



**IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG HIGH COURT, PRETORIA)**

DATE: 06/11/2009

CASE NO: 42690/2007

UNREPORTABLE

In the matter between:

JACOBUS CORNELIUS COETZEE

Plaintiff

And

THE ROAD ACCIDENT FUND

Defendant

JUDGMENT

LEDWABA, J

- [1] Plaintiff instituted an action against the defendant claiming damages for the injuries he sustained on 27th November 2004. Plaintiff was the driver of a Mitsubishi four ton truck with registration number RDS 761 GP, which collided with an Isuzu bakkie with registration number KB 260 LDV (insured

vehicle). The driver of the insured vehicle, Mofokeng Moliko Jacobs and his passenger died at the scene of the accident.

[2] Merits and quantum were separated in terms of **section 33(4) of the Rules of the High Court** as the parties could not reach an agreement on quantum. Trial proceeded on the merits and issues concerning quantum were stayed.

[3] The witnesses in describing the weather conditions stated that it was cloudy, the tarred road was wet, it had just stopped raining or it was drizzling. Exhibit A in pages 3 and 4 has coloured photos of the scene of the accident. Plaintiff's vehicle was damaged on the left front side as shown on exhibit A page 6.

[4] The evidence of the plaintiff can be summarised as follows:

4.1 Plaintiff testified that he saw the insured vehicle at a distance of about 50 meters away from the opposite direction approaching at a high speed and there were no other vehicles in the vicinity except the insured vehicle.

4.2 At a distance of about 20 metres the insured vehicle swerved to its right, bumped against the zinc, barrier shown on the bottom coloured photo in page 3 of exhibit A, plaintiff swerved slightly to his left and to his right again. In that process, the insured vehicle swerved to its left again and the two vehicles collided with each other and the path of the plaintiff's vehicle

as indicated on the rough sketch on page 2 exhibit N prepared by the plaintiff about two months after the accident.

[5] The defendant's witness, Ms. Rose Karrim, described the accident as follows:

5.1 She had followed the plaintiff's vehicle for some time metres and the space between her vehicle could be the length of about two vehicles. Plaintiff's vehicle was travelling at a speed of about 60-70 kilometres per hour. This implies that she was travelling at the same or lesser speed than the plaintiff.

5.2 She explained that she was surprised to see the plaintiff's vehicle swerving to the right and colliding with the oncoming vehicle. Plaintiff was flung out of the truck on impact and he landed on the side of the zinc barrier of the oncoming vehicles.

5.3 She also made rough sketches indicating the positions of the vehicle after the accident, see the point marked X on the right side of the bottom photo on page 3, sketch A represents plaintiff vehicle and B sketch represents the insured vehicle.

5.4 She further said after stopping she went to the plaintiff and covered him with an object to protect him from the sunlight. She made a statement to the police at the

scene of the accident see page 9 exhibit A. When she left the scene the ambulance had not yet arrived.

- [6] The plaintiff's witness, Mr. Ronnie C. Kotze, plaintiff is his brother and said when he arrived at the scene of the accident plaintiff had already been taken to the hospital. This implies that when he arrived at the scene Ms. Karrim had already left the scene.

- [7] From the evidence presented in court the three witnesses indicated different points of the positions of the vehicles after the accident. The said positions also differ from the rough sketch made by the police on exhibit A page 11. The position of the vehicles as indicated by the witness cannot assist the court much. The exact point of impact is not known.

- [8] The court should now determine which version is more probable between the plaintiff and Ms. Karrim.

- [9] The plaintiff's statement to the police dated 3rd February 2005 further alleged that on page 8:
"...Ek was toe alreeds besig om na die anderkant van die pad te beweeg toe die voertuig my op die linkerkant gestamp het. Beide die voertuie het aan die regtekant van die pad tot stilstand gekom, ek is by die voorste venster uitgeslinger en ek het op die barrier van die brug te lande gekom."

- [10] Ms. Karrim in her statement to the police on paginated page 9 said the following:

“...It appeared that the Mitsibusi lost control and smashed head on into an Isuzu”

- [11] It is not very clear from Ms. Karrim’s statement that the plaintiff’s vehicle swerved to its incorrect side of the road nor does she state that the insured vehicle swerved to the path of the plaintiff’s vehicle.
- [12] However, she clearly stated in court that the plaintiff’s vehicle moved to the path of the insured vehicle. Ms. Karrim is an independent witness. I carefully analysed her evidence and her demeanour in court, she is a credible witness and the plaintiff has not proved that she had a motive to falsely testify against the plaintiff.
- [13] Plaintiff’s counsel conceded, correctly in my view, that she was a credible and reliable witness. When Ms. Karrim testified that she was following the plaintiff before the accident happened that was not disputed.
- [14] On the contrary the plaintiff cannot be regarded as a credible and reliable witness. Plaintiff testified that there were no other vehicles in the vicinity prior to the accident. This is an indication that he never kept a proper look-out.
- [15] The onus is on the plaintiff to prove his case against the defendant on the balance of probabilities. In **African Eagle Life Assurance Co Limited v Cainer 1980 (2) SA 234 (W)** the court said:

“The approach laid down in National Employers Mutual General Insurance Association v Gany 31 AD 187, namely: “Where there are two stories mutually destructive, before the onus is discharged the Court must be satisfied that the story of the litigant upon whom the onus rests is true and the other false”, which was applied in Koster Ko-operatiewe Landboumaatskappy Bpk v Suid-Afrikaanse Spoorweë en Hawens 1974 (4) SA 420 (W), where there are probabilities, inherent or otherwise, there is no room for this approach.”

[16] In evaluating the evidence before me properly, I cannot find that the evidence of Ms. Karrim is false. The plaintiff has therefore failed to discharge the onus on him.

[19] **I therefore make the following order:
The plaintiff’s claim is dismissed with costs.**

**A. P. LEDWABA
JUDGE OF THE HIGH COURT**
