

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG LOCAL DIVISION, JOHANNESBURG)**

CASE NO: 17711/2016

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED
_____ DATE	_____ SIGNATURE

In the matter between:

THERON, MARTIN THOMAS

Plaintiff

And

THE ROAD ACCIDENT FUND

Respondent

Summary: An accident between a vehicle and a motorcycle at an intersection, (T junction). The insured driver was negligent by failing to keep a proper look out and undertook an inherently dangerous move without sufficient care. The Court found that the action of the insured driver was the sole cause of the collision as a result of which the Plaintiff sustained his injuries.

JUDGMENT

CAMBANIS AJ

[1] This is an action for damages suffered by the Plaintiff caused by a collision between a motor cycle and a motor vehicle. The quantum of the Plaintiff's claim has been settled. The quantum has been agreed between the parties in the total amount of R5, 436,548.94. The component of this total is set out in the order of the Court. This trial was only concerned with the merits of the matter

[2] The Plaintiffs Mr. M.T Theron, issued summons against the Road Accident Fund ("RAF") in May 2016 in respect of injuries he sustained on the 8 June 2015 at Main Street, Rosettenville, Johannesburg, arising out of the driving of a Mercedes Benz ("Merc") motor vehicle bearing registration letters and numbers [...] GP (the insured vehicle) owned by Ms S.N. Mandlate and a Honda motor cycle bearing registration letters and numbers [...]GP driven by the plaintiff.

[3] The Plaintiff pleaded that the sole cause of the injuries he sustained was the negligence and or wrongful act of the driver of the insured driver and set out the generic pleadings about a collision.

[4] A Road Accident Fund claim is a delictual claim in which there are five elements which the Plaintiff has to allege and prove. These are the commission or omission of an act, which is unlawful or wrongful, committed negligently or intentionally which results in or causes harm and the suffering of an injury, loss or damage. The first three elements relate to the merits of the case:

4.1 The Plaintiff firstly handed in a DVD which is marked Exhibit 1 containing two video clips of the CCTV footage of the accident. I viewed both the video clips, the contents of which I will describe in more detail later in this judgment.

4.2 Suffice to say that it shows a motorcycle crashing into a sedan vehicle from both the South and the North sides of the accident site. Both parties accepted the video footage as being video footage of the accident which is the subject matter of this trial.

4.3 In presenting his evidence on the merits, the Plaintiff first led the evidence of his expert, Mr R.A Opperman, who is an expert in accident reconstruction. His expertise in the field was not challenged nor was there an expert report filed by the defendant challenging Mr. Opperman's conclusions.

4.4 His written report together with his photographs of the scene of the accident was handed in as exhibit A. In preparing his report he was given a copy of Accident Report (AR) form, a copy of the Johannesburg Metropolitan Police Department's sketch plan and key, a copy of an affidavit by the Plaintiff, a copy of a rough sketch of the accident site by the Plaintiff and two video clips containing CCTV footage of the accident. He testified that he conducted a site inspection on the 7 July 2017 during which the Plaintiff and his legal representatives were present. Certain details were pointed out to him, he took some photographs and measurements using a measuring wheel.

[5] The common cause facts are that the collision occurred in the intersection (T junction) of Petunia and Main streets, Rosettenville, both streets are two-way roads, with one lane going in either direction, there are no white lines (centre lines) on these roads, the traffic in Main street has the right of way while traffic on Petunia street is controlled by a stop sign and the speed limit on both roads is 60km per hour.

[6] He testified about the inferences he drew from the information available to him and gave the reasons for drawing such inferences.

[7] The first inference he drew related to the point of impact. The point of impact was marked on photograph 4 at page 103 of the Bundle A, which contains the Plaintiff's merits and quantum documentation. The photograph is of the intersection between Main and Petunia Streets. The stop sign depicts the stop sign at which the Mercedes Benz was obliged to stop. The distance between the stop sign line and the point of impact is eight meters. The photograph depicts the direction from which the motorcycle was traveling in Main Street. The point of impact is in Main Street, in the direct path that the Mercedes Benz would have travelled and is located in the lane in which the motor cycle had been travelling. His reasons for concluding that that was the probable area of impact are that the area correlates with the path of travel of the two accident vehicles at the time of impact and it correlates with the area pointed out by the plaintiff during the site inspection as well as correlating with the position of both vehicles at the time of impact as can be seen on one of the video clips containing CCTV footage of the accident.

[8] The second inference he drew was that the Honda motorcycle's speed at the moment of collision was relatively slow, probably in the order of 50- 60km per hour. The reasons for this conclusion are based on the Plaintiff's account of the accident. Plaintiff told the expert that he had pulled away at the traffic light (to the north of the accident site) accelerated normally and was traveling south on Main street at a moderate speed. Plaintiff estimated his speed at the time in the order of 60km/hour.

[9] The expert, Mr. Opperman, calculated the distance between the motorcycle traveling between a road marking "Slow" painted in the northbound lane as it approaches the area of impact and calculated the time it took to travel this distance as is shown on the CCTV footage. He applied the relevant equation and calculated that the motorcycle was probably traveling at 49km/h.

[10] The third inference he was able to draw was that the Plaintiff was not in a position to take evasive action to avoid the collision. His reasons were based on plaintiff's version that the Mercedes Benz had skipped that stop street in Petunia Street and drove into his lane unexpectedly. He once again, using the distances travelled by the Mercedes Benz from behind the stop line to the probable point of impact and estimating the Mercedes Benz at 20-30km per hour, calculated that the Mercedes Benz would reach the point of impact within approximately 0,96 -1,44 seconds when the applicable equation is applied. He concluded that the motorcycle probably did not have enough time to take evasive action in order to avoid the collision because research has shown that the average perception – reaction time, for an unexpected event is approximately 1, 6 seconds.

[11] He also did the calculation of the Plaintiff's perception reaction time available based on the insured drivers version. On her version the time would have been a bit longer at 2, 33 seconds. He testified that even if the insured driver's version is correct, according to his calculations the Plaintiff could not have stopped in time.

[12] Under cross examination the insured driver's version was put to him which was that he had not stopped at a red robot more than 100 metres away from the point of impact and that he had been travelling at a very high speed. It was disputed that he had been traveling at a speed of 50-60km/h.

[13] The Defendant did not present evidence of its own accident reconstruction expert. Mr.Opperman's evidence was not dented under cross examination, in the main because his version was largely corroborated by the CCTV video clips of the collision and I therefor accept his expert opinion as to the manner in which the accident occurred.

[14] The Plaintiff gave evidence of his version. He was 56 years old at the time of the accident. He had driven a motorcycle for 35 years. He was born in the area of the accident. At the time of the accident he was on his way back to the factory at which he worked. The motorcycle had its headlights on. He stopped at the red robot 100,m before that point of impact. He tried to swerve to avoid the accident but there was not enough time. He knew that route well and knows that there are school children and other pedestrians crossing Main Road, he is always careful. He disputed the insurance driver's version that he had *inter alia*, been traveling at a high speed and relied on the CCTV footage which corroborates his version.

[15] It was also put to him by his counsel that the insured driver's written version given to the police did not mention that the robot was red or the direction from which he had come.

[16] Under cross examination, he relied on the CCTV footage and photographs for corroboration of his version. He added that he had been driving that route for the past 24 years.

[17] The Plaintiff created a good impression when giving his evidence. It is difficult to fault his version as critical elements have been captured on video footage and contrary to the insured driver's version the headlights of the motorcycle were on. Observing the footage it does not appear that the plaintiff was driving at high speed. I accept his evidence that the plaintiff was not driving fast and that he did not have any time to take evasive action.

[18] Nonetheless, it is necessary to examine the version of the insured driver in order to establish whether there is any evidence that the Plaintiff's actions amount to contributorily negligence as the cause of the accident and resulting injuries he sustained.

[19] The insured driver in her evidence in chief was that she was in Petunia road at the T-junction with Main Street when a motorcycle collided with her vehicle as she entered Main road causing damage to the front right side of the vehicle. At the stop street she first looked left, did not see anything, looked right and then moved to turn right onto Main street when she saw the motorcycle approaching at a very high speed. She stopped her car and waited for the bang.

[20] She also lives in the area and travels that road regularly; she had picked up her children at about 3 o'clock, dropped them at home and was on her way back. She testified it was not very busy at the time of the accident but that there were cars moving. She said that the motorcycle was traveling at a high speed because she did not have time to swerve. Under cross examination she described the motorcycle flying at a very high speed.

[21] She did not know that there was CCTV footage before giving her evidence. After viewing in it Court she said it had been an accident, that she was partly to blame but the Plaintiff was also partly to blame because of the speed at which he was traveling. There were some contradictions between her affidavit to the police after the accident, the version put on her behalf and her own evidence in chief and when she was confronted with them she answered that it had been some time since the accident and that that is what she remembers. It is not necessary to elaborate on the details of such contradictions as they have already referred to in this judgment.

The main concern is that her evidence that the motor cycle had been travelling at an excessive speed which was the reason she gave for not seeing him approaching Petunia Street cannot be accepted. Based on the objective evidence, the CCTV footage together with Mr Opperman's evidence, her version is rejected.

[22] For these reasons, I find that there is no credible evidence that Plaintiff was speeding and that the insured driver failed to keep a proper look out and undertook an inherently dangerous move without sufficient care. The evidence is that the Plaintiff did not have sufficient time to take evasive action and that he is blameless and was in no way negligent. I find that the action of the insured driver was the sole cause of the collision as a result of which the Plaintiff sustained his injuries.

[23] As previously stated the quantum has been agreed in the total amount of R5, 436,548.94. This amount is made up of past medical expenses R2,253,789.94, future medical expenses an undertaking in terms of section 17 (4) (a) of the Act, loss of earnings (past and future) R2,182,752.00 and general damages in the amount of R1,000,000.00. Such amounts were agreed to in terms of a draft order that was handed up to me in court.

[24] In the result I make the following order:

1. The Defendant is liable for 100% of Plaintiff's proven damages.
2. The Defendant shall pay Plaintiff a capital amount of R5, 436, 548.94 in delictual damages, on or before 19 October 2017, together with interest a tempore morae calculated in accordance with the Prescribed Rate of Interest Act, 55 of 1975, read with section 17(3)(a) of the Road Accident Fund Act, 56 of 1996.

3. The aforesaid amount shall be paid into the Plaintiff's Attorneys trust account, the particulars of which are:

De Broglio Attorneys

Nedbank – Northern Gauteng

Account Number: [...]

Branch Code: [REDACTED]

Reference: [REDACTED],

through means of a direct transfer on or before 19 October 2017.

4. The Defendant shall furnish the Plaintiff with and undertaking in terms of section 17(4) (a) of the Road Accident Fund Act, 56 of 1996, to reimburse the Plaintiff for the costs of the future accommodation of the Plaintiff in a hospital or nursing home, or treatment of or rendering of a service or the supplying of goods to him, arising out of the injuries he sustained in the motor vehicle accident that occurred on 8 June 2015, after such costs have been incurred and upon proof thereof.
5. The Defendant shall pay the Plaintiff's taxed or agreed party and party costs on the High Court scale, such costs to include, but are not limited to:
- 5.1 The costs attendant upon the obtaining of payment of the full amount referred to in paragraph 2 above; and
 - 5.2 the costs of all the Plaintiff's expert medico-legal reports, as well as the reasonable taxable, qualifying and reservation fees, if any, of such experts; and
 - 5.3 The costs of the experts' joint minutes; and
 - 5.4 The costs of the actuarial reports of Mr. Ivan Kramer; and
 - 5.5 The Plaintiff is declared a necessary witness; and

- 5.6 the costs of the accident reconstruction report of Mr. Rudolph Opperman and his qualifying fee and the costs of his attendance at Court to give evidence on 15 August 2017; and
- 5.7 The costs of 15 August 2017 and 16 August 2017; and
- 5.8 The taxed or agreed costs of senior counsel.
- 6. The Plaintiff shall, in the event that costs are not agreed upon, serve the notice of taxation of the Defendant's Attorneys of record.
- 7. The Plaintiff shall allow the Defendant 14 (fourteen) days after taxation to make payment of such taxed costs.

**JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION
JOHANNESBURG**

Counsel for the Applicant: Adv, J N De Vos SC
Instructed by: de Broglio Attorneys Inc

Counsel for the Respondent: Adv. J T Zitha
Instructed by: Moloto Stofile Inc.

Date of Hearing: 15 - 16 August 2017

Date of Judgment: 22 September 2017

