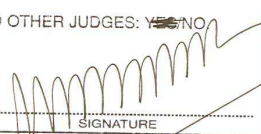


IN THE HIGH COURT OF SOUTH AFRICA
NORTH GAUTENG HIGH COURT
PRETORIA

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES /NO.	
(2) OF INTEREST TO OTHER JUDGES: YES /NO.	
(3) REVISED. ✓	
27/03/2009 DATE	 SIGNATURE

DATE: 27/3/2009

CASE NR: 41242/06

In the matter between:

A GRACEFFA

PLAINTIFF

versus

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

MAKHAFOLA, AJ:**INTRODUCTION:**

- [1] The plaintiff who is 69 years old has issued summons against the Road Accident Fund for damages suffered by him on account of being knocked down by a motor vehicle with registration letters and numbers BJX404NC there and then driven by one FGJ Laubscher, the insured driver. The collision occurred between the insured motor vehicle and the plaintiff who was a pedestrian.
- [2] The question of quantum has been settled. The court must now decide the question of liability. The disputes centre on the crossing location. According to the plaintiff he was crossing the road at the intersection in Klerksdorp at the corner of Church and Delver Streets, walking from north to south as indicated on the plan. The defendant in its short plea denied almost all of the allegations contained in the particulars of claim save for partially admitting paragraphs 1 and 2 relating to the names of the plaintiff and the defendant.

CASE FOR THE PLAINTIFF:

- [3] Antonino Graceffa testified that he was involved in a motor accident on 2 January 2002 in Klerksdorp at or near the intersection of Delver and Church Streets. The intersection is robot controlled. When the insured vehicle collided with him it was about 10:30 to 11:00. He was on his way to Checkers and he was walking. According to him he arrived at the robot and waited for it to turn green before he could cross. When the robot turned green, and whilst he was walking across the street, he found himself on the ground on the other side of the road, because a small van had hit him. From the collision with the van he sustained injuries to his right hand side of the hip and foot.
- [4] Petro Antonio Graceffa is the son of the plaintiff. He had received a phone call from his brother, telling him that his father had been knocked down by a motor vehicle. He proceeded to the scene where he found his father lying. He also found the driver of a light coloured bakkie there. The driver of the bakkie went to him and told him that he was not from Klerksdorp. He further told him that when he look up he just saw his father in front of the bakkie. He found the bakkie at the crossing, further down north. The defendant's case was closed without calling any witness to testify.

THE LAW:

- [5] In FISHER V MALGA 1937 TPD 261 at page 266 Greenberg J stated that: "until the court has all the facts before it, until it knows all the circumstances that combined to produce the result which was observed, it cannot say definitely that the Defendant was negligent."
- [6] This is not a case where there is mutually destructive evidence because the evidence of the defendant is not before the court. The court relies, and will have to decide the outcome of this case on the evidence of the plaintiff and his witness. The court relies also on the versions put to the plaintiff especially "the admission that the driver admits he did not see you, he saw you just before he hit you in front of the vehicle."
- Vide:** NATIONAL EMPLOYER'S GENERAL INSURANCE V JAGERS 1984 (4) SA 437 (ECD) at 440 d-g and NATIONAL EMPLOYEES MUTUAL INSURANCE ASSOCIATION V GANI 1931 AD 187. In the circumstances of this case, the principles enunciated in above two cases do not apply.

[7] During cross-examination the plaintiff admitted that when he collided with the bakkie he did not see where it had come from. The plaintiff should have kept a proper look out when he entered the intersection to cross over the road. The fact that the robot was green for him did not absolve him from the duty of care.

[8] On the flip side of the coin the insured driver as a reasonable driver was expected to have taken reasonable steps to ensure that it was safe to cross an intersection by keeping a proper lookout for pedestrians crossing the road. If the driver knows what to do, but does not care at all, this amounts to reckless driving which is more serious than negligent driving. The principle expressed in the following criminal cases is sufficiently instructive.

Vide: R V RUNDLE [1953(2)] SA 662 (SR)

R V LEVINE 1927 TPD 949.

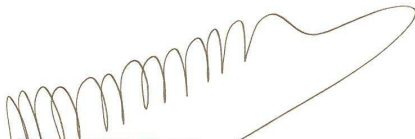
[9] On the totality of the evidence before court it is clear that both the plaintiff and the insured driver were proportionally negligent. In the result I find as follows:

- (a) that both the plaintiff and the insured driver were negligent;
- (b) that both the plaintiff and the insured driver have by their negligence contributed to the collision in question;
- (c) that the plaintiff was 20 % negligent and the insured driver 80 % negligent;
- (d) that the plaintiff has succeeded to prove 80 % of his damages;

[10] In conclusion, I make the following order:

- (i) the defendant is liable for 80 % of the damages suffered by the plaintiff;

- (ii) judgment is granted on the basis of 80 % to 20 % in favour of the plaintiff in terms of the provisions of the Apportionment of Damages, ACT 34 of 1956;
- (iii) the draft order marked "XX" is made an order of court.



K MAKHAFOLA
ACTING JUDGE OF THE HIGH COURT

Advocate for Applicant:
Attorney for Applicant:
Advocate for Defendant::
Attorney for Defendant:

Adv. AG Horak
Van Zyl le Roux Attorneys
Adv. E Seima
Rangath Attorneys