect of this is that defendant should be liable to compensate plaintiff for 100% of his proven or agreed damages resulting from the injuries that plaintiff sustained in the accident

which occurred on 1 September 2013.

[13] Defendant should make payment of plaintiff's taxed or agreed party and party merits costs of the action on the High Court scale, which costs should include the fees of junior-senior counsel on the High Court scale inclusive of counsel's full reasonable day fee for 10 November 2015.

[14] In the result, I make the following order:

1. Defendant is liable to compensate plaintiff for 100% of his proven or agreed damages resulting from the injuries that plaintiff sustained in the accident which occurred on 1 September 2013.
2. Defendant is ordered to pay plaintiff's taxed or agreed party and party merits costs of the action on the High Court scale, which costs will include the fees of junior-senior counsel on the high Court scale and counsel's full reasonable day fee for 10 November 2015.
3. Costs shall be payable as follows:
 - 3.1. Plaintiff shall serve a notice of taxation on defendant's attorney of record;
 - 3.2. Plaintiff shall allow defendant seven court days to make payment of the taxed costs from date of settlement or taxation thereof;
 - 3.3. Should payment not be effected timeously, plaintiff will be entitled to recover interest at the rate of 9% per annum on the taxed or agreed costs from date of allocation to date of final payment; and
 - 3.4. The taxed or agreed party and party costs, once determined, must be paid to plaintiff's attorneys Adams & Adams by direct transfer into their trust account details of which are as follows:

Bank: Nedbank, Pretoria branch

Branch code: 198765

Account holder: Adams & Adams

Account number: [...]

Reference: JPR/JLR/P1261

M W MSIMEKI

JUDGE OF THE GAUTENG DIVISION, PRETORIA

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Prepared on 29 October 2026 · Esheria