

**THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

21/01/2016

Case no: 50051/2014

NOT REPORTABLE

NOT OF INTEREST TO OTHER JUDGES

REVISED

PETRUS JACOBUS HERBST

PLAINTIFF

And

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

MODIBA J:

[1] The Plaintiff sues the Road Accident Fund for personal injuries sustained in a motor vehicle accident.

[2] Merits were separated from quantum in terms of rule 33(4) of the uniform rules of court and the quantum trial postponed sine die. The trial proceeded only in respect of merits.

[3] The Plaintiff testified that on 17 February 2013 at about 7am on the R38 road between Bethal and Standerton, the motor vehicle which he was driving was involved

in a collision with an unidentified motor vehicle driven by an unidentified driver.

[4] As he was driving' on this road he noticed the unidentified motor vehicle ahead of him. It was driving at an unusually low speed for the type of road they were driving on. He decided to overtake it. Prior to overtaking he observed the unidentified motor vehicle to anticipate an action by the unidentified insured driver. After ensuring that it was safe to commence with an undertaking maneuver, he began to overtake. In that process, the unidentified motor vehicle suddenly moved to the right onto his path of travel, causing the motor vehicle collision.

[5] Where .the collision occurred is a single. carriage road. on both sides. The road is straight with no in-roads. At the time of the collision the road was being repaired. New tar had been laid on the road and the road surface was not marked. The weather was clear and there was sufficient natural light as one would expect for a late summer morning in the Gauteng Province.

[6] He tried to avoid a collision with the unidentified motor vehicle by moving to his further right. He lost control of his motor vehicle, and it overturned. His next recollection was finding himself in the overturned car. It had landed in water on the side of the road. He managed to get out of the car. He realized that his right arm was broken. He had to support it with the other hand. He made his way to the main road. He was dazed and confused. His next recollection is when he was transported by ambulance to hospital.

[7] The Defendant did not put any version before court. Its counsel only sought to test the Plaintiff's version in cross-examination.

[8] In its plea the Defendant admitted the collision but placed the negligence of the insured driver in dispute. Counsel for the Defendant cross examined the Plaintiff on a sworn statement he deposed to on 9 September 2013 where he started that the collision occurred when the unidentified motor vehicle suddenly turned right on his path of travel. He clarified that by using the word turned right he meant that the unidentified motor vehicle moved right to his path of travel as he has testified. He cannot account for the reason for the move taken by the unidentified driver.

[9] Counsel for the Defendant submitted that the court ought to reject the Plaintiff's evidence on his own version because on a straight road, there is no reason why the unidentified motor vehicle would suddenly turn right. She argued that the probable conclusion to draw from the Plaintiff's evidence is that no other motor vehicle was involved in the collision.

[10] This is one of the most bizarre Road Accident fund claims I have ever come across. The Defendant has a statutory duty to investigate motor vehicle accidents that result in personal injuries for which it has received claims. It is common cause that the Plaintiff has complied with all statutory requirements relating to the Plaintiff's claim. Absolutely no investigation has been undertaken by the defendant's representatives in respect of the plaintiff's claim. The defendant has neglected to answer to the plaintiff's request for further particulars for trial as well as questions requested at the pre-trial conferences held on 21 August 2014 and on 4 November 2015. In the result, the plaintiff came to court in-apprised of the defendant's defence.

[11] The defendant came to court with a plea in which he pleads a bare denial of the allegations in the Plaintiff's particulars of claim and with no version to contradict the plaintiff's allegations in a bizarre hope that the plaintiff fails to withstand cross-examination. There is no duty on a plaintiff to explain the reason for movements of the unidentified motor vehicle. The defendant has not shown that the plaintiff failed to take the steps that a reasonable person in his position would have taken to avert the collision. There is therefore only one version before court. I find that the sole cause of the foresaid motor vehicle collision is the insured driver.

[12] I am satisfied that the plaintiff has discharge the onus on him to prove that the defendant is 100% liable for damages that he sustained in the foresaid motor vehicle collision.

[13] In the premises, I make the following order:

ORDER

1. The defendant shall pay the plaintiff 100%. of his proven agreed damages.

2. The trial in respect of quantum is postponed sine die.
3. The defendant is ordered to pay the plaintiff's costs of suit, which costs shall include:
 - 3.1. The costs of the preparation of trial bindles;
 - 3.2. The costs of counsel and attorney, inclusive of their full day fees for 23, 25 and 26 November 2015;
 - 3.3. The reasonable costs of attorney including the following costs: travelling, court attendance, preparation for pre-trial conferences including preparation of pre-trial minutes and attendance at pre-trial conferences;
 - 3.4. Trial preparation costs for the attorney;
 - 3.5. The plaintiff is declared a necessary witness. The defendant shall pay his travel and accommodation costs for the purpose of attending trial;
 - 3.6. Counsel's reasonable trial preparation costs.
4. The defendant shall pay the plaintiff's costs of suit as taxed or agreed within 30 (thirty) days from the date of taxation or settlement of such costs, failing which the defendant shall be liable to pay interest thereon at a rate of 9% per annum, from and including the date of taxation of settlement up to and including the date of final payment.
5. The defendant shall pay the plaintiff's costs of suit into the following bank account:

Account name: Gildenhuys Malatji Inc.

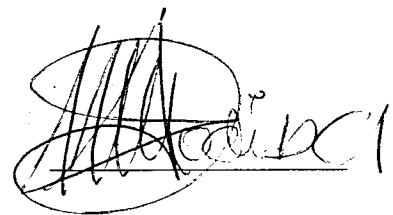
Bank: ABSA Bank

Branch: Brooklyn

Account number: [...]

Branch code: 335345

Reference: G Erasmus/01700987

A handwritten signature in black ink, appearing to read 'Modiba J', is written over a circular stamp or seal.

MODIBA J

DATE OF HEARING: 26 November 2015

DATE OF JUDGMENT: 21 January 2016

LEGAL REPRESENTATIVES:

Counsel for the Appellant/ Plaintiff: Adv. JC van Eeden

Instructed by: Geldenhys Malatji

Counsel for the Respondent/ Defendant:

Instructed by: TM Chauke Incorporated