

SOUTH AFRICA / JUDGMENT

Williams v Gawie Hugo Motors CC t/a Total N1 City (5746/2008) [2011] ZAWCHC 86 (6 April 2011) [2011] ZAWCHC 86

COURT

Western Cape High Court, Cape Town

BEFORE

Van Heerden

CASE / FILE NUMBER

5746/2008

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IN THE
HIGH COURT OF SOUTH AFRICA
(WESTERN
CAPE HIGH COURT, CAPE TOWN)

Case No: 5746/2008
In the
matter between: RUBY
WILLIAMS
.....Plaintiff
and
GAWIE
HUGO MOTORS CC t/a TOTAL N1 CITY
.....Defendant

JUDGMENT

DELIVERED ON WEDNESDAY 6 APRIL 2011

VAN HEERDEN, AJ

[1] In this matter Plaintiff sues Defendant for injuries sustained by her in a fall at Respondent's petrol station, being Total N1 City, situated at N1 City Shopping Complex, Joe Simon Street, Goodwood, Western Cape.

- [2] According to Plaintiff, on the morning of 21 August 2006 at approximately 09h30. she went to Defendant's garage to fill her motor car with diesel, whilst the motor car was being filled with diesel she went to the ladies cloakroom. When she left the cloakroom and whilst walking out of the passage where the cloakroom was situated and where the passage opened onto the forecourt area she slipped and fell and in the process hurt her right ankle.
- [3] Photographs were submitted by agreement and it is clear that where Plaintiff fell the brickwork slopes down from the passage to the forecourt level. No evidence was led as to the type of brickwork that was laid there or to its condition and whether it was a suitable surface for a forecourt. From the photographs the surface seems to be in a reasonable condition and appears to be a surface of a rough type of face brick. It appears to be an appropriate surface for a garage forecourt.
- [4] Plaintiff alleges she slipped on the portion of bricks which sloped down from the passage to the forecourt level. No direct evidence was led as to the extent of the slope, but it appears to be a reasonably gentle slope, approximately one metre wide.
- [5] It appears that when Plaintiff placed her right foot on the sloping section of the bricks her foot slipped and she fell and slid about 2 metres on the right side of her body. Her right leg was trapped under her body and she could not feel it. She stated that she screamed, and one James, a petrol attendant came to her assistance. One of the people sitting at a nearby table suggested that she put ice on her leg and James went to the garage shop to get some ice, but returned and informed her that the management of the shop said she must pay for the ice. Plaintiff recalls that a male person looked out of the shop at her but then returned into the shop. According to her this person was wearing a type of uniform of khaki pants and a blue shirt. Plaintiff gave her business card to James and after a while got in her car and drove away.
- [6] Plaintiff stated that when she approached the cloakroom, which was the same route she took when she left the cloakroom, she did not notice any water on the bricks or that they were wet or slippery. She was in the cloakroom for about 10 minutes. After she fell and whilst lying on the ground she stated that she felt that her clothes and her hair were wet and that this was a "soapy slimy substance".
- [7] Plaintiff was of the view that this "soapy slimy substance" was present as cars were being washed nearby under a red shade cloth area approximately 10 to 15 metres away from where she fell. She surmised that the soapy liquid had come from that area.
- [8] Approximately a week later and whilst Plaintiff was on her way to N1 City Hospital to have an operation on her ankle, which she hurt in the fall, she stopped at Defendant's garage. James, the petrol attendant, recognised her and came up to her to ask her how she was. She gave him a card and told James to tell management that she was going to sue them, as she had to have an operation. Whilst speaking to James, the same man dressed in khaki pants and blue shirt, came out of the shop and called James to him and told James not to talk to her.

[9] Plaintiff then left the premises and whilst in hospital she said she received a phone call from the owner of the garage who asked if she was going to sue him (being the garage) or Total, to which she replied that she did not know, and that he must speak to her lawyer.

[10] Approximately a year and 3 months later Defendant received a letter from Plaintiff's attorney, dated 26 November 2007, which inter alia stated as follows:

"Our client's instructions are that she attended your premises situate at N1 City on 28 August 2007, in order to have her car washed. Our client required a lavatory and was informed by your staff members that the keys were at reception. On client's way to your reception, she slipped and fell, and as a result sustained [a] lateral malleolus fracture of her right ankle."

Notwithstanding the incorrect date of the incident and the fact that Plaintiff's attorneys description of what happened is radically different from the version as given by Plaintiff in court, according to Mr Hugo (Junior) a member of Defendant Close Corporation and its managing member in charge of the forecourt, carwash area and the shop, this was the first indication to Defendant that Plaintiff had allegedly fallen at Defendant's premises.

[11] Mr Hugo (Junior) and Ms Melanie van Rensburg gave evidence on behalf of Defendant. Mrs van Rensburg is employed as the manager on the shop side and responsible for merchandising. She stated that she had been so employed since 1 April 2004. She had no knowledge of Plaintiff's alleged fall at the premises. She confirmed that at the time of the alleged fall Mr Hugo (senior) and Mr Hugo (Junior) were the members involved in the running of the business and that no managers were employed by the business. Mr Hugo (Senior) was not called to give evidence, apparently due to health reasons and I was not asked to draw any inference in this regard.

[12] Mrs van Rensburg stated further that cars were never washed under the red shade cloth area as stated by Plaintiff as the garage had two dedicated car wash bays some distance from the red shade cloth area. She stated that after the cars were washed they were driven to the red shade cloth area where they were dried, polished and vacuumed, in fact there was not even a tap at the red shade cloth area. This evidence was confirmed by Mr Hugo (Junior).

[13] Mrs van Rensburg's evidence was further to the effect that all employers were trained that if any water is spilled or if a spillage of anything else occurs, that it must immediately be mopped up and if necessary covered with sand. Both she and Mr Hugo (Junior) regular inspected the forecourt and if anything untoward was noted, it would immediately be put right.

[14] Mr Hugo (Junior) gave evidence to the same effect, save he stated that he would spend most of his time on the forecourt and that the employees' duties included that they were required to deal with any spillage immediately. Mr Hugo did concede that he could not be everywhere all the time. His uncontested evidence was that in the 13 years that Defendant has owned the Total N1 City garage, that there have been no incidences of people slipping and/or falling. He confirmed that motor vehicles were not washed at the red shade cloth area and in fact to do

so was against the law. He also confirmed that there was not a tap near that area. Both Mr Hugo and Mrs van Rensburg stated that at the time of the fall, there was not a petrol attendant or any other person employed by Defendant with the name of James.

- [15] Plaintiff relies on Defendant's negligence and the allegations in this regard are that in essence Defendant failed to take precautions to protect the public and to prevent water from the carwash area to flow over a portion of the premises so as to create a dangerous situation. With regard to spillages on shop floors it was held in *Probst v Pick 'n Pay (Pty) Ltd* [1998] 2 All SA 196 (W) at 200G that the precautions that should be taken by the shopkeeper should:

"...not be so onerous as to require that any spillage must be discovered and cleaned up as soon as it occurs. Nevertheless, it does require a system which will ensure that spillages are not allowed to create potential hazards for any material length of time, and that they will be discovered, and the floor made safe, with reasonable promptitude."

- [16] This duty is also applicable to shopping malls, see *Chartarprops 16 (Pty) Ltd and Another v Silberman*

[2008] ZASCA 115; 2009

- (1) SA 265 (SCA) at 275A-B.

- [17] Although this general rule might be overly onerous for the forecourt of a garage, which by its very nature will have spillage which cannot immediately be cleared up due to that which is undertaken on a forecourt, and further that these forecourt are usually outside and open to the elements, such as rain, I am, however, of the view that a garage owner, such as Defendant, still requires a system to ensure that spillages are not allowed to create hazards for any material length of time.

- [18] The evidence of both Mr Hugo and Mrs van Rensburg was to the effect that the employees are trained to immediately clean up any spillage using a mop and if necessary sand. This system seems to have worked for at least the last 13 years, as there have been no reported slips or falls at Defendant's premises.

"[19] Plaintiff did not notice the slippery substance on the bricks when she went into the cloakroom. When she came out of the cloakroom, some 10 minutes later, which in all probability could well have been a shorter period as her motor vehicle was been filled with diesel and one does not leave a car for too long, she slipped and fell on the soapy slimy substance. [20] Having regard to the mechanics of Plaintiff's fall and the slipperiness of the service, the probabilities are that the "soapy slimy substance" was not there when she went into the cloakroom. Accordingly the "soapy slimy substance" could not have been there for more than 10 minutes, but in all probability was there for less than 10 minutes and in fact could have been there for an even shorter period of time.

[21] As stated evidence was led on behalf of Defendant as what steps were in place to deal with such a spillage should it occur. This mere fact that there is a spillage such as contended by Plaintiff does not mean Defendant is negligent. [22] Accepting Plaintiff's version that there was a "soapy slimy substance" on the surface of the forecourt (which I do not find as a fact), I am not satisfied that Plaintiff has succeeded in showing that Defendant was negligent in allowing the substance to be there and that Defendant was further negligent in not having a system in place so as to prevent the spillage from creating a potential hazard for any material length of time.

[23] I accordingly find that Plaintiff has not proved causal negligence against Defendant and the following order is made: Plaintiffs claim is dismissed with costs. VAN HEERDEN, AJ

"[19] Plaintiff did not notice the slippery substance on the bricks when she went into the cloakroom. When she came out of the cloakroom, some 10 minutes later, which in all probability could well have been a shorter period as her motor vehicle was been filled with diesel and one does not leave a car for too long, she slipped and fell on the soapy slimy substance.

[20] Having regard to the mechanics of Plaintiff's fall and the slipperiness of the service, the probabilities are that the "soapy slimy substance" was not there when she went into the cloakroom. Accordingly the "soapy slimy substance" could not have been there for more than 10 minutes, but in all probability was there for less than 10 minutes and in fact could have been there for an even shorter period of time.

[21] As stated evidence was led on behalf of Defendant as what steps were in place to deal with such a spillage should it occur. This mere fact that there is a spillage such as contended by Plaintiff does not mean Defendant is negligent.

[22] Accepting Plaintiff's version that there was a "soapy slimy substance" on the surface of the forecourt (which I do not find as a fact), I am not satisfied that Plaintiff has succeeded in showing that Defendant was negligent in allowing the substance to be there and that Defendant was further negligent in not having a system in place so as to prevent the spillage from creating a potential hazard for any material length of time.

[23] I accordingly find that Plaintiff has not proved causal negligence against Defendant and the following order is made:

Plaintiffs claim is dismissed with costs.

VAN HEERDEN, AJ

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Prepared on 13 October 2026 · Esheria