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**HIGH COURT OF SOUTH AFRICA  
(GAUTENG DIVISION, PRETORIA)**

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

CASE NO: 72078/2017

12/2/2020

In the matter between:

**HELENE HENDRINA LAWRENCE**

Applicant

and

**ROAD ACIDENT FUND**

Respondent

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**JUDGMENT**

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**DAVIS, J**

[1] This is the judgment in a trial regarding a damages claim instituted by the Plaintiff, a 58 years old female against the Road Accident Fund (the "RAF").

[2] The date, approximate time and place of the collision are all common cause. So are the details of the vehicles involved and the drivers thereof, being the Plaintiff and -the insured driver respectively. The only dispute relates to the mechanism of the collision and the extent of negligence of the two drivers. The insured drive r avers that the Plaintiff drove into the back of his truck while he was reversing and

the Plaintiff claims the insured driver turned the truck across her lane of travel.

[3] Witnesses

3.1 The first witness called by the Plaintiff was Mr Erasmus. He was not strictly speaking a direct eye-witness to the actual collision, but he was at the scene thereof. He testified that his place of employment was on Moot Street in Pretoria which is where the collision occurred. On the morning in question, he was busy loading his vehicle in preparation for the day's tasks. He observed the truck driven by the insured driver approaching from his left-hand side prior to the collision. He alleged that the truck had been reversed. he would have seen this as he often, when around, assisted trucks in reversing from the premises visited by the insured driver which, although not adjacent to the witness' place of employment, are close by, on the same side of the street. The assistance normally rendered by the witness would be to stop oncoming vehicles and to indicate to the driver of a truck that it was safe to reverse into the road. He did not do any of this on the morning in question. After having noticed the truck driven by the insured driver on his left-hand side. he then heard a car hooter sounding and briefly saw the 1400 LDV driven by the Plaintiff approaching from the right hand side. She was, accordingly to the witness approximately two bakkie-length's away when he heard the screech of tyres. Shortly thereafter the impact took place, but the actual collision was obscured from the witness' view by his own truck. He only heard the impact. According to the witness, the truck driven by the insured driver had turned across both lanes of the road on the side of the Plaintiff and she struck the left-hand rear wheel of the truck. She was in the right-hand of the two lanes of traffic on her side of the road. Later in his evidence he stated that he only saw the back of the Plaintiffs LDV prior to the impact and that she might have been three vehicle lengths away when he heard her hooter. He estimated her speed to have been below 60km/h. According to the witness when he had gone across to check on the Plaintiff who was still sitting in her vehicle after the

impact, the insured driver came over and said "Ma'm are you OK? Sorry, I did not see you". The witness denied the version of the insured driver having reversed. He had some difficulty in explaining the extent and location of the damage to the Plaintiff's vehicle. which had the largest impact on his front left hand side. This was caused, according to the witness' version in court, by the truck's rear wheel when the truck had been perpendicular to the Plaintiff's vehicle at the time of the impact.

- 3.2 At the commencement of the trial, the parties indicated that a bundle of documents discovered by them and which had been. handed up, were what they purported to be. According to a minute of one of their pre-trial conferences. despite not agreeing to the correctness or the contents of the documents. they agreed that the documents would constitute evidence by the mere production thereof. Both of the parties, but in particular the Plaintiff, referred the court to some of the documents. Such as the officer accident report without it otherwise having been proved as evidence. Included in the bundle were also various photographs of both the Plaintiff's vehicle as well as the location of the collision. all taken some time after the collision (and not contemporaneously). Reference to and use of these photographs were also made without formal proof. One of the documents the Plaintiff's counsel studiously avoided, however was a previous affidavit by Mr Erasmus. Therein, he still placed the blame on the insured driver, but described nothing of the alleged perpendicular side-impact he testified about in court when he in detail, with the aid of the aforementioned photographs pointed out where the front and the rear of the truck had allegedly been positioned at the time of impact. In contrast, in his prior affidavit, the collision is, without reference to any hooting or braking on the part of the Plaintiff. described as a "head-on collision". I gave the parties the opportunity to address me on these and other discrepancies in the evidence and postponed the matter for the delivery of written heads of argument The Plaintiff's only answer

therein to this issue was that the previous affidavit of the witness should be ignored as it had not formally been introduced into evidence. I shall deal with this aspect later.

- 3.3 The Plaintiff testified that, on the morning in question, she was driving in a westerly direction in Moot Street when the truck, driven by the insured driver, approached from the opposite direction. She knew the road as she was on her way to her sister's house close by. She estimated her speed to have been approximately 55 km/h. She was in the right-hand lane of the two lanes in her direction of travel as she intended to turn right two blocks later. When she was 5 or 10 meters from the truck, it "cut" in front of her without prior indication or warning. She had no opportunity to hoot, brake or swerve and hit the truck on its left rear wheel. She sustained serious injuries but remained conscious and verbally lashed out at the driver of the truck when he crone over to ask if she was all right. She also alleges that the driver of the truck said "sorry, ma-m1 did not see you".
- 3.4 After the commencement of the trial had been somewhat delayed, the insured driver, much to the expressed surprise of the Plaintiff and her legal team, made his appearance. His evidence was that he had uploaded his truck at his employer's yard in Silverton to the North-east of Pretoria as per usual. After the necessary paperwork for his intended deliveries had been concluded, he proceeded with his daily activities, eventually travelling west in Moot Street where he turned into the premises where he had to make a delivery on the same side of the street as the premises of the witness Erasmus' place of employment. After the delivery, he checked that the road was clear and reversed back into Moot Street, intending to thereafter to proceed to a further delivery point to the west of Pretoria in Atteridgeville.. He slowly reversed across the two southern lanes of Moot Street when he heard an impact at the rear of his truck. He stopped, jumped out and found that the Plaintiff had driven into the rear left-hand corner of the truck, scratching the paint and damaging the taillight. He saw that the

elderly Plaintiff had been injured and said --"sorry, sorry", not meaning any admission. but expressing sympathy as one would do, for example, when seeing a person slipping. falling and getting injured.

- 3.5 There are some a factual disputes between the witnesses as to what happened after the incident as to whether people had gathered, started harassing the injured driver. stolen his wallet from his truck and whether had he fled the scene or not. The insured driver said he was forced to leave the scene in these circumstances whereupon he immediately proceeded to the Hercules police station to report the accident. Upon his return to the scene, the Plaintiff's vehicle was no longer there. Nothing much runs on this.

[4] In an article "Truth in the courtroom" by Edward Jay Epstein in the August 1969 edition of Commentary the general perception of a trial is described as being this: --"*It is looked upon as a fact-finding operation, an occasion for the public exposure of all known information regarding a given crime. The general assumption is that, if fairly conducted, a trial will yield the whole truth; aside from meting out justice ... ii will provide complete information ...*". The same can be said about civil trials where the adversarial system and the testing of evidence by way of cross-examination is perceived to ensure that the truth will prevail (the effectiveness of cross-examination in this otherwise noble quest is. however sometimes questioned. See: Schirrkard, Does cross-examination enhance accurate fact-finding?, SALJ 2019 Vol 136 Part 1, 27 - 41).

[5] In this case, even cross-examination could not provide accurate answers to the following questions:

- What was the exact mechanism of the collision?
- Did the plaintiff in fact hoot prior to the collision (and did she have time to do so)?
- Did the Plaintiff apply her brakes at all to the extent that her tyres screeched? Was there time to apply brakes?
- How was the damage to the Plaintiff's vehicle exactly caused and by

what? By the truck's wheel or any other part of the side of the truck? Or did she hit the rear of the truck? Why was her vehicle more damaged on her front left-hand side than the front right-hand side (quite severely so)?

- Had the truck driver indeed done a delivery on that day at the address he had indicated? What was delivered etc. (this could easily have been ascertained)? If he had done a delivery and thereafter proceeded west, it would support his version of having reversed.

[6] In Stellenbosch Fanner's Winery Group Ltd & another v Martell et Cie & others 2003 (1) SA 11 (SCA) the exposition of the manner in which evidence is to be assessed and compared when conflicting versions are presented bears quotation:

*“The technique generally employed by courts in resolving actual disputes of this nature may conveniently be summarized as follows: To come to a conclusion on the disputed issues a court must make findings on (a) the credibility of the various factual witnesses; (b) their reliability; and (c) the probabilities. As to (a), the court's finding on the credibility of a particular witness will depend on its impressions about the veracity of the witness. That in turn will depend on a 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 facts or with his own extrajudicial statements or actions, (v) the probability or improbability of particular aspects of his version, (vi) the caliber 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 m dependence of his recall thereof As to (c). this necessitates an analysis and evaluation of the probability or improbability of each parry's version on each of the dispute 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”.*

[7] Evaluation:

If one applies the technique proposed by the Supreme Court of Appeal, the following emerges:

- 7.1 The so-called eye-witness did not witness the actual collision. His lack of ability to observe might impact negatively on his recall of the remainder of his actual observations. The finding-of an elderly lady in a small LDV having collided with a huge truck clearly -made the longest and strongest impact on his memory. These two factors (lack of observance and emotional impact) also lead. to internal contradictions in his evidence regarding where exactly the point of impact between the bodies of the two vehicles took place. These contradictions were exacerbated by the extent and location of the damage to the Plaintiff's vehicle. His evidence also suffers from the external contradictions with his prior affidavit. As a document presented by agreement, the affidavit had evidential status, the contents of which, being not inadmissible hearsay attributable to another person carries some weight (See also: Visser v 1Life Direct Insurance Ltd 2015 (3) SA 71 SCA at par [8] (majority decision) and paras [3-9] and [4-8] (minority decision)) and Absa Bank Ltd v ONS Beleggings BK 200(4) SA 27 (SCA) at [6] and the cases quoted there.

7.2 The Plaintiffs own evidence suffers from external contradictions with the “eye-witness” regarding time and opportunity to boot and brake and on internal inexplicability of how her vehicle became damaged in the way it did.

7.3 The truck driver testified in a clear and adamant fashion and impressed as a witness but floundered when he could not explain why, when reversing, he did not see the Plaintiff approaching on a flat open road if he had been keeping the proper look-out which he said he had prior to reversing.

7.4 There are also the following objective facts against which the various discrepancies must be measured:

- The collision took place not more than *two* vehicle lengths prior to a t-junction intersection to the Plaintiffs right (as can clearly be seen from photograph 7 of the photographs produced on behalf of the Plaintiff).
- The intersection is furnished with a "zebra-stripe" pedestrian crossing and pedestrians are visible in the area on multiple of the photographs.
- Moreover, the two lanes in the Plaintiff's direction of travel, both have painted yield signs and there is a yield sign posted on the left-hand side of the road. These signs imposed obligations on traffic travelling in the direction that the Plaintiff had been travelling in.
- The address at which the truck driver had made his delivery that morning (and this evidence had remained uncontested) is located, if not actually on the left-hand side of the t-junction (i.e its straight angle) then immediately opposite the yield-sign regulated portion thereof.
- In short, the Plaintiff had approached the t-junction where there are yield signs and a pedestrian crossing, all at the exact location where the truck had done a delivery.

7.5 One must add to the above, the improbabilities as to why, if the truck driver



had come from the eastern side of town had, travelled down the same road as the Plaintiff in the same westerly direction for purposes of his delivery, he would. on the Plaintiff s version, come back in an easterly direction if his next delivery was further on in south-westerly and direction. The probabilities favour him simply reversing after bis delivery and thereafter continuing in a westerly direction down Moot Street.

7.6 Raving weighed up all the above, I find that the Plaintiffs version of how the collision occurred cannot be accepted. I find that the truck had indeed been reversed into the road from the left-hand side when the Plaintiff, travelling in the right-hand lane of the two lanes (as all the witnesses agree on) collided with the left-front side of her vehicle into the rear of the truck. This construction accords with the damage on her vehicle. She was clearly not keeping a proper look-out and travelled at a too high a speed for one responsibly approaching the t-junction described above. The truck driver, on the other hand must have seen the approaching Plaintiff. On a construction of the scene as clearly depicted on the photographs she must have been clearly visible to him for some time prior to the collision and, reversing then as he said he did was negligent.

7.7 It appears then that both drivers had been at fault and, in my view, equally so. A 50% apportionment must consequently be applied to the damages proven by the Plaintiff.

[8] Damages

8.1 The Plaintiff was 56 years old at the time of the accident, and she is currently 58 years old. At the time of the accident she was self-employed.

8.2 The Plaintiff sustained the following injuries:

- (a) Left femur fracture
- (b) Right open tibia and fibula fractures
- (c) Left ankle fracture

- (d) Fracture of the sternum
- (e) Fracture of the ribs
- (f) Laceration to lower lip
- (g) Fracture of the left ring finger and finger.

She -was admitted at hospital for 43 days. She suffered a left below knee amputation and it was later in June 2018 converted to left above knee amputation.

- 8.3 The parties are in agreement as to the calculation of the Plaintiffs past and future loss of earnings and the contingencies actuarially applied. I have - perused the calculations and read the various reports of the numerous experts employed by the parties and I agree that this calculation is a fair reflection of the Plaintiffs loss. It amounts to R453 783, 65.
- 8.4 The parties' counsel have referred to the following cases in their very useful and comprehensive heads of argument in respect of the claim for general damages: Shadrack v RAF 2013 (6D2) QOD 15 GP, Goba v RAF 2013 JDR 1504 (ECG); Bonesse v RAF 2014 (7A3) QOD 1 (ECP); Joko v RAF 2016 (7A2) QOD 1 (WCC), Rens v MEC of Health Northern Cape Provincial Department (2009) 6 QOD D2-1; Pretorius v South British Insurance 1963 1C & B 259; Gallant v RAF 20045 C & B E2-29 Magule v AA Mutual Insurance 1978 2 C & B 739, Taylor v SA Railways & Harbours 1958 1 C & B 257, Jardine v SA Mutual Fine & General Insurance 1974 2 C & B 449 and various unreported judgments. I had regard to these comparable cases and the Plaintiff's loss of amenities of life and estimate her general damages.at R1, 4 million.
- 8.5 The amount of past medical expenses has been settled between the parties and it is clear that she qualified for an undertaking as envisaged in section 17 of the RAF 56 of 1996.

[9] I find no reason why costs should not follow the event, the Plaintiff being substantially successful in proving a claim against the RAF.

[10] Order

1. The Defendant is liable for 50% of the plaintiff's damages pursuant to a motor vehicle accident in which she was involved on 8 March 2017;
2. The Defendant shall therefore pay to the Plaintiff the sum of R226 891, 83 in respect of past and future loss of earnings and/or earning capacity;
3. The Defendant shall pay to the Plaintiff the sum of R13 053, 50 in respect of past medical expenses;
4. The Defendant shall pay to the Plaintiff the sum of R700 000, 00 in respect of general damages.
5. In the event of the aforesaid amount not being paid timeously, the Defendant shall be liable for interest on the amount at the rate of 10% per annum, calculated from the 15<sup>th</sup> calendar day after the date of this order to date of payment.
6. The Defendant shall furnish the Plaintiff with an undertaking in terms of Section 17(4)(a) of Act 56 of 1996 for payment of the medical expenses (including caretaking from Johanna Elizabetha Bezuidenhout, ID [....]) future accommodation of the Plaintiff in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to her resulting from the injuries sustained by the Plaintiff in the motor vehicle accident that occurred on 08 March 2017, to compensate the Plaintiff in respect of the said costs after the costs have been incurred and upon proof thereof limited to 50%.
7. The Defendant shall pay the Plaintiff's taxed or agreed party and *party* costs on the high court scale. subject thereto that:
  - 7.1 In the event that the costs are not agreed
    - 7.1.1 The Plaintiff shall serve a notice of taxation on the Defendant's attorney of record;
    - 7.1.2 The Plaintiff shall allow the Defendant 14 (Fourteen) court days

from date of allocator to make payment of the taxed costs.

7.1.3 Should payment not be effected timeously. the Plaintiff will be entitled to recover interest at the rate of 10% per annum on the taxed or agreed costs from date of allocator -w date of final payment.

7.2 Such cost shall, subject to the Taxing Master' s discretion, include but not be limited to:

7.2.1 The- costs incurred in obtaining payment of the amounts mentioned in paragraphs 2, 3, 4 and 5 above;

7.2.2 The costs of and consequent to the employment of Counsel, including counsel's charges in respect of the trial, as well as reasonable preparation and the drafting of heads of argument.

7.2.3 The costs of all medico-legal, radiological. actuarial. accident reconstruction, pathologist, joint minutes and addendum reports obtained by the Plaintiff and furnished to the Defendant and/or its attorneys, including, the following:

7.2.3.1 Dr P Engelbrecht- Orthopaedic surgeon;

7.2.3.2 Dr Wiele - Orrhotics;

7.2.3.3 Dr Annalie Pauw - Clinical Psychologist;

7.2.3.4 Anneke Greeff Incorporated- Occupational Therapist;

7.2.3.5 JJ Prinsloo &. Associates - Industrial Psychologist;

7.2.3.6 Argen Actuarial Solutions - Actuary (present at court).

7.2.4 The reasonable and taxable preparation, qualifying and reservation. foes, if any, in such amount -as allowed by the Taxing Master, of the following experts:

7.2.4.1 Dr P Engelbrecht- Orthopaedic surgeon;

7.2.4.2 Dr Wiele - Orthotics;

7.2.4.3 Dr Annalie Pauw - Clinical Psychologist;

- 7.2.4.4 Anneke Greeff Incorporated - Occupational Therapist;
- 7.2.4.5 JJ Prinsloo & Associates - Industrial Psychologist;
- 7.2.4.6 Argen Actuarial Solutions - Actuary (Present at court).

7.2.5 The reasonable costs and time spent travelling incurred by and on behalf of the Plaintiff in, as well as the costs consequent to attending the medico-legal examinations requested by both parties;

7.2.6 The costs and time spent travelling consequent to an inspection in loco;

7.2.7 The costs consequent to the Plaintiffs trial bundles and witness bundles;

7.2.8 The cost of holding all pre-trial conferences, as well as round table meetings and judicial case management conference at court between the legal representatives for both the plaintiff and the Defendant, including counsel's charges in respect thereof;

7.2.9 The cost of and consequent to compiling all minutes in respect of pre-trial conferences

7.2.10 The reasonable travelling costs and time spent travelling of the Plaintiff, and those who are hereby declared necessary witnesses:

7.2.11 Mrs JE Bezuidenhout - sister and care giver;

7.2.12 Mr GJ Erasmus - Eyewitness to accident.

7.2.13 The reasonable costs for the interpreter Mr P Maleka (present at court).

8. The amount referred to above will be paid to the Plaintiff's attorneys, Spruyt Incorporated, by direct transfer into their trust account, details of which are the following:

Standard Bank

Account number: [...]

Branch code: Hatfield (01 15 45)

REF: SD3004

9. It is noted-that there *is* no contingency fee agreement between the Plaintiff and Spruyt Incorporated Attorneys.

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N DAVIS

Judge of the High Court  
Gauteng Division, Pretoria

Date of Hearing: 02 & 03 December 2019

Judgment delivered: 14 February 2020

APPEARANCES:

For the Plaintiff: Adv S G Maritz

Attorney for Plaintiff: Spruyt Inc, Pretoria

For the Defendant: Adv O J Ntshole

Attorney for Defendant: Maponya Inc., Pretoria