



CASE NO.: I 2445/2010

IN THE HIGH COURT OF NAMIBIA

In the matter between:

RENÉ PRINSLOO

PLAINTIFF

and

Y BRITZ

DEFENDANT

CORAM: SWANEPOEL, J

Heard on: 04 July 2011

Delivered: 21 July 2011

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### **JUDGMENT**

**SWANEPOEL, J:** [1] This matter concerns a motor vehicle collision on the 11<sup>th</sup> of August 2008 between two vehicles at a T-junction where Visagieplein Street joins Gous Street, Pioneers Park, Windhoek from a northerly direction. Gous Street ascends slightly from east to west and has a curve to the right before the T-junction where after it runs straight in a westerly direction for some distance.

[2] The only issue for this court to adjudicate upon is the negligence of either and/or both of the parties. All other issues were resolved and agreed upon prior to the trial during the rule 37 conference. Mr Pfeiffer represented the plaintiff while Mr De Beer represented the defendant.

[3] The plaintiff, employed as a sales person at Ritter's Toyota was on that particular day en route from his place of employment to his residence at no. 62 Gous Street for lunch. The plaintiff's residence is the 3<sup>rd</sup> house west of the aforesaid T-junction and some 50-60 meters from where the collision occurred. He was travelling at a speed of approximately 40 km per hour when he noticed a black Subaru vehicle stationary ahead of him with it's right hand indicator on to turn to the right into Visagieplein Street. There was enough space to pass this vehicle on the left hand side at the same speed without the need to leave the tar road. When his vehicle was approximately half way past the Subaru, the latter suddenly and without any indication turned left and hit his vehicle on the panel below the right hand rear door resulting in it overturning on its left side skidding a few meters. Plaintiff drove a Chana Star double cab bakkie which is smaller than a Toyota double cab vehicle, but higher than the Subaru vehicle. Defendant, a 24 year old young lady was the driver of the Subaru.

[4] A plan (not in accordance with scale) of the collision area was handed in. The evidence confirms that Gous Street is 10m wide consisting of two opposite lanes 5m in width respectively. The pavement to the south (left) of Gous Street is paved out with interlocks and is on the same level as Gous Street.

[5] Plaintiff indicated the point of impact in the eastern lane of Gous Street, but readily conceded during cross examination when it was put to him that the point of impact was more to the eastern (left) side of the road. (as opposed to next to the road).

[6] It was further put to the plaintiff during cross examination that the defendant would testify:

1. That she stopped at the T-junction to turn to the right from Gous Street into Visagieplein Street (It is common cause that the right indicator of defendant's vehicle was on when she was at the T-junction to turn right).
  2. There was a vehicle stationary at the stop sign in Visagieplein Street; and,
  3. That the defendant thereafter put the left hand indicator of her vehicle on.
- The plaintiff replied that he had never seen the change of the right hand indicator to the left hand indicator.

[7] Henriette Groenewald was thereafter called on behalf of the plaintiff to the witness box. She is a teacher by profession and is the sister-in-law of the plaintiff. She also resides at 62 Gous Street. She and a friend came out of the erf where they were standing on the sidewalk. Looking down Gous Street she saw plaintiff approaching. She also saw a black Subaru vehicle with its indicator indicating that it wanted to turn into Visagieplein Street. Apart from the plaintiff's vehicle and the black Subaru vehicle, she also noticed a combi stationary at the T-junction in Visagieplein Street. It appeared to her that the driver of this vehicle was an acquaintance of the driver of the black Subaru

vehicle. I will return to this piece of evidence later on in this judgment. According to Ms Groenewald the plaintiff was coming “up the road” and was in the process of passing the Subaru on its left when suddenly, without any indication the Subaru turned left hitting plaintiff’s bakkie, threw it into the air while coming down on its left hand side and skidding a few metres - still in Gous Street. Apart from these three vehicles, there were no other vehicles in Gous Street. She is herself a driver and estimated the speed of plaintiff’s vehicle at approximately 40 km per hour. According to her evidence plaintiff had slowed down as he approached the Subaru. This latter part of the evidence is in conflict with plaintiff’s evidence who testified that he had never slowed down before the point of impact, as there was enough space for him to pass on the left.

[8] It was put to this witness during cross-examination that at the point of passing, defendant started to move right into Visagieplein Street. The witness confirmed that plaintiff was behind the Subaru which started to move. She corroborated plaintiff’s evidence that the latter’s vehicle did not leave the tar road when passing the Subaru. On a question whether she saw any indicator change, (as opposed to putting it to her that the defendant would come and testify that she had in fact activated the left indicator) she replied in the negative and reiterated that she only saw that the right hand indicator was on. Whether she could have made a mistake about the speed of plaintiff’s vehicle, she replied that 40km per hour was “pretty close” to the speed she had testified about.

[9] The defendant testified that she was an employee of African Building Supplies and on that particular day, she was on her way to the Baines Shopping Centre to deliver certain papers to her former employer. She was also driving in Gous Street and was supposed to turn right into Visagieplein Street which leads to the parking area of the aforesaid shopping centre. The right indicator of her vehicle was activated approximately 4m before it became stationary at the said junction. She could however not execute the turn as she was waiting for her ex-boss to pass. He came from the opposite direction with a 2.8 Isuzu bakkie. I interpose here to mention that these facts pertaining to her ex employer were never put to the plaintiff and/or Ms Groenewald during cross examination. While waiting for him, her ex colleague came from her right hand side and stopped at the stop street in Visagieplein Street. He indicated to her that she should park on the left hand side of Gous Street so that the papers to be delivered could be handed to him. This piece of evidence corroborates Ms Groenewald's evidence that defendant and person who stopped at the T-junction were acquainted with one another. Defendant confirmed that at this particular time her vehicle's right hand indicator was still on. She then looked in her vehicle's right hand – then the middle – and thirdly in the left hand side rear view mirrors. There were according to her observation no vehicles behind her. She then activated the left indicator and began (within 2 seconds) to turn left. The left front side of her vehicle was already off Gous Street when the plaintiff came from behind on the interlocks and bumped into her vehicle. According to the defendant the plaintiff then “jerked” his vehicle back – it

overturned on its left side and slid for approximately 6-8 metres and came to a standstill in the road.

[10] Throughout her evidence either in chief and/or during cross-examination and/or during questions by the Court, the defendant never saw the plaintiff's vehicle before impact. She thought plaintiff came at a higher speed than 40kph.

[11] Despite minor differences between the evidence of the plaintiff and Ms Groenewald i.e. whether plaintiff had decreased speed prior to the collision (which can also be explained by the fact that plaintiff was on his way to his residence for lunch a mere 3 houses away) and on the question precisely when Ms Groenewald and her friend appeared on the pavement outside no. 62 Gous Street, their evidence corroborates each other in material respects. The court was alive to the fact that plaintiff is the brother-in-law of Ms Groenewald. No suggestion was made during cross examination that they had colluded with one another or of any other impropriety. Both made a good impression on the court.

[12] The same however cannot be said about the evidence of the defendant. It is clear from her evidence that she has no idea about her duties as a driver, particularly when she either wants to turn left or right. Her appreciation of her duties is inter alia borne out by the following in her evidence:

- (i) She was asked whether she had looked in her rear view mirror while she was stationary at the intersection and having been directed by her ex colleague to park on the left side of Gous Street, to which she replied as follows:

*“No, because I did not put another vehicle in danger.”*

- (ii) On another question on whether it is not important to look in the mirror before she wanted to turn right (in Visagieplein Street), she replied:

*“No, he (plaintiff) cannot over take me on my right..... If my indicator is on for turning right, he cannot pass me.... These are the rules”*

[13] She had also testified that she was travelling in the middle of her lane (leaving a meter on both sides of the vehicle) and not closest to the central line of the road before turning right, (as required by law) *“because if someone comes from the front (as her ex boss allegedly had done) “he can collide with me.”*

[14] The defendant was furthermore at pains to explain the presence of plaintiff’s vehicle behind or to the left of her vehicle just prior to the collision. She also had no explanation for not stating, in her written statement to the police on 10 September 2008, that she had as a fact looked into the mirror(s) of her vehicle.

[15] Defendant's evidence that the left side of her vehicle was already on the interlocks to the left of the tar road when the collision occurred, contradicts her instructions to Mr De Beer when he put it to the plaintiff that the point of impact was still on the road, albeit more to the left as plaintiff had initially testified.

[16] I find plaintiff's version on the probabilities much more convincing than the evidence of the defendant. It is much more probable in the circumstances that her attention was on her ex colleague who came from the right side at the T-junction and who had signalled to her to go and park on the left side of Gous Street just prior to the collision. There is no question about the fact that she had caused a dangerous situation for all concerned. She had a clear duty to have made sure that, after first indicating that she wanted to turn right and thereafter to turn left, that it was safe to do so and that any following traffic had observed same and had reacted thereon. The fact that she did not see the plaintiff is, on her own version, in itself negligent. She had either not looked into any rear view mirror, or has not kept a proper look out. Furthermore and even if plaintiff's vehicle was for a moment in her blind spot, she should have made certain that it was safe for her before she had turned left. I have no hesitation to reject the defendant's evidence where it is in conflict with the plaintiff's and Ms Groenewald's evidence.

[17] Finally, the court makes a negative inference against the defendant for not having called her ex colleague as witness.



[18] I furthermore find on the facts that the plaintiff was entitled, once the defendant had indicated that she intended to turn right and became stationary at the T-junction, to assume that she would proceed and execute her intention by turning right and that the plaintiff could pass on the left.

[19] I have come to the conclusion that the defendant's negligence was the sole cause of the collision. The following orders are made:

1. Defendant is ordered to pay to the plaintiff an amount of N\$99 100.00 plus interest thereon at the rate of 20% per annum from date of judgment until date of payment, with costs.
2. Defendant's counterclaim is dismissed with costs.

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**SWANEPOEL, J**

ON BEHALF OF THE PLAINTIFF

Mr Pfeiffer

Behrens & Pfeiffer

ON BEHALF OF THE DEFENDANT

Mr De Beer

Instructed by:

Pieter J De Beer Legal Practitioners