



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: I 3388/2012

In the matter between:

**CHRISTIAAN JOHANNES VAN SCHALKWYK**

**PLAINTIFF**

And

**GOVERNMENT OF THE REPUBLIC OF NAMIBIA  
(MINISTRY OF WORKS & TRANSPORT)**

**DEFENDANT**

**Neutral citation:** *Van Schalkwyk v Government of the Republic of Namibia* (I 3388/2013) [2014] NAHCMD 310 (17 October 2014)

**Coram:** MILLER, AJ

**Heard:** 20 May 2014

**Delivered:** 17 October 2014

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**ORDER**

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In the result I make the following orders:

- a) Judgment in favour of the plaintiff in the sum of N\$46,337.85;
- b) Interest at the rate of 20% per annum calculated from the date of judgment to the date of payment;
- c) The counterclaim is dismissed.
- d) Defendant is ordered to pay the plaintiff's costs which will include the costs of one instructing and one instructed counsel.

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**JUDGMENT**

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MILLER, AJ:

[1] The action arises from the collision which occurred between a vehicle driven by the plaintiff and a vehicle driven by Mr Matjila, an employee of the defendant. It is common cause that Mr Matjila was driving the vehicle in the course and scope of his

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employment. The collision occurred on 5 September 2011 on a public road between Drimiopsis and Gobabis and in the vicinity of du Plessis.

[2] By the time the trial commenced the parties had reached agreement on all the issues including quantum, but for the issue of negligence. It is to the determination of that issue that I turn. Each of the parties accused the other of being negligent and being the cause of the collision. The issue is purely a factual one which I must determine on a consideration and weighing up of all the evidence adduced at the trial.

[3] The version of the plaintiff and that of the defendant are destructive of one another.

[4] The plaintiff testified that he was traveling from Gobabis to Drimiopsis. He came upon a section of the road under repair. The movement of heavy construction vehicles in the vicinity created a lot of dust which impaired his vision. He says that he drove at an indicated speed of 60 k.p.h.

[5] The plaintiff noticed a truck approaching from the opposite direction, trailing behind it a thick cloud of dust. He then observed the vehicle driven by Mr Matjila emerging from the cloud of dust, ostensibly in the process of overtaking the truck. Due to the close proximity of the vehicles at that stage he could not avoid the collision which ensued. The right front of his vehicle collided with the right side of the vehicle driven by Mr Matjila. Following the impact his vehicle veered to the right and across the road coming to a standstill on the right hand verge of the road. Due to the damage caused to his vehicle, a drag mark was caused from the point of impact to where his vehicle came to a standstill.

[6] The vehicle of the defendant capsized Mr Matjila's version is that he was driving behind the truck and on his correct side of the road. He did not see the vehicle driven by the plaintiff approaching his vehicle. He only became aware of the fact that something was amiss when the rear view mirror snapped followed by a heavy impact. He concludes that the plaintiff was traveling on the incorrect side of the road. This version differs substantially from a version allegedly given to Warrant Officer Vosloo who is the investigating officer. W/A Vosloo testified that part of his investigation he completed in accident report, Exhibit "E".

[7] To that end he approached Mr Matjila a few days after the collision to record the latter's version of the events as it was narrated to him. He says that Mr Matjila told him that the vehicle struck a pot hole in the road causing it to veer to the right and into the path of the vehicle driven by the plaintiff. The version of the defendant is also not supported by the photographs taken at the scene shortly after the collision. In particular the photograph Exhibit "DD" portrays the drag mark caused by the plaintiff's vehicle to which I have referred. That mark clearly starts on the plaintiff's correct side of the road and veer over onto the incorrect side of the road.

[8] The plaintiff was a good witness in all respects. He presented a lucid version of the events. He remained consistent in cross-examination and his demeanour was entirely satisfactory.

[9] I have no reason to doubt the evidence of W/O Vosloo. It is highly improbable that W/O Vosloo would dream up the version of the pot hole when in fact Mr Matjila, as he says, never mentioned that. Mr Matjila was an unsatisfactory witness. His evidence is

based almost entirely on inferences he seeks to draw from the photographs. It is by and large a poor attempt at reconstructing the events. I find that his version is improbable if not entirely false.

[10] Taking into account all the evidence the probabilities and the surrounding circumstances, I conclude that at the time of the impact Mr Matjila was driving on his incorrect side of the road, the probabilities being overwhelming that he was in the process of overtaking the truck.

[11] It follows as a logical conclusion that Mr Matjila was negligent and that his negligence was the sole cause of the collision, and that consequently the plaintiff's claim must succeed.

[12] It was agreed between the parties that the plaintiff's claim of N\$68,337.85 must be reduced by N\$22,000.00 being the scrap value of the wreck of the plaintiff's vehicle.

[13] I make the following order:

- e) Judgment in favour of the plaintiff in the sum of N\$46,337.85;
- f) Interest at the rate of 20% per annum calculated from the date of judgment to the date of payment;
- g) The counterclaim is dismissed.
- h) Defendant is ordered to pay the plaintiff's costs which will include the costs of one instructing and one instructed counsel.

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P J Miller  
Acting Judge

APPEARANCES

PLAINTIFF: MR JONES

Instructed by: DR WEDER, KAUTA & HOVEKA INC.

DEFENDANT: MR NCUBE

Instructed by: GOVERNMENT-ATTORNEY

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