

SOUTH AFRICA / JUDGMENT

Van Rhyn v Road Accident Fund (4784/2016) [2018] ZAFSHC 112 (25 June 2018) [2018] ZAFSHC 112

COURT

Free State High Court, Bloemfontein

BEFORE

NM MBHELE

CASE / FILE NUMBER

4784/2016

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IN THE HIGH COURT OF SOUTH AFRICA,

FREE STATE DIVISION, BLOEMFONTEIN

Case No: 4784/2016

In the matter between:-

HERMANUS BRAND VAN RHYN PLAINTIFF

and

THE ROAD ACCIDENT FUND DEFENDANT

CORAM: MBHELE, J

HEARD ON: 20 AND 23 MARCH 2018

DELIVERED ON: 25 JUNE 2018

[1] This is an action for damages in terms of the Road Accident Fund Act, 56 of 1996, as amended (the Act). The plaintiff claims an amount of R 998 406.72. 00 as a result of the injuries he sustained on 03 May 2014, allegedly as result of a collision that occurred on Frans Kleynhans Drive. The plaintiff alleges that he was riding a motorcycle when he swerved off the road to avoid an oncoming unidentified motor vehicle being driven on the incorrect side of the road. He collided with a chevron board, fell and sustained injuries. .

[2] The Plaintiff alleges that the collision occurred as a result of the sole negligence of the unknown driver who was negligent in one or more of the following respects:

- He drove partially in the lane of the plaintiff;

- He drove too fast in the circumstances;
- He failed to drive with the necessary care and skill the is expected of a prudent driver;
- He drove away from the scene of the incident

The defendant has denied the allegations of negligence against the driver of an unidentified vehicle. Defendant denies the accident happened as alleged in paragraph 3 of the particulars of claim.

- [3] The parties requested a separation of the issues of liability and quantum, to which I agreed, as I considered it convenient that the issues be determined separately. Accordingly, the matter is before me for the determination of liability. Only the plaintiff testified, as the defendant closed its case without calling any witnesses.
- [4] Plaintiff testified, inter alia, to the effect that on 3 May 2014 at 22h00 he was riding a motorcycle travelling in Frans Kleynhans Drive in the direction of Tempe Airport in Bloemfontein. When he came to the turn located opposite the entrance of Emoya Estate, a vehicle came from the opposite direction driving partially in his lane at a high speed. It took half of the lane that the plaintiff was travelling in. he was travelling at about 30 Kilometres per hour before entering the turn and when he saw the vehicle approaching he reduced his speed further to approximately 10 – 15 Kilometres per hour. He could not identify the colour nor the make of the vehicle because of the glare on its head lamps. In order to avoid a head-on collision with the unidentified vehicle, he swerved to the left and immediately to the right colliding with a chevron pole on the left hand side of the curve. He fell into a ditch with the motorcycle on top of him. Everything happened too fast in a distance of about 22 meters and there was no chance he could have avoided the accident. He has been a driver for 22 years and is familiar with the road because he uses it often when teaching his daughter to ride a motorcycle.

One Robert Olivier arrived at the scene and summoned an ambulance which took him to No. 3 Military Hospital in Bloemfontein. He was discharged the following day from the hospital and put on sick leave for a week. When he went for a check-up in June he was informed of a need for an operation. He only learned of the severity of his injuries in July when he was operated on and booked off for three months. He was confined to bed during that period. In cross examination he reiterated that he did not report the accident to the police because he was bedridden for most of the time after the accident and that he laboured under an impression that the person who arrived first at the scene had reported it.

Applicable Law

- [9] Road users have a duty to exercise care and act reasonably on the road. This duty entitles drivers to assume that other drivers will also exercise care and act reasonably.

One expects and is entitled to expect reasonableness rather than unreasonableness, legality rather than illegality, from other road

users. (See *Moore v Minister of Posts and Telegraphs* 1949 (1) SA 815 AD on p 826).

[11] In *The Law of Collisions in South Africa*, 7th Edition at 72, Kloppe explains the general duties and rights of drivers on public roads as follows:

"Because a driver is under a duty to act reasonably, he is entitled to expect other road users to do the same. This principle translates into certain assumptions a driver of a motor vehicle is justified to make when his duties and driving skills are considered. These justified assumptions are inherent in the process of establishing whether a driver was negligent in not complying with the various duties imposed on a driver. However, the existence of justified assumptions does not relieve a driver from the duty to appreciate that other drivers may act unreasonably and to provide for such a contingency by taking all possible reasonable steps to avoid a collision occasioned by another driver's unreasonable behaviour. A driver will be negligent if the unreasonable conduct is generally foreseeable and he does not take reasonable preventative action to avoid a collision."

[11] The plaintiff's evidence stands unchallenged that an unidentified vehicle drove partially into his lane causing him to

swerve to the left and immediately to the right resulting in him colliding with a chevron pole on the left side of the road. Mr.

Mopeli, on behalf of the defendant, argues that it would have been impossible for the plaintiff to collide with the chevron if he was driving at the speed he alleges he was driving at. The plaintiff testified that everything happened swiftly at a sharp curve with no chance for him to avoid the accident.

Mr. Mopeli, further, argues that failure by the plaintiff to report the accident is an indication that there was no accident and that there was no second vehicle involved. He submits that the plaintiff's evidence as a single witness must be rejected.

It is indeed so that the plaintiff is the only one who testified that the alleged accident happened and that his evidence is not

contradicted. In *Siffman v Kriel* 1909 TS 538 at 543 the following was said:

"It does not follow, because evidence is uncontradicted, that therefore it is true.....The story told by the person on whom onus rests may be so improbable as not to discharge it."

In *Daniels v General Accident Ins Co Ltd* 1992 (1) SA 757 (C) it was said:

"The single witness, more particularly where he is one of the parties, must be credible to the extent that his uncorroborated evidence must satisfy the court that on the probabilities it is the truth."

When dealing with the evidence of a single witness, the trial judge will weigh his evidence, will consider its merits and demerits and, having done so, will decide whether it is trustworthy and whether, despite the fact that there are shortcomings or defects or contradictions in the testimony, he is satisfied that the truth has been told. (See *S v Sauls and Others* 1981 (3) SA 172 (A) at 180F). Although the above principle was enunciated in a criminal case I am of the view that it finds application in the current matter.

[13] The plaintiff was an impressive witness, he was candid and reliable. He related his story without exaggerating. He did not contradict himself. In my view, he told the truth. It is clear that he did not make up the events that led to his injuries. Observations during the inspection in loco support the Plaintiff's version that he could not have avoided the accident. The accident happened at a corner where there are a few chevron poles, a heap of soil and a ditch. Although reporting the accident to the police within the reasonable time would have been beneficial, failure to do so does not suggest that the accident did not happen.

My view is that although the plaintiff had a duty to exercise precaution, and the law imposes a duty on drivers to be mindful of

"unreasonable drivers", the evidence before me does not suggest that the plaintiff drove his motorcycle negligently and that such negligence contributed to the collision. Consequently, the defendant must be held liable for 100% of the plaintiff's

proven damages.

[14] Consequently the following order is made:

ORDER

- (a) Defendant is liable for 100% of such damages as the plaintiff may prove to have suffered as a result of the collision that occurred on 03 May 2014.
- (b) The question of quantum will stand over for determination on a date to be arranged with the Registrar.
- (c) The defendant is ordered to pay costs attendant upon the hearing of this matter.

NM MBHELE, J

On behalf of the plaintiff: Adv JL OLIVIER

Instructed by:

Pieter Skein Attorneys

BLOEMFONTEIN

On behalf of the defendant: Adv M MOPELI

Maduba Attorneys

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