



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

Case Number: 85574/2019

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

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DATE

In the matter between:

NAIDOO, SIVESHEN

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGEMENT

MNGQIBISA-THUSI J

[1] The plaintiff has instituted an action against the defendant in which he claims damages for loss suffered as a result of injuries he sustained in a motor collision that took place on 26 January 2019 along Nigel Street, Springs. It appears that the collision occurred when the plaintiff's vehicle left the road and he collided with a tree. At the time of the collision the plaintiff was driving a vehicle bearing registration number DT56CW GP. From the evidence of the plaintiff it appears that three unidentified motor vehicles were also involved.

[2] As a result of the collision the plaintiff sustained the following injuries:

- 2.1 multiple fractured vertebrae;
- 2.2 a fracture of the left femur;
- 2.3 a fracture of the right tibia and fibula;
- 2.4 a fractured rib; and
- 2.5 .a fractured left elbow.

[3] The parties agreed to the separation of issue of liability and quantum. A ruling was made in terms of Rule 33(1) whereby liability and quantum were separated and quantum was postponed *sine die*.

[4] The defendant, the Road Accident Fund, has denied liability contending that the collision was caused by the negligence of the plaintiff in failing to keep a proper lookout. In the alternative the defendant pleads that the plaintiff's negligence contributed to the collision.

[5] The only issue in dispute was whether the plaintiff or either of the three insured drivers were negligent. If any of the three insured drivers was negligent, whether there was contributory negligence on the part of the plaintiff.

[6] The plaintiff's evidence is as follows. On the day in question at around 14h30 he was driving along Nigel Road, Springs, in a northerly direction. He was driving on the right lane at a speed of 90 km per hour. The road is tarred and visibility was good. He described the road as being a dual carriage road with two lanes in each direction, separated by a raised traffic island. Plaintiff testified that he was driving towards a traffic light where he stopped as it was red. When the traffic light changed, allowing him to proceed, he saw a taxi (the first insured vehicle) which was travelling on the left lane in the same direction and was picking up passengers. He also saw two taxis driving behind him. The second taxi (the second insured vehicle), which was driving behind him was flicking its lights indicating that he should move aside and started tailgating him. As he signaled to move to the left lane, he could not do so as the first insured vehicle, travelling on the left lane, was already travelling alongside him, preventing him from changing lanes. At that stage the second insured vehicle, which was travelling right behind him, moved to the left lane, behind the first insured vehicle. The third taxi (the third insured vehicle) was now driving behind him and tailgating him.

[7] The plaintiff further testified that as the third insured vehicle was driving behind him and tail-gaiting him, he decided to move to the left lane. As he

was maneuvering the movement to change lanes, the second insured vehicle moved to the right lane towards his path of travel. In trying to avoid colliding with the second insured vehicle, he swerved to the left, and in doing so lost control of his vehicle and collided with a tree. The plaintiff testified that at the time this was happening he was driving at about 90 km/h. He further testified that there was nothing he could have done in order to avoid the collision as he took into account that the second insured vehicle had passengers. After colliding with the tree, he jumped off his vehicle and went to investigate if any people had been injured and thereafter an ambulance was called and he also called his family.

[8] Under cross-examination the plaintiff admitted that he was familiar with the vicinity of Nigel Road where the collision happened. He also admitted that at the time the collision occurred, he was driving at 90 km per hour even though the speed limit on that road was 60 km per hour. He explained that he was driving at that speed as he was being tailgated by the third insured vehicle.

[9] In argument it was submitted on behalf of the plaintiff that the plaintiff's version as to how the collision happened was unchallenged and should be accepted as the defendant did not provide any evidence to contradict his evidence. It was further argued on behalf of the plaintiff that in driving at the speed of 90 km per hour plaintiff was forced by the situation he found himself in and was trying to avoid colliding with the second insured vehicle. It was further argued that the plaintiff's case is not a proper one where an apportionment can be applied. In the event that the court makes a finding that

the plaintiff was also negligent, it was submitted that an apportionment of 90%/10% in favour of the plaintiff should be applied.

[10] On behalf of the defendant it was argued that even though three insured vehicles are said to have been involved, none of these insured vehicles was impacted by the collision. Counsel surmised that it should be taken that the plaintiff was negligent when he veered off the road as he should have kept a proper lookout before changing lanes and should have kept to the prescribed speed limit. Counsel submitted that the plaintiff's claim should be dismissed and in the alternative it was argued that by his negligent conduct, plaintiff contributed to the collision and that an apportionment of 50%/50% should be applied.

[11] It is common cause that on the day the collision it was in the afternoon and the weather was clear. The road in which the plaintiff and the three vehicles were travelling had two lanes with the first insured vehicle on the left lane and the second and third insured vehicles travelling in the right hand lane as the plaintiff.

[12] There is a duty on all road users to keep a proper lookout on the road in order to avoid colliding with other road users and to avoid travelling at an excessive speed. According to the undisputed evidence of the plaintiff the collision occurred as a result of the second insured vehicle encroaching on his lane of travel and in order to avoid colliding with it, forcing him to swerve to the left, resulting in him losing control of his vehicle and colliding with a tree.

[13] The evidence of the plaintiff as to how the collision happened was clear and cogent. He came across as credible and was not evasive, even conceding that the speed at which he was travelling at was 90km per hour in a 60km per hour zone.

[14] Inasmuch as I am satisfied that the plaintiff, when faced with the second insured driver's encroachment into his path of travel, he did take evasive action in order to avoid colliding with the second insured driver. The second insured driver did create an emergency situation for the plaintiff when it cut in front of him. However, I am of the view that, had the plaintiff been travelling at the prescribed speed limit, even when he suddenly had to swerve to the left in order to avoid colliding with the second insured driver, he would have been in a position to control his vehicle and avoid colliding with the tree.

[15] In the result I find that both drivers' negligence was the cause of the collision and that liability for the cause of the collision should be apportioned on a 90%/10% basis in favour of the plaintiff.

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

1. The defendant is liable to compensate the plaintiff for 90% of the agreed or proven damages.
2. The defendant to pay the agreed or taxed High Court costs as between party and party, such costs to include the costs of counsel and the costs of 17 November 2021 and 9 February 2022.

3. The plaintiff shall, in the event that the costs are not agreed serve the Notice of Taxation on the defendant's attorney of record; and
4. The plaintiff shall allow the defendant 180 court days to make payment of the taxed costs.
5. The issue of quantum is postponed *sine die*.

N P MNGQIBISA-THUSI
Judge of the High Court

Date of hearing : 9 – 10 February 2022

Date of Judgment : 19 January 2023

Appearances:

For plaintiff: Adv J Erasmus (instructed by De Broglio Attorneys Inc.)

For defendant: Adv K Phokwana (instructed by the State Attorney, Pretoria)