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IN THE HIGH COURT OF SOUTH AFRICA
(TRANSVAAL PROVINCIAL DIVISION)

Case no. 2003/2038

In the matter between:

28 / 6 / 20

OOSTHUIZEN VANESSA

PLAINTIFF

And

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

SERITI J,

The plaintiff instituted action against the defendant, acting in her personal capacity and in her capacity as mother and natural guardian of her minor child Kari Oosthuizen.

In her particulars of claim, the plaintiff alleges that she was married to the deceased, Rudolph Andriaan Stephanus

Oosthuizen, and out of the said marriage, a minor child mentioned above was born.

The deceased had a duty to support and maintain her and the minor child. And in fact, before his death, the deceased who was employed, was maintaining and supporting her and the minor child.

The particulars of claim further alleges that on 7th December 1999 at about 22h15 and along Wit Road, the deceased was driving a motor-vehicle with registration numbers FCZ 735 GP in southerly direction.

At the same date and time a truck with registration numbers TZY 359 T, with two trailers with registration numbers HFB 690 GP and HFB 689 GP was driven in a westerly directions along Plover street by Mr Elias Masango.

Wit road and Plover street form a T junction with a stop sign controlling motor-vehicles travelling along Plover street and joining Wit road.

At the said T junction, a motor-vehicle driven by the deceased collided with the truck driven by Mr Masango, as a result of which deceased sustained injuries and ultimately died as a result of injuries sustained in the said collision.

Particulars of claim further alleges that the said collision was caused by the negligent driving of the said Mr. Masango,

who was negligent in several respects as mentioned in the said particulars of claim.

At the beginning of the trial, by agreement of both parties, court was requested in terms of Rule 33 (4) to separate issues of merits and quantum, and deal only with the question of liability.

Court granted the said request.

Certain documents, being exhibits were handed to the court and same were marked accordingly.

The said exhibits were the following:

1. Exhibit A - Minutes of a pre-trial conference and reports of expert witnesses.

2. Exhibit B - Plaintiffs bundle of documents. 3.

Exhibit C - Minutes of a joint meeting held

between the two expert witnesses, namely Ms W. Badenhorst and Mr. B Grobbelaar dated 7th of June 2005.

4. Exhibit D - Photographs of the scene of accident taken by Ms Wilna Badenhorst, the expert witness.

5. Exhibit E - Enlarged photograph of the scene of the accident.

6. Exhibit F - Photographs of the scene of the accident and sketch plan prepared by police officer who attended the scene of accident.

7. Exhibit G - Copy of criminal court record re: State/Masango.

8. Exhibit H - Statement made by Ms Kellie Marie Reynolds to the police dated 7th March 2000.

During the pre trial conference, the parties agreed that the documents purport to be what they are, but the correctness of the contents thereof are not admitted.

Parties, during the course of hearing, agreed that the court record of the criminal proceedings should be admitted by the court.

Minutes of joint meeting held between the two experts, namely Ms W Badenhorst and Mr B Grobbelaar read as follows:

"1. The experts agree that the impact speed of the golf against the rear wheels of the semi trailer of the truck was probably somewhere between 65km/h and 75km/h.

2. The experts agree that the speed of the golf prior to breaking was probably somewhere between 102km/h and 109km/h.

3. The experts agree that if the golf was travelling between 102km/h and 109km/h prior to seeing the hazard and braking to leave 34m brake marks, it is probable that the driver of the golf would have been able to have skipped his vehicle prior to colliding with the semi trailer of the truck had

he been travelling at 80km/h instead of 102km/h and 109km/h. The experts agree further that for a speed of 90km/h or higher, the driver of the golf would not have been able to avoid the collision with the semi trailer of the truck.

4. The expert agree that it would probably have taken at most 8.5 seconds for the truck to pull away from its stop line and accelerate to its position at collision.

5. The experts agree that the beams (according to Ms W Badenhorst), glimmer or haze (according to B Grobbelaar) of the head lights of the golf would have become visible prior to the physical headlights becoming visible to the driver of the truck. This distance would probably have been at least 260m. The experts did not measure the distance at which the actual physical headlights became visible but agree that this distance was in the order of 240m or thereabout.

6. The experts agree that based on the impact speeds, speed of the Golf prior to braking as well as the acceleration time of the truck as provided in the above paragraphs, the Golf was probably between 233m and 251m -away from the truck when the truck was pulled away from the stop line.

7. The experts used a visualisation, perception and reaction time of 1.5 seconds and a coefficient of friction of 0.72 (including the slope) in performing the above calculation.

The statement of Ms Kelly Marie Reynolds made to the police and marked Exhibit H, reads as follows:

1.

"I am an adult female ...

2.

On the 7th of December 1999 at about 23H30 I was in my own car. I was the driver of my own car and I was travelling in Plover street and was travelling towards the stop street at Witweg where a truck was stationery. The truck was waiting for cars to pass. I noticed a car on the bridge when the truck started to turn to the right to go over the bridge. ~

3.

I saw the car which was coming over the bridge break and I was going slower to give him space to swerve if he was going to. He never swerved and he collided with the second trailer of the truck with the nose of his car.

4.

The car was travelling at a high speed but the truck also turned in front of the car. The car was visible on the bridge when the when the truck started to turn right."

The first witness to testify is the plaintiff herself.

She testified that she was married to the deceased and at the time of his death, she was pregnant. She gave birth to a child on the 5th January 2000.

Her husband, who was involved in an accident on the 7th of December 1999, died on the 8th of December 1999 as a result of injuries sustained in the said accident

The next witness to testify is Inspector James Hutchison Russets. He testified that he is stationed at Springs police station.

During the evening of the 7th of December 1999 he received a report of an accident. At about 11.30 pm he went to the scene of the accident which was at the corner of Wit Road and Plover street.

At the scene of the accident he found a Golf motor vehicle and a truck which collided with each other. He noticed that the Golf motor vehicle was damaged in front and the truck was damaged at the back next to the wheels. The golf motor vehicle had collided with one of the back tyres of the truck.

At the scene the roads are tarred and they were dry. The area was dark, although there were lights at the bridge, which bridge is nearby .

He referred to a photograph which depicts the rear wheels of a trailer which were damaged by the impact of the Golf. He found the break marks on the tarred road.

According to his observation, shortly before the accident the Golf motor vehicle was travelling along Wit road from north to south (from Springs to Nigel) and the truck was travelling along Plover street from east to west.

He referred to a photograph of the scene of the accident. It is clear from the said photograph that Wit road runs from North to South, with double lanes in each direction. Where the said road passes Plover street, which runs from west to east, left lane of Wit road widens to allow motor vehicles turning left into Plover street to do so without interfering with traffic going straight.

There is a stop sign, controlling traffic coming along Plover street to join Wit road. The truck involved in the accident is a horse with a trailer with a tank on it, with three big wheels at the back.

Sergeant Jones arrived at the scene and he pointed out to him (Sergeant Jones) what he observed and Sergeant Jones took photographs.

Driver of the Golf was driving from North to South (from Springs to Nigel) and the truck driver was driving from East to West shortly before the collision.

Under cross examination, he said that the Apollo lights on the right side of the road were on. They were very bright and they were illuminating the road up to the bridge, which bridge is further North from the vicinity of the impact. After the bridge

towards the North, there is a set of robots and they are +-500 metres north of the bridge.

He further testified that when you approach the bridge from Springs there is a slight rise of the road. A motor vehicle approaching the bridge from Springs, becomes visible to a person standing at the stop sign which is in Plover street, when it reaches top of the bridge. According to his observations, the Golf motor vehicle collided with the second back wheel of the trailer.

Under re-examination he said that there were three Apollo lights on the left side of the Golf motor vehicle. Prior to reaching the bridge from Springs, road is level with a slight slope.

The next witness to testify is inspector Anthony Edward Jones.

He testified that on the day of the accident under consideration, he went to the scene of the accident. He found the horse and trailer, and Golf motor vehicle. The latter motor vehicle was extensively damaged in front. There were no serious damages to the horse and trailer.

Inspector Russell pointed out to him certain marks. He took photographs of the scene, drew sketch plan and key thereto.

At the said intersection, the road surface was tarred and dry.

His observations were that the truck and the trailer were travelling along Plover street from East to West, entered the intersection and turned right into Wit road. The Golf motor vehicle was travelling from North to South along Wit road. The intersection in question is near the southern base of the bridge. The Wit road carries traffic in both directions, from North to South and vice versa. Each direction is a dual carriage road. At the scene it was dark, although the bridge itself was well lit by the Apollo lights which are on the eastern side of the said road.

Break marks and possible area of impact were clearly visible on the tarred road.

Plover street has two single lanes in each direction.

The point of impact on the truck appears almost towards the back of the trailer on its second but last wheel.

He referred to the photograph of the horse and trailer that he took at the scene of accident and indicated the possible area of impact on the trailer.

He further testified that the brake marks of the Golf motor vehicle were 34m long and that the said Golf was found along Wit road on the eastern lane and the truck towards the Northern direction.

He further testified that the length of the horse and trailer is 15.5metres.

The next witness to testify is Mr. Phillip Van Blerk. He testified that he is the plaintiffs attorney of record. He further testified that he consulted with Ms. Reynolds and took a statement from her. He retained the original, signed affidavit which he later put in the court file.

Initially, he thought that he will not need Ms. Reynolds as a witness. Shortly before the trial, his counsel advised him that they will need Ms. Reynolds to testify.

He tried to locate Ms. Reynolds without any success. He was advised that she has immigrated overseas. She had no relationship with the deceased.

The affidavit he obtained from Ms. Reynolds reads partly as follows:

1.

"I the undersigned Kelly Marie Reynolds here by declare under oath as follows:

2.

On the 7th of December 1999 at approximately 22H 15 I was the driver of a motor vehicle travelling from Struisbulf along Plover road to its T -junction with Wit road, Springs. I was alone in the car on my way to Nigel.

3.

On approaching the junction I saw a truck at the stop street at the end of Plover road. It was obvious that the truck intended turning to its right in Wit road. The truck consisted of a horse and two trailers. The first trailer was a tanker. The last trailer was smaller than the first but did not have its tank on.

4.

Weather conditions: The weather conditions were cool and clear.

5.

The truck waited for a car coming from its right to pass. As the deceased's car appeared on the edge of the bridge built over the railway line, the truck moved forward. It stopped as if had seen the vehicle approaching from its right. However, it moved forward again. The deceased decelerated when the truck moved forward initially but accelerated when the truck stopped. As the truck moved forward then, the deceased applied brakes but skidded into the last of the two trailers".

The next witness to testify is Ms. Wilna Badenhorst.

She testified that she obtained B Sc degree in Mathematics and Applied Mathematics. She worked for CSIR for six years as a motor vehicle accidents reconstruction expert. From 2002 she worked as a consultant and was still doing the same work.

She further testified that she visited the scene of the accident and took certain photographs. She confirmed contents of the joint minutes of experts.

She referred to a photograph she took standing in the vicinity of Plover street at the stop sign where the truck in question would have stopped. The said photograph shows the direction from which the Golf motor vehicle came.

When standing at the vicinity of the stop sign, she could see a person standing along Wit Road on top of the bridge.

She further testified that from the stop sign, one could see physical head lights of a motor vehicle which is about 240 metres towards the bridge, which bridge is on the right hand side of Plover street, along Wit road. The beams of the headlights of the Golf would have been visible from a distance of about 260 metres away.

The person that she could see whilst in the direction of the bridge whilst she was standing on the stop line was about 258 metres away.

The left lane of Wit Road widens before reaching Plover street to allow traffic turning left into Plover street to do so without disturbing traffic travelling straight, on the left lane of Wit Road. This would have allowed the truck driver to stop in front of the stop line which was at Plover street without interfering with traffic moving straight pass on the left lane of Wit road, passing intersection of the said road and Plover street.

If the truck driver had stopped 4.9 metres in front of the stop line, (which truck could have done without interfering with traffic going straight along Wit road on the left lane), then it means that Golf motor vehicle would have been closer to the truck when the truck pulled away to cross the south bound lanes of Wit Road.

She visited the scene in the evening and she saw the Apollo lights along the road. The road surface was dark and she could see beams of approaching motor vehicles before she could see the said motor vehicles.

She further testified that if the truck driver had moved about 4.9 metres in front of the stop line and stopped, then it means that the Golf motor vehicle was very close to the truck when the truck started crossing the intersection.

Under cross examination she said that if the Golf motor vehicle was travelling at 80km per hour, it would have taken 11.7 seconds to cover a distance of 260 metres and the said Golf motor vehicle would not have collided with the truck, and same would have passed behind the truck.

From the stop sign in Plover street, visibility in the direction of the bridge is not impaired.

Under re-examination she said at the time she stood at the, stop sign, the person she saw next to the bridge was 258 metres away from her. Person sitting in the truck would have been higher than her.

She further said that during night time, beams of the lights of motor vehicle approaching the bridge becomes visible first, before one sees the actual lights of the said motor vehicles.

The plaintiff closed its case.

The first defendant's witness to testify is Mr. Barry Grobbelar. He confirmed the joint minute of the experts.

He further testified that at the time Golf motor vehicle started braking, its speed was between 102 - 103 km/h. He is unable to tell the court the speed at which the said Golf motor vehicle was travelling at prior to it starting to apply the brakes.

The next witness to testify is Mr. Elias Masango.

He testified that he is an experienced driver. He has been driving trucks for years.

On the 7th of December 1999 he was the driver of a horse and trailer which were involved in an accident.

On the said day, he was transporting Sulphuric acid which is used in the mines. He was carrying 22 tons of sulphuric acid. His truck was pulling one trailer and the combination thereof was 22 metres long.

He was driving along Plover road heading towards the T-junction of Plover and Wit road. Time was about 11h20 pm when he stopped at the stop sign before turning right into Wit road. He stopped at the stop line, looked left and right for oncoming traffic, checked his blind sides, again checked left and right sides. There was no oncoming traffic, he engaged extra low gear.

Extra low gear moves truck for one and half metres. He changed to 2nd gear, still looking around for oncoming traffic. He kept the truck to the extreme left side of the road, so that he could turn right without rear wheels of the trailer getting onto the island which was in the middle of Wit road.

Whist still negotiating his right turn, he looked again at his right side for oncoming traffic and at that time he was already in the intersection, and he saw a motor vehicle travelling from north to south along Wit road at a high speed. He said motor vehicle knocked the truck. There was nothing he could do to avoid collision.

When the collision occurred, the front part of his truck had already crossed the two south bound lanes of the Wit road and the trailer had not yet crossed left lane of the south bound lane of the road.

When he saw the approaching golf motor vehicle, same was 200-240 metres away from him and travelling towards south on the left lane. When the said golf motor vehicle collided with his truck, it was travelling between the two south bound lanes of the Wit road.

He first noticed the golf motor vehicle when same was on the bridge. He could not see it before it reaches the bridge.

He could not have accelerated because that could have damaged the truck.

He further testified whilst at the stop sign, he saw the ford motor vehicle which was following her.

Under cross examination, he said that when collision occurred, he was probably travelling at 10 kilometres per hour.

He conceded that when you stand at the stop sign, you can see a person 258 metres away, standing at the bridge and if is in the truck, he can see further than 258 metres away.

He further testified that the left lane (eastern lane) of the south bound lanes of the Wit road widens just before the stop sign at the Plover street.

It was suggested that to him that he would have taken less time to cross the south bound lanes if he had stopped few metres in front of the stop line, than it would when he pulls off form the stop line and he disagreed.

He further testified that he will not stop in front of the stop sign as the law does no allow him to do so.

When he pulled away from the stop sign, he looked to his right side for oncoming motor vehicles.

If the golf motor vehicle was 233-251 metres away form him when he pulled off form the stop sign, he would have seen it.

Before he pulled off from the stop sign, he did not see the light of the oncoming golf motor vehicle.

He saw golf motor vehicle whilst same was at the top of the bridge and next he heard was the scratching brakes. He had the golf motor vehicle under observation until it collided with the truck.

The question that the court must determine is whether there was any negligence on the part of the driver of the truck or not.

As stated earlier, driver of the truck testified that before he pulled off form the stop line, he looked to his right side and he did not see the lights of the approaching golf motor vehicle.

Experts agreed that the golf motor-vehicle was probably 233 to 251 metres away from the truck when the truck pulled away from the stop line.

Ms Badenhorst testified that from the stop sign standing on the ground, she could see a person 257.8 metres away and standing on the bridge.

She further testified that the truck driver, who was higher than the person standing on the road, would have seen more than 257.8 metres away from the stop sign towards the bridge.

Failure of the truck driver to see the golf motor vehicle approaching before pulling off from the stop sign, which motor vehicle according to the experts was 233-251 metres away, indicates that the truck driver failed to keep a proper look out.

The above-mentioned view, is strengthened by the failure of the truck driver to see the beams of the headlights of the approaching motor vehicle from a distance of about 260 metres away. If truck driver had kept a proper look out, he should have seen the beams of the approaching Golf motor vehicle and he would not have entered the intersection at that time as he was driving a heavily loaded truck.

Furthermore, Ms Badenhorst testified that because the left lane of south bound lane of the Wit road, widens before it reaches stop sign at the Plover street, accident would not have occurred if the truck driver had stopped few metres in front of the stop line, looked to his right before crossing the intersection.

The truck driver's attitude which is that he could not have stopped in front of the stop line as it is illegal to do so, is not reasonable under the circumstances of this case.

Had the truck driver stopped at the stop line, moved few metres forward and stopped again before crossing the intersection, he would probably have realised that the

approaching golf motor vehicle was too close for the truck to safely enter the intersection without interfering with traffic travelling on the left south bound lanes.

Truck could have safely stopped in front of the stop line before proceeding to cross intersection.

Any of the above mentioned factors indicate that the truck driver drove the truck negligently and/ or he failed to keep a proper look out or that he failed to avoid an accident under circumstances in which he could have avoided the accident.

My view is that the plaintiff has proved her case.

Court therefore makes the following order -

1. Defendant is ordered to pay the plaintiff whatever damages plaintiff is able to proof.
2. Defendant is ordered to pay the plaintiffs costs, which costs will include costs for attending pre-trial conference and qualifying fees of Ms Badenhorst.

W. L. SERITI
JUDGE OF THE HIGH COURT