

Editorial note: Certain information has been redacted from this judgment in compliance with the law.

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES / NO

(2) OF INTEREST TO OTHER JUDGES: YES / NO

(3) REVISED

12 July 2021

DATE

SIGNATURE

Case

No.:

20663/2016

In the matter between:

G P

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

Coram: **NICHOLS AJ**

JUDGMENT

NICHOLS AJ:

INTRODUCTION

[1] The plaintiff, Mr. G P, instituted action against the defendant (the RAF) in terms of the Road Accident Fund Act 56 of 1996 (the Act), for damages as a result of injuries he sustained in a motor collision which occurred on 29 June 2014. The plaintiff was a pedestrian when a motor vehicle with registration number [...] GP, then driven by an unknown driver, collided with him in Eldorado Park.

[2] The RAF was unrepresented in these proceedings. Miss Sibiya, the claims handler who is responsible for this claim, maintained a watching brief on behalf of the RAF throughout the proceedings. It was not contended, and correctly so, that Miss Sibiya could as the claims handler, formally represent the RAF in the proceedings.

[3] At the commencement of the trial the plaintiff's counsel sought to amend the plaintiff's particulars of claim to amend the date of the collision from 30 June 2014, wherever it appears in the particulars of claim to 29 June 2014. In support of this application, plaintiff's counsel submitted that the plaintiff's hospital records were not clear on the date of his admission and accident. The accident report was equally unhelpful because the collision had been reported months after it had occurred. The hospital subsequently confirmed the plaintiff's date of admission as 29 June 2014 although he was first examined by an attending doctor on 30 June 2014. In view of the fact that no prejudice can be suffered by the RAF attendant upon such amendment, the application to amend was granted.

SEPARATION OF ISSUES

[4] The plaintiff sought a separation of the issues of liability and quantum of damages in terms Rule 33(4). The application in terms of Rule 33(4) was granted with the only issue for determination in this trial being that of liability.

HISTORY OF THE LITIGATION

¹ *Maseko v RAF* (7086/2018) [2020] ZAWCHC 94 (19 August 2020) para 6 – 7.

[5] In July 2020, the plaintiff sought and was granted an order compelling the RAF to serve and file the medico legal reports which it would seek to rely upon in this matter. The RAF was also ordered to convene a Rule 37A meeting with the plaintiff in order to curtail the issues in dispute. This order was not complied with. In addition, the RAF failed to discover as required in terms of the Uniform Rules of Court. The matter was certified as trial ready in August 2020 and the trial date was duly allocated for the matter to proceed.

[6] As with the majority of cases involving the RAF in this division, the RAF terminated the services of its legal representatives at some point prior to the commencement of the trial with the result that it was unrepresented throughout these proceedings before me. The presence of the claims handler, Miss Sibiya, in no way ameliorated any prejudice which the RAF may potentially have suffered in consequence of it being unrepresented. This is so because as much as Miss Sibiya was able to observe the proceedings and perhaps make notes for her internal file, she could in no way participate or contribute to the proceedings.

ISSUE FOR DETERMINATION

[7] Adopting the four stage inquiry posited by Fisher J in *MS v RAF*², the issues to be decided in this matter are whether the negligence of the third party driver caused the collision (the Merits Inquiry) and whether the plaintiff sustained the pleaded injuries in the accident (the First Causation Inquiry)³.

THE FACTS AND EVIDENCE

[8] The plaintiff pleaded that he was involved as a pedestrian in a motor vehicle collision on 29 June 2014 at approximately 12h30. He pleaded that the collision was caused solely by the negligent driving of the insured driver who failed to avoid the collision when by the exercise of reasonable care, he could and should have done so; who drove at an excessive speed in the circumstances; who failed to keep a proper lookout; who failed to keep the vehicle he was driving under proper control and who failed to apply the brakes of his vehicles timeously or at all. As a result of the accident he sustained a head injury, a right shoulder injury, a neck and spine injury and other serious and severe injuries.

² (10133/2018) 25 March 2019.

³ *MS* matter para 12.

[9] The plaintiff and two witnesses led evidence in support of the plaintiff's case. The second witness was the plaintiff's wife and the third witnesses was an independent witness.

[10] The plaintiff's evidence was that the accident occurred between 12pm and 1pm on 29 June 2014 on Vlei Lane in Old Eldorado Park. It was a Sunday and he had left home to visit a friend. He was walking on the pavement along Vlei Lane when he noticed a yellow Mazda 323 turn left into Vlei Lane at the T-junction between River Road and Vlei Lane. He then realized that the vehicle was driving towards him on the pavement. He tried to run from the vehicle but he had nowhere to run because there were yard fences in the way. The vehicle collided with the right side of his body. He lost consciousness as a result of the collision and when he regained consciousness he was on his back. He noticed that the vehicle was stationary on the opposite side of the road. He also noticed that there were people standing around him although he only saw their legs.

[11] The plaintiff testified that the police did not attend at the scene of the collision on the day of the accident, although he heard a few people saying that the police had been called. He was taken by ambulance to Baragwanath Hospital. His wife had been called to the scene of the accident and she rode in the ambulance with him to hospital. When the paramedics were moving him onto the stretcher and into the ambulance, he could hear and see but he could not move his body and hands. He was admitted during the late afternoon on the Sunday and he was only attended to on the Monday morning at the hospital. X-rays were taken and he was discharged later on the Monday. He sustained injuries to his spine, back of neck, back of head and right shoulder. He testified that he was dizzy, weak and could barely climb off the stretcher but he was discharged on the Monday because there were no beds, linen or food at the hospital. He recuperated at home for about a year in the care of his wife.

[12] He did not immediately report the accident because he was recuperating at home and could barely walk. His wife tried on several occasions to report the accident at the police station without him. When he could move, he went with his wife to the police station to report the accident. They took the police officers to the scene of the accident and his statement was recorded there. When it was pointed out to the plaintiff that the accident report makes reference to the accident as having occurred in Fontein Street, he

maintained that his accident occurred on Vlei Lane. He maintained that the police were taken to the scene of the accident and that he pointed out where it occurred.

[13] The plaintiff's second witness was his wife, A P. She testified that she was told at about 1pm on Sunday 29 June 2014 that her husband had been involved in an accident. She had just returned from church service. At the scene of the collision, she found the plaintiff lying on the ground. He was unresponsive and unconscious for about two to three hours. The plaintiff regained consciousness by the time the ambulance arrived but he still could not speak. He was placed on a stretcher with a neck support and taken to hospital by ambulance. She testified that she accompanied the plaintiff in the ambulance to the hospital and that she provided both of their information to the paramedic. At the hospital, the paramedics provided all the registration information for the plaintiff to the hospital.

[14] Mrs. P testified that bystanders at the scene pointed out the vehicle which had collided with the plaintiff to her. It was still abandoned unattended at the scene. The police were called but did not attend at the scene of the accident whilst she was there. The police did not visit the plaintiff at the hospital either. She confirmed that the plaintiff was discharged on Monday 30 June 2014. She tried, unsuccessfully, a few times to report the accident at the police station on her own. Eventually, in March 2015, the plaintiff was able to accompany her to the police station to report the accident. They were taken to the scene of the accident by two police officers in a police vehicle. There she conducted various pointing outs to the police and provided all the information required for the completion of the accident report form. Although the plaintiff was with them at the scene, Mrs. P testified that she provided all the information to the police officers including the description of the accident. The accident happened in Fontein Street. She ascertained this as the name of the street was written on the wall. She testified that it also known as Vlei Laan.

[15] The plaintiff's third witness was Ms. Ncomes Beck, an independent witness who witnessed the collision. She testified that she had been in the park, smoking a cigarette when she witnessed the plaintiff being knocked over on the sidewalk by a car. It was a Sunday between 12h30 and 13h00, the time when people usually arrived home from church services. The park was directly opposite the point where the accident occurred and she had a clear and unobstructed view of the road and the accident as it happened. The car came from around the corner of Vlei Laan at the time when the plaintiff was walking on the sidewalk facing away from direction that the vehicle came from. The left side of the car

hit the plaintiff but she could not clarify which part of the plaintiff's body was impacted. She expressed the view that she did not think that the plaintiff saw the vehicle approaching him from behind or that there was anything he could have done to avoid the collision, once he became aware of the vehicle, because the vehicle had climbed onto the sidewalk and collided with him from behind. She was still at the scene when the second witness, the plaintiff's wife arrived and when the ambulance arrived. Quite a few people called the ambulance and it arrived within about 30 minutes. She joined the other bystanders by the plaintiff who was lying on the ground before the ambulance arrived and noted that he was unresponsive for a period.

THE LAW

[16] It is trite that the onus is upon the plaintiff to prove on a balance of probabilities that his injuries were caused as a result of the negligent driving of the insured vehicle. ⁴

EVALUATION

[17] I found the plaintiff to be a credible witness. His evidence was also corroborated by both his wife and the independent witness in all material respects. Further documentary corroboration was provided by the police accident report and the Baragwanath Hospital documentation. The accident report records the description of the accident as follows:

"Pedestrian, Mr. P alleged that he was bumped by the car in Fontein Street, Old Eldos and sustained right shoulder and spine injuries"

[18] The plaintiff's patient registration form with Chris Hani Baragwanath Hospital is dated 29 June 2014. His patient examination form records the doctor's examination notes on 30 June 2014 and records the plaintiff's injuries as including cervical spine, lumbar, right shoulder and head injury.

[19] The plaintiff and his witnesses' evidence was uncontested and not subject to cross-examination in consequence of the fact that the RAF unrepresented at the trial. This court was mindful of that fact and took greater care to clarify issues with the witnesses that required clarification. This included a consideration of whether any contributory negligence could be attributed to the plaintiff.

⁴ *Laas v Road Accident Fund* 2012 (1) SA 610 (GNP); *MS matter* para 11.

[20] Both the plaintiff and the independent witness gave evidence that the collision between the insured vehicle and the plaintiff occurred on the sidewalk and that there was nothing which the plaintiff could have done to avoid the accident. It is trite that sidewalks are not intended for vehicles and the plaintiff would not have been obliged to foresee that a vehicle would, without warning, mount the sidewalk from behind and collide into him.⁵ Failing any evidence being led before me to support a finding of contributory negligence on the part of the plaintiff, I find that no contributory negligence can be attributed to plaintiff.

CONCLUSION

[21] On a consideration of the evidence in totality, I find that the plaintiff has discharged his onus. I am satisfied that the plaintiff, as a pedestrian, was involved in a collision which occurred on 29 June 2014 and that he sustained various injuries as a result of that collision. I further find that no contributory negligence may be attributed to the plaintiff. The plaintiff is entitled to recover his full proven damages against the defendant.

ORDER

[22] In the result the following order is made:

- (a) The defendant is liable for 100% of the plaintiff's proven or agreed damages consequent upon the injuries sustained by him during the accident on 29 June 2014.
- (b) The defendant shall pay the plaintiff's costs of the trial on the merits.
- (c) The determination of the plaintiff's quantum of damages is postponed *sine die*.

Acting Judge of the High Court

Nichols AJ

Date Heard : 23 April 2021

⁵ *Fabrinso v Road Accident Fund* (3676/11) [2016] ZAGPJHC 242 (9 September 2016) para 10.

Date Judgement Delivered : 12 July 2021
For the Plaintiff : Advocate Molo-pe-Madondo
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No appearance for the Defendant: