

SOUTH AFRICA / JUDGMENT

Tolofi v Road Accident Fund (28773/2016) [2017] ZAGPPHC 493 (11 August 2017)

[2017] ZAGPPHC 493

COURT

North Gauteng High Court, Pretoria

BEFORE

Ngobeni

CASE / FILE NUMBER

28773/2016

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

IN

THE HIGH COURT OF SOUTH

AFRICA

(GAUTENG

HIGH COURT, PRETORIA)

Case

No: 28773/2016

Date: 11/08/2017
In

the matter between: MASEKOTE
EDITH
TOLOFI
Plaintiff
and
ROAD
ACCIDENT
FUND
Defendant

JUDGMENT

NGOBENI, AJ:

INTRODUCTION:

- [1] This is a personal injury claim arising from damages sustained by Plaintiff, as a result of a motor collision on the 2nd May 2014 at Puthaditjhaba, whilst Plaintiff was a pedestrian at the time of the collision.
- [2] The parties agreed to first deal with the merits of the case; the issue of quantum to be put in abeyance and to be dealt with on a date yet to be decided depending on the decision of the court on the merits.
- [3] The parties placed on record that it was not disputed that on 2 May 2014 and Phuthadithjaba, the plaintiff was run over by a vehicle driven by the insured driver. The issue to be decided by the court is to what extent was the insured driver negligent and or to what extent the plaintiff contributed in the accident having occurred.
- [4] The common cause facts in this matter are briefly as follows:
 - 4.1 On the date in question there was a meeting at the Phuthadithjaba community hall where in a meeting had been called by the mayor, his executive and the municipal manager (the insured driver) to address issues in the community;
 - 4.2 The plaintiff, a counsellor at the time in the area, had attended the meeting as well;
 - 4.3 A number of vehicles inclusive that of the insured driver had packed in the yard of the community hall;
 - 4.4 An agreed draft of how the vehicles had been parked was accepted by the court as exhibit "A";
 - 4.5 Immediately after the meeting the insured driver rushed to his vehicle followed by the plaintiff in the company of one Sonto Selepe;
 - 4.6 A conversation ensued between the plaintiff and the insured driver who by then was sitting inside his vehicle on the driver's seat whilst the plaintiff was standing outside next to the driver's door;
 - 4.7 The plaintiff had suggested to the insured driver that they should have a meeting comprising of herself, the insured driver and the mayor regarding a list of young persons within the community who had previously volunteered in a project and wait to be employed on a full-time basis by the municipality;

4.8 The insured driver indicated to the plaintiff that he was in a hurry to Harrismith for another meeting and was not prepared to engage with the plaintiff regarding the persons to be employed on a full- time basis as he was going to utilise a list which he was in possession of which had been prepared by the Premier;

4.9 It was at that moment that the plaintiff was still engaging the insured driver verbally that he insured driver suddenly started the vehicle and reversed running over the plaintiff's right foot with his vehicles right front tyre, injuring the plaintiff in the process.

[5] Under cross examination the Defendant's counsel attempted to get the Plaintiff to admit that she did not keep a proper lookout and in summary that she should have anticipated the collision which resulted.

[6] The Plaintiff was the only witness who testified and was called in this matter. No alternative version was put to the plaintiff and supported by any evidence. It is clear in the absence of any contradictory evidence that the plaintiff could not have anticipated

that the insured driver would without notice silently start the vehicle and reverse. I find the plaintiff to be credible and reliable and having described the incident with sufficient detail to the court. In evaluating the Plaintiff's evidence as a whole, the Defendant did not in my view succeed in getting the Plaintiff to concede that he did not do everything in his power to avoid a collision.

[7] The test for negligence is summarized by the court in the matter of JONES NO v SANTAM BPK 1965 (2) SA 542 (A) as follows: "A person is guilty of culpa if his conduct falls short of that of the standard of the diligens paterfamilias - a standard that is always objective and which varies only in regard to the exigencies arising in any particular circumstances."

[8] It is trite that the criterion of the reasonable person is central to the determination of negligence. The question then arises whether the reasonable person would have foreseen the harm and secondly whether the harm could have been prevented by taking reasonable steps.

[9] I cannot find any evidence that supports a view that the Plaintiff ought to have anticipated the actions of the insured driver. It is evident that the negligent driving of the insured driver is the sole cause of the collision that resulted in the injury of the Plaintiff. He ought to have alerted the Plaintiff that he was to start his vehicle and reverse.

[9] On the liability thus the defendant is held liable to compensate the plaintiff 100% of such damages as the plaintiff is able to prove as a result of the collision which occurred on n2 d May 2014.

[10] In the result the following order is made:

(1) The Plaintiff's claim in respect of the merits succeeds. The defendant is to compensate the plaintiff hundred percent of such

damages as the plaintiff is able to prove as a result of the collision which occurred on 2nd May the year 2014.

(2) Costs of suit, including the cost of the interpreter.

NGOBENI AJ

ACTING JUDGE OF THE HIGH COURT

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/2017/493.html>

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

Prepared on 23 October 2026 · Esheria