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**IN THE HIGH COURT OF SOUTH AFRICA
(LIMPOPO LOCAL DIVISION, THOHOYANDOU)**

CASE NO: 521/2017

(1) REPORTABLE: YES

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED

Date: 18/10/2024

Signature:

In the matter between:

ITANI WINNERS MULAUDZI

PLAINTIFF

AND

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

MAKHAFOLA J:

INTRODUCTION

[1] The Plaintiff has issued summons against the Road Accident Fund (RAF) for compensation for the injuries sustained in a motor collision having occurred on 19 September 2016 at R578 Bungeni public road.

[2] The collision between the kombi driven by him, a Toyota Quantum with registration letters and numbers F[...], and Toyota Hino Truck (the truck) with registration letters and numbers C[...] driven by Fhatuwane Tshivhase, the insured driver, occurred due to the sole negligence of the insured driver who failed to stop at a stop sign he alleged.

[3] It is common cause that the Plaintiff was driving from North to South towards the intersection which is controlled by 4-way stop signs. Each driver alleged that, he had stopped at the stop sign before crossing the intersection. This is the only dispute to be decided by the court.

[4] The trial has been separated in terms of Rule 33(4) of the Uniform Rules of Court to as to adjudicate the merits first.

AD THE PLAINTIFF'S CASE.

[5] *In casu*, the Plaintiff testified that his kombi was carrying school children because it is a school bus. He was going to fetch other school children because on board were only seven of them. He transports the children from Mbongeni to Levubu and Tshakhuma.

[6] According to the Plaintiff, visibility was not clear because of the mist. The headlamps of the kombi were switched on, and he was driving from North to South direction.

[7] The road he was travelling on has a hilltop from where he was able to see the R578 public road that goes from West to East. He was travelling at 40 kilometers per hour and there were no motor vehicles travelling to his direction except those going in the opposite direction.

[8] At the intersection where stop signs are situated, the road is flat and marked. Each stop sign has two lanes for motor vehicles turning left and those proceeding straight.

[9] He arrived at the stop sign of the intersection and stopped. He saw a Great North Bus or accordion bus turning to the left from the R578 road to the North into the road he was travelling on.

[10] He saw only that bus and no other motor vehicle. He had stopped at the stop sign for about two minutes waiting for the bus to turn.

[11] He had seen the truck at a distance of about 100 meters and it did not stop at the stop sign, as he, (the Plaintiff), was entering the intersection.

[12] The cluster of his kombi had not recorded the speed being travelled by him. The speedometer was at zero. When he realized that the truck was driving at a high speed, he tried to stop, but the front portion of his kombi was already in the middle of the intersection.

[13] There were other motor vehicles at the intersection travelling from East to West but there were no stationary cars at the intersection at the stop sign or a car from the East direction.

[14] The truck collided with the kombi by hitting the kombi on its right side and his kombi was damaged on the right hand side door, bumper, headlamps, right-bumper dashboard and front windscreen.

[15] The Plaintiff conceded under cross-examination that, at the time the toolbox on the left hand side of the truck hit the front portion of the kombi that the toolbox got detached from the chassis of the truck.

AD THE DEFENDANT'S CASE.

[16] The insured driver testified that: he was travelling from West to East on the R578 public road in the company of Bele and Mbiza who are males, end route to Sekgosese. Visibility was clear, though the weather was dark and cloudy.

[17] Before he arrived at the intersection of the collision, he had been driving behind two buses. His truck was the third motor vehicle behind the Great North Bus, GT Bus, in front of which was the accordion bus of Phadziri heading to the stop sign. At the corner of the stop sign on the lane turning to the left, passengers bearded the Phadziri Bus.

[18] When the two buses stopped he also stopped because the GT Bus had obstructed his view to see traffic coming from the North. At that time, he was about 200 meters from the stop sign.

[19] At the distance to 200 meters, he could clearly see motor vehicles inside the intersection. At his arrival at the intersection, there were no motor vehicles at the stop signs or in the intersection.

[20] He was able to see motor vehicles at the distance of 900 meters at that time he was approaching the intersection. The distance was the topic they were discussing with his companions. At the stop sign, he was able to see up to 300 meters.

[21] Under cross-examination, he testified that: when he first saw the Plaintiff's kombi it was at a hilltop at a distance of 900 meters and it was the only motor vehicle on the road no other motor vehicles were behind it.

[22] He saw the Plaintiff's kombi driving at a high speed whilst his truck was already in the middle of the intersection and that caused him, the insured driver, to leave his lane and swerve to the oncoming traffic to avoid the collision with the kombi.

[23] At that time, the front portion of the truck was outside the intersection but its rear portion was still in the intersection. That is when the kombi knocked the toolbox at the left-rear wheel of the truck.

[24] While he was stationary at the stop sign, he did see the kombi going towards the stop sign and he drove away from the stop sign.

AD EVALUATION AND FACT ANALYSIS

[25] The issue in dispute is not complex as it pivots on whether one of the parties has stopped or not at the stop sign. The solution is resolved by evidence from both sides of the dispute.

AD PROBABILITIES

[26] It is strange that the Plaintiff saw, only one bus behind which the truck was travelling to the stop sign.

[27] The truck driver described two buses behind which he was driving. He described how the two buses had stopped at an informal bus halt, and that the GT bus turned left into the direction from which the Plaintiff had come.

[28] The Plaintiff was able to see only one bus which turned to where he had come from. He does not testify about the buses having stopped at that informal bus stop, and about passengers boarding the Phadziri Bus which ultimately drove Eastward to Giyani, that the truck driver had observed.

[29] Further to that, the truck driver said, the truck was the third motor vehicle that stopped at the intersection stop sign. His view had been obstructed by the two busses before he stopped at the bus halt. He proceeded to stop at the stop sign from where he drove off Eastwards.

[30] The truck driver testified that he had seen the Plaintiff's kombi on the hilltop about 900 meters away and that they had been discussing the area with his companions.

[31] What the Plaintiff has done was to insist that, the truck driver did not stop at the stop sign without giving the court the lay-out of what he had observed about the truck, and the circumstances that prevailed leading to the collision.

[32] The lay-out of the events by the insured driver was never disputed by the plaintiff, save to say the truck was driven at a high speed and had never stopped at the stop sign.

[33] If what was observed by the truck driver is correct about the two buses, and how they had stopped, why could the Plaintiff not see the Phadziri Bus which had also proceeded straight *en route* the travel of the truck? It is probable that the events leading to the collision are as observed by the truck driver. The truck driver said: visibility was clear though the weather was cloudy and dark.

[34] According to the Plaintiff, there was mist. Asked by the court how far he could see? He testified that in the mist, he could see for a distance of 12 meters only.

[35] Asked about whether the truck was behind the bus when both travelled from the West to East, the Plaintiff's answer was: "I may say so".

[36] In evidence-in-chief when his counsel repeated the question he changed his answer to say: "it was behind the bus". Of course, this is clear that the Plaintiff is not certain whether the truck was behind the bus or not.

[37] These, to a certain extent may mean, he did not see the truck and the Phadziri Bus. It is negligent to drive at a speed of 40 kilometers per hour when the Plaintiff drove towards the intersection when he could only see within the range of 12 meters. The speed of 40 kilometers per hour was elicited for the first time during cross-examination.

[38] The Plaintiff is bound to mention in his evidence-in-chief the speed he was driving to support his allegation that he was not driving at excessive speed.

AD IMPROBABILITIES

[39] The Plaintiff contradicted himself materially when he said that on entering the intersection he could see the truck at a distance of about 100 meters. Whereas, he had testified that there was mist, and he could only see at a distance of 12 meters. It

is improbable for the Plaintiff to have seen the truck driving at a high speed at a distance of 100 meters in the mist.

[40] In terms of his evidence relating to the mist, he did not see the truck at that distance. It is also improbable that he drove from the stop sign into the intersection at zero speed if he intended to drive away. Moreover, he gave no reason to drive at that zero speed.

[41] The Plaintiff conceded to the version that: the kombi collided with the truck's body next to its left-rear wheel. This concession gives credit to the truck driver's testimony when he said that at the time of the collision the kombi hit the truck. It can safely be held that the truck had entered the intersection first as testified to by the truck driver which had been denied by the plaintiff.

[42] Paginated page 3 of the Accident report AR depicts on top of the wording "Accident Sketch" at point 8 approached angle: both motor vehicles driving straight that the kombi hit the truck at the rear left end.

[43] The accident report is not of great assistance to the court as there was no evidence led by its author. The court relies entirely on the evidence of the Plaintiff and the insured driver to all intents and purposes. But the Plaintiff testified that: he agrees with point 8 relating to the point of the accident report during cross-examination that evidence cannot be ignored because it was elicited under cross-examination testimony.

AD CREDIBILITY AND RELIABILITY

[44] The Plaintiff has contradicted himself in material points that cannot persuade the court that his evidence is credible. Apart from being able to see the truck at a distance of about 100 meters in the mist where he could only see to a limit of 12 meters, there are other crucial contradictions.

[45] He testified that: "there were no other motor vehicles travelling along with him from the North". Yet, when asked: what prevented him to reverse if he had seen the

truck at a distance of about 100 meters? He advanced a different version that: "it was impossible, because behind my kombi was another motor vehicle".

[46] What is clear is the emphatic evidence of the Plaintiff that: the truck driver drove at a high speed and did not stop at the stop sign.

[47] As I have already pointed out above, the lay-out to those factual allegations are wanting in the Plaintiff's evidence. I cannot rely on the evidence that lacks credibility.

THE LAW

[48] It is trite that the principle of proof is on a preponderance of probabilities is required in civil cases to discharge an onus.

vide: Pillay v Krishna 1946 AD 946 at 954. The Plaintiff has failed to discharge the onus he bears.

Bagus v Estate Moosa 1941 AD 62; and Ley v Ley's Executors 1951(3) SA 186(A) 192).

[49] A balance of proof is not in quantities of evidence which is counted, but the probabilities arising from the evidence and all the circumstances of the case are weighed.

Vide also: Selamolele v Machado, 988(2) SA 372(v) AT 375D - E.

The Plaintiff *in casu* is not favoured by probabilities in his evidence because it is lacking in crucial aspects especially the lay-out to the collision.

[50] The Plaintiff needs more evidence to achieve the standard required to prove, on a balance of probabilities, his claim if the inherent improbabilities in his evidence are to be overcome.

vide: Transport commission and Another v Chetty's Motor Transport (Pty) Ltd, 1972(3) SA 726(A) (S734-H); and Du Toit v Voorsitter, Nasionale Vervoerkommissie 1985 3) SA 56 (SWA) at 61D-C)

CONCLUSION

[51] In applying the law to the facts on record, I hold that the Plaintiff has failed to discharge the onus he bears to prove his factual allegations for damages sued. In the premises, his claim falls to be dismissed with costs order.

ORDER:

[52] The Plaintiff's claim is dismissed with costs.

KHAMI MAKHAFOLA
JUDGE OF THE ABOVE HIGH COURT

APPEARANCES:

For Plaintiff : Muthevhuli L
Kern & Dekker Attorneys
Thohoyandou

For Defendant : Mr Radzuma TJ
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