

SOUTH AFRICA / JUDGMENT

Thomas v Road Accident Fund (88435/16) [2018] ZAGPPHC 624 (29 August 2018)

[2018] ZAGPPHC 624

COURT

North Gauteng High Court, Pretoria

BEFORE

E Van der Schyff

CASE / FILE NUMBER

88435/16

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REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE

NO: 88435/16

29/8/2018

In

the matter between:

JEAN-PIERRE
THOMAS
PLAINTIFF
and
ROAD
ACCIDENT
FUND
DEFENDANT

Heard:

21 August 2018

Delivered:

29 August 2018

JUDGMENT

VAN DER SCHYFF. AJ

Introduction

- [1] In this case the court was requested to separate the issues of merits and quantum in terms of Rule 33 of the Uniform Rules of Court and to decide only on the merits.
- [2] Two witnesses testified on behalf of the plaintiff. The defendant did not call any witness.
- [3] The relevant portion of the plaintiff's evidence is that on 21 September 2013 between 19h00 and 1930 he was the driver of an Opel Corsa with registration number [...]. His brother was a passenger in the vehicle. He was driving straight in a southern direction on Line Road, Rustenburg. The insured vehicle, an Opel Corsa Utility vehicle, approached from the opposite direction and suddenly turned right, directly into the plaintiff's pathway. The insured vehicle did not give any indication of an intention to turn right.
- [4] Although it was not taken further during cross examination, it must be noted that the plaintiff testified that he was charged for drunken driving after the accident happened. However, a nolle prosequi was issued because the blood results did not indicate that the plaintiff was under the influence when the accident occurred. Plaintiff testified that he had a glass of wine with his lunch and the accident happened in the evening.
- [5] From the evidence and the photographs, it can be deduced that the insured vehicle intended to access a security complex on the opposite side of the road as seen from his perspective.
- [6] The plaintiff testified, and it is evident from the sketch plan, that the entrance road to the security complex and the exit road from the security complex was on his left-hand side. It forms a T-junction with Line Road from the security complex's direction. As the plaintiff was driving, he would first drive pass the entrance road to the complex and immediately thereafter the exit road from the complex. At the point where the exit road from the complex formed a T-junction with Line Road there is a stop street with a stop sign.
- [7] It was the plaintiff's evidence that the insured driver cut in before him from the opposite side and attempted to enter the road to the security complex at the exit- side thereof, cutting the corner at the stop sign.
- [8] Plaintiff testified that it was dusk. His vehicle's head lights were switched on, as were the oncoming traffic's. Both the plaintiff and his passenger's seatbelts were fastened. There were a few cars approaching from the opposite direction. Plaintiff was driving approximately 60-70km/ph. The road surface was good. It was a tar road but because there were building activities next to the road,

there was a thin layer of sand on the road surface. As result thereof, his car skidded when he applied the brakes when the defendant turned directly into his pathway. He estimated that he was about 5-6m from the insured driver when the driver suddenly turned.

[9] Plaintiff testified that there was nothing else that he could have done to avoid the accident. He immediately applied his brakes when he realised that the insured car was moving into his pathway, but there was no other evasive action that he could take.

[10] It was not put to the plaintiff during cross examination that he was driving at an excessive speed. (Although counsel for the defendant

initially referred to the damage on the plaintiff's vehicle as is evident from the photograph on record, I assume in an attempt to indicate that the plaintiff was speeding, he later confirmed that the plaintiff was driving at a reasonably slow speed and questioned the fact that the plaintiff was not able to stop before colliding with the insured vehicle). The only aspects focused on during cross examination was whether there were any evasive actions that the plaintiff could take, and whether the plaintiff should have noticed the insured driver at an earlier stage and applied his brakes earlier.

[11] The question was put to the plaintiff whether there were any barricades next to the road, to which the plaintiff answered in the negative. It was then put to the plaintiff that he could have swerved to avoid the accident - but the plaintiff denied such contention.

[12] During cross examination it was re-affirmed that the plaintiff saw the insured vehicle in the oncoming line before the insured vehicle

suddenly and without warning executed a right turn that placed him immediately in the plaintiff's pathway.

[13] Counsel for the defendant put it to the plaintiff that he did not have an absolute right of way and that he had to anticipate the possibility that the oncoming vehicle might turn right into the complex. Plaintiff testified that there was no reason for him to anticipate the driver of an oncoming vehicle suddenly and unexpectedly turning right to cut in directly in his pathway.

[14] In light of the fact that there were no witnesses who was going to testify on behalf of the defendant, defendant's counsel was in an unenviable position as far as cross examination was concerned. He used the opportunity to test the plaintiff's version as best as he could in the circumstances.

[15] The plaintiff's brother, Quintin Thomas, then testified. He confirmed the date of the accident but placed the time of the accident a little later, between 19h30- 20h00. He also estimated that they were about 10m from the insured driver when they noticed him the first time. He was busy with the radio and only looked up when his brother suddenly applied the brakes and attempted to stop. By that time the insured driver was already directly in their pathway. He also testified that there were no other evasive actions that the plaintiff could take to prevent the collision.

- [16] He stuck to his version during cross examination.
- [17] As stated above, this was the only evidence before the court.
- [18] The authority is very clear- a driver who makes a right hand turn and collides with oncoming traffic is prima facie in the wrong - Ruthenberg v Otto 1974 2 SA 268 (C); Naidoo v Durban Corp 1961 2 SA 775 (N).
- [19] It has been confirmed in numerous precedents that to turn across the pathway on oncoming traffic is an "inherent dangerous manoeuvre"
- Jacobs v The Road Accident Fund(A402/2008) [2011] ZAGPPHC 121 (13 June 2011) paragraph 12.
- [20] "It is also trite that a driver is entitled to assume that those who are travelling in the opposite direction will continue in their course and that they will not suddenly and inopportunistically turn across the line of traffic." - Jacobs v The Road Accident Fund (A402/ 2008) (2011) ZAGPPHC 121 (13 June 2011) paragraph 12.
- [21] In accordance with the principles laid down in Randalia Versekeringskorporasie van SA Beperk v De Beer 1976 (4) SA 707 (A) 711 it has long been accepted in our law that a driver is only called upon to take precaution against reasonably foreseeable contingencies and not the reckless driving of other motorists.
- [22] In casu the only evidence before the court is that the driver of the insured vehicle executed a right-hand turn without any prior indication or warning to that effect, and without slowing down at all. There was nothing that the plaintiff could do to avoid the collision. I accordingly find that the insured driver was negligent.
- [23] As far as the defendant's counsel's contention goes that the plaintiff would have been able to stop within 10m or less if he was travelling at a speed of 60kph, counsel for the plaintiff referred me to Southern Insurance Association Ltd v Coghill and Another 1978 (4) SA 128 (A). In this case reference is made by the counsel for the appellant to Pretorius v African Gate & Fence Works Ltd 1938 AD 575 substantiating that " the Court will take judicial notice of the fact that "reaction time" must be allowed for; allowing a reaction time of three-quarters of a second from the earliest possible sign of danger ...".
- [24] It is common cause that a person who is travelling at 60kph will travel 16.67 meter per second. It can therefore be accepted, that with allowance for the reaction time, that the plaintiff would not have been able to stop in time to avoid the accident if he saw that the insured driver was moving into his lane even if he was 10m from the insured driver.
- [25] Cognisance must also be taken of South African Railways v Symington 1935 AD 37 where the following was stated at page 45:

"One man may react very quickly to what he sees and takes in, whilst another man may be slower. We must consider what an ordinary, reasonable man would have done. Culpa is not to be imputed to a man merely because another person would have reacted more promptly and acted more quickly. Where men have to make up their minds how to act in a second or in a fraction of a second, one may think this course is the better whilst another may prefer that. It is undoubtedly the duty of every person to avoid an accident, but if he behaves reasonably, even if by justifiable error of judgment he does not choose the very best course to avoid the accident as events afterwards show, then he is not on that account to be held liable for culpa.

[26] In the matter before me, no evidence was even placed before me that "another person would have reacted more promptly".

[27] In light of the fact that a plaintiff needs to prove only 1% negligence on the side of the insured driver to succeed with a claim against the Fund (Tsotetsi v RAF (72217/2009)

[2016] ZAGPPHC 36), the duty is on the defendant to adduce evidence to the contrary or take a risk that judgment be given against him - Ntsala v Mutual & Federal Ins Co ltd 1996 (2) SA 184 (T) 190, Alberts v Engelbrecht 1961 (2) SA 644 (T).

[28] On the evidence before me I cannot find that the plaintiff was contributory negligent.

ORDER

In the circumstances it is ordered that:

[1] The issues of merit and quantum are separated as provided for in Rule 33(4) of the Uniform Rules of Court.

[2] The issue of quantum is postponed sine die.

[3] The defendant is 100% liable for the plaintiff's proven or agreed upon damages.

[4] The defendant is to pay the plaintiff's taxed or agreed party and party costs for this part of the hearing on the High Court scale, which costs shall include, but not be limited to, the following:

[4.1] The fees of senior-junior counsel, inclusive of counsel's full reasonable day fees for 21 August 2018;

[4.2] The costs of a consultation between the plaintiff and his legal representatives to discuss the terms of this order;

[4.3] The reasonable taxable accommodation and transportation costs (including toll and e-toll charges) incurred in attending consultations with the plaintiff's legal representatives and the court proceedings.

[4.4] The aforesaid costs will be paid into the trust account of the plaintiff's legal representatives.

E VAN DER SCHYFF

ACTING JUDGE OF THE GAUTENG DIVISION, PRETORIA

Heard on:

21 August 2018

For the Plaintiff/Applicant: ADV J BISSCHOFF

Instructed by:

KRITZINGER ATTORNEYS

For the Defendant/Respondent: MS B SIBIYA

Instructed by:

LEKHU PILSON ATTORNEYS

Date of Judgment:

29 AUGUST 2018

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