



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

(1) **REPORTABLE:** ~~YES~~/NO
(2) **OF INTEREST TO OTHER JUDGES:** ~~YES~~/NO
(3) **REVISED**

06/06/2017
DATE

SIGNATURE

CASE NUMBER: 37617/16

DATE: 06 June 2017

SHADRACK DHLIWAYO MAZANGWA

Plaintiff

V

ROAD ACCIDENT FUND

Defendant

JUDGMENT

MAKAMU AJ:

It was agreed at the commencement of trial that merits be separated from the quantum
and the matter proceeded on merits:

- [1] The Plaintiff Mr Mazangwa was coming from work on the 7th of July 2014, when he was bumped or knocked by an insured motor vehicle driven by the insured driver Ms Duduzile Precious Thabethe. He alighted from a taxi and decided to cross the road to the opposite side. When he almost reached the centre barrier dividing the two carriage ways a collision took place. He fell down and when he stood up, decided to run away as he was confused. The Insured driver and her husband with an assistance of another man gave chase and caught the Plaintiff and brought him back to the scene where they tried to help him by taking him to the clinic.
- [2] He was eventually taken to the clinic by the insured driver and her husband at Dobsonville. He could not be assisted and they took home. The following day he was taken to the clinic at Meadowlands where he was treated.
- [3] The Plaintiff did not see where the insured vehicle came from as he looked at the robot and saw it was green for him to cross the road although he did not cross at the demarcated pedestrian crossing. According to him there was no vehicle approaching.
- [4] He did not feel any pains on the day of the accident he could only feel pains the following day as he could not walk properly. When he came back from the clinic and police station it is then that he saw pieces of glass falling from his head.

[5] The insured driver Ms Precious Thabethe testified that she was driving from Johannesburg to Dobsonville coming from her parental home going to her place. The traffic light became red and she stopped. When it turned green for her to drive she pulled away from the traffic light. She engaged the second gear driving at approximately 30kph when she heard her husband who was a passenger shout her name, at the same time she heard a bang noise from her left side and she saw the plaintiff on the windscreen of her car.

[6] The plaintiff fell to the ground and stood up and started to run. The witness (insured driver) and her husband gave chase and with the assistance of the plaintiff's friend they managed to catch him. They asked to take him to the clinic and he resisted but with the help of his friend they managed to take him to the clinic which unfortunately they could not help. They took him home and early in the morning the following day they took him to Meadowlands clinic where he got help.

The plaintiff suffered the following injuries: head injuries that led to loss of sight on his right eye, abrasions on his shoulder and leg.

[7] The Plaintiff was referred to St John eye hospital but did not go and he did not advance any reason why he did not want to go to the eye hospital.

[8] The witness said she did not see the plaintiff as he appeared from her blind spot running although in cross examination she conceded that she did not see him

running as she only saw him when he fell on the windscreen but she was certain that he came from her blind spot as a result he also broke the left rear view mirror

[9] The parties agreed on the following facts:

1. That the accident took place on the 7th of July 2014 at Van Onselen road between Meadowlands zone 9 and 10, although the plaintiff said it was 3m away from the intersection and the defendant said it was 12m away from the intersection.
2. Both parties agreed that the insured driver was the driver of the insured vehicle.
3. The accident occurred at around 19h00 and 20h00 near the traffic intersection.
4. The insured vehicle bearing registration numbers [N...] driven by Ms Duduzile Precious Thabathe.
5. At the time of accident the plaintiff was a pedestrian
6. The insured vehicle was travelling from Johannesburg direction to Dobsonville (East to West)
7. The plaintiff was crossing the road from Johannesburg to Dobsonville from South to North.
8. The plaintiff crossed the road where there is designated or demarcated dedicated pedestrian crossing (J walking) and it was not an intersection.
9. The point of impact between the insured vehicle and the Plaintiff was in the lane closest to the centre barrier separating two carriage ways.
10. That the Plaintiff got up after collision and fled from the scene.
11. That the Insured driver and her husband gave chase until they caught the Plaintiff and took him to the clinic.

[10] The Plaintiff crossed the road a distance from the intersection where there is a dedicated demarcation for pedestrian crossing, in other words he did what they normal call J walking and he gave two reasons for such conduct that, they always cross there after alighting from the taxi and that everybody does it that way.

[11] It is very clear that he did not see the Insured vehicle coming and there is no suggestion that there is any obstruction that could have prevented him from seeing the vehicle taking off from the intersection when the traffic light turned green. He did not deny that the Insured vehicle did stop at the traffic light as he just did not see the vehicle, period.

[12] The Insured driver did not see the Plaintiff because he came from her blind spot on the side hence he collided with the left side rear view mirror, according to her evidence

[13] In *Santam Insurance Co Ltd v Gouws* 1985(2) SA 629 (AD) at 634-636, it was held that: "The duty of a motorist who approaches an intersection and enters it with green in his favour is to have regard to the reasonable possibility that traffic which entered lawfully, may still be in the intersection." However in this case the Insured driver had just pulled off away from the intersection and according to the Insured driver there was nobody on the road until she heard her husband scream out her name and she saw the Plaintiff fall on the windscreen from her blind spot.

[14] In *National Employer's Mutual General Insurance Association v Gany* 1931 AD 187 the court stated: "*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 is false:*"

This technique was followed in *Stellenboisch Farmers Winery Group LTD* and another v *Martell ET CIE and others*, 2003(1) SA 11 (SCA) on paragraph 1: "*The technique generally employed by courts in resolving factual disputes of this nature may conveniently be summarised as follows: To come to a conclusion on disputed issues a court must make findings on (a) the credibility of various factual witnesses; (b) their reliability; and (c) the probabilities. As to (a), the court's findings on the credibility of a particular witness will depend on its impression about the veracity of the witness. That in turn will depend on variety of subsidiary factors, not necessarily in order of importance, such as (i) the witness' candour and demeanour in the witness-box, (ii) his bias, latent and blatant, (iii) internal contradictions in his evidence, (iv) external contradictions with what was pleaded or put on his behalf, or with established fact or with his own extracurial statements or actions, (v) the probability or improbability of particular aspects of his version, (vi) the calibre and cogency of his performance compared to that of other witnesses testifying about the same incident or events, As to (b), a witness' reliability will depend, apart from the factors mentioned under (a) (ii), (iv) and (v) above, on (i) the opportunities he had to experience or observe the event in question and (ii), the quality, integrity and independence of his recall thereof. As to (c), this necessitates an analysis and evaluation of the probability or improbability of each party's version on each of the*

disputed issues. In the light of its assessment of (a), (b) and (c) the court will then, as a final step, determine whether the party burdened with the onus of proof has succeeded in discharging it. The hard case, which will doubtless be the rare one, occurs when a court's credibility findings compel it in one direction and its evaluation of the general probabilities in another. The more convincing the former, the less convincing will be the latter. But when all factors are equipoised probabilities prevail.

[15] The Insured driver had some contradictions in her evidence when she was confronted with what she said in her statement namely: That there was a bar across the street she said she did not say that secondly that she bumped the Plaintiff by the d=front portion of the vehicle but in her evidence she testified that the Plaintiff bumped her vehicle from the front portion as the left side mirror is on the front portion of her car and the windscreen.

[16] The Plaintiff could not really explain and justify why he ran away from the scene after the collision and that he resisted going to the clinic when the Insured driver offered to take him to the clinic, he also could not explain why he refused to receive medical attention at St John eye hospital.

[17] It is not probable that a vehicle that stopped at a traffic light he could not see it when he crossed the road and he did not even see it when it was stationery at the traffic light, it is highly improbable if he was keeping proper look out on the road as he crossed the road.

[18] Road users must always pay attention to use the road responsibly and when it is safe to do so, whether it is a pedestrian or driver of vehicle. The Plaintiff did not see the vehicle before it collided with him and there is no explanation why he did not see the Insured vehicle.

It is very clear that he did not pay a proper look out before he could cross the road, as he was surprised by the vehicle when it hits him. This is very clear as he fled immediately after rising from the ground as he knew that he has done something that is not correct.

[19] It is not true that he fled because he was confused He also initially resisted to be taken to the clinic for fear of his actions.

[20] There is nothing that the Insured driver could have done to avoid the accident as she could have managed to stop before the collision had she seen the Plaintiff since the vehicle was not yet fast from the intersection it was only travelling at approximately 30kph and indeed when she heard the bang and her husband calling her name she managed to stop immediately.

[21] The accident took place due to the fault of the Plaintiff and there is not contribution that the Insured driver made. There was nothing that the Insured driver could have done to avoid the collision

[22] Therefore I make the following order

The Plaintiffs claim is dismissed with costs.



M.S MAKAMU

ACTING JUDGE OF THE HIGH COURT

Appearances:

<i>Counsel for the Plaintiff</i>	: Adv. R L Kayingo
<i>Instructed by</i>	: Kotlolo Attorneys
<i>Counsel for the Defendant</i>	: Adv. Erasmus
<i>Instructed by</i>	: Rambevha Morobane Attorneys
<i>Date Heard:</i>	31 May 2017
<i>Date of Judgment:</i>	06 June 2017