REPUBLIC OF NAMIBIA

HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK

JUDGMENT

Case No. HC-MD-CIV-ACT-DEL-2020/01562

In the matter between:

NEDNAMIBIA HOLDINGS LTD **PLAINTIFF**

and

MCC NINETEENTH METALLURGICAL CORPORATION NAMIBIA (PTY) LTD **DEFENDANT**

Neutral Citation: *NedNamibia Holdings Ltd v MCC Nineteenth Metallurgical Corporation Namibia (Pty) Ltd* (HC-MD-CIV-ACT-DEL-2020/01562) [2021] NAHCMD 371 (13 August 2021)

CORAM: SIBEYA J
Heard: **09 – 10 August 2021**
Delivered: **13 August 2021**

Flynote: Motor vehicle accident – Plaintiff suing for damages – No dispute between parties regarding quantum – Court called upon to determine the sole cause of the accident – Defendant opting not to file a witness statement in submitting its version of

events – Such election proving to have its shortcomings – Court coming to the conclusion that the version of the plaintiff is more probable.

Summary: On 24 May 20217 at around 15h30 to 16h00, a tipper truck bearing registration number N 129-885 W collided with the rear end of a Volkswagen Caddy bearing registration number N 61987 W which also collided with the rear end of a stationary Toyota Hilux which was pushed forward and in turn collided with the rear end of a Volkswagen Polo. The plaintiff, owner of the Volkswagen Caddy, instituted action for damages allegedly caused by the defendant, the owner of a tipper truck. The claim is disputed.

Plaintiff alleges that its vehicle was damaged beyond economical repair. It is further averred that the amount of N$ 159,306.25 claimed in damages was arrived at from the fair and reasonable market value of the of plaintiff's vehicle prior to the collision which was N$ 174,830, towing fees amounted to N$ 7, 850 and the vehicle assessment fees of N$ 1, 207.50, less salvage value.

The defendant denied the allegation that the brakes for the truck were faulty and that Mr. Lifasi drove at an excessive speed. The defendant further, in its plea, averred that Mr. Shikesho solely caused the collision when he drove the plaintiff's vehicle negligently. The defendant further pleaded in the alternative and only in the event that Mr. Lifasi is found to have caused the collision through negligent driving, that the negligent driving by Mr. Shikesho contributed to the collision. The defendant prayed for dismissal of the plaintiff's claim with costs. No counterclaim was filed by the defendant.

Held – It is trite law that he who alleges bears the burden of proof of such allegation on a balance of probabilities in order to sustain his claim.

Held – The material part of the version testified to by Mr. Shikesho was left unchallenged, as there existed no basis at the time of the cross-examination of Mr Shikesho on which a different version could be put to him. It was held that failure by a

party who is legally represented to challenge the evidence of an opposing witness may be regarded as acceptance of such evidence as correct.

Held – That Mr. Lifasi failed to apply brakes timeously in order to avoid the collision and failed to keep a proper lookout when the truck which he drove collided with the rear-end of the stationary plaintiff's vehicle.

Held further – After a careful consideration of the evidence the court accepts the version of the Mr. Shikesho to be probably true and rejects that of Mr. Lifasi as being highly improbable and unreliable. The court is further unable to find any negligence on the part of Mr. Shikesho, solely or contributory to the collision.

ORDER

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1. The defendant must pay to the plaintiff the amount of N$ 159, 306.25 for damages sustained resulting from the motor vehicle collision.
2. The defendant must pay interest on the aforesaid amount in paragraph 1, at the rate of 20% per annum calculated from date of judgment to date of final payment.
3. Costs of suit limited to costs of one counsel.
4. The matter is regarded finalized and removed from the roll.

JUDGMENT

SIBEYA J

Introduction

[1] On the 24th day of May 2017 at around 15h30 to 16h00, a tipper truck bearing registration number N 129-885 W collided with the rear end of a Volkswagen Caddy bearing registration number N 61987 W, which in turn collided with the rear end of a stationary Toyota Hilux, which was pushed forward and collided with the rear end of a Volkswagen Polo. The plaintiff, the owner of the Volkswagen Caddy, instituted action for damages allegedly sustained at the hands of the defendant, the owner of the tipper truck. The claim is disputed.

The parties and representation

[2] The plaintiff is NedNamibia Holdings Ltd, a company, duly registered and incorporated in terms of the laws of this Republic, with its principal place of business situated at number 12-20, Dr Frans Indongo Street, Windhoek. The defendant is MCC Nineteenth Metallurgical Corporation Namibia (Pty) Ltd, a company, duly registered in accordance with the Company laws of this Republic, with its principal place of business situated at number 9, Kathy Street, Ludwigsodrf, Windhoek.

[3] The plaintiff is represented by Mr. M Boonzaaier while the defendant is represented by Ms. W Chinsembu.

The pleadings

[4] Subsequent to the collision referred to above, the plaintiff instituted these proceedings where it seeks payment in the amount of N$ 159,306.25, together with interest thereon at the rate of 20% per annum and costs of suit. The plaintiff alleges that the defendant's tipper truck, driven by Mr. Toby Kabika Lifasi, an employee of the defendant who acted within the course and scope of his employment, was the sole cause of the motor vehicle collision. Plaintiff avers further that Mr. Lifasi negligently drove the defendant's vehicle prior to the collision on the following basis:

(a) That he failed to drive with a reasonable distance behind the plaintiff's vehicle;
(b) That he drove a vehicle with faulty brakes and failed to apply brakes timeously;
(c) That he travelled at an excessive speed;
(d) That he failed to keep a proper lookout;
(e) That he failed to take cognizance of the plaintiff's stationary vehicle in front of him;

[5] Plaintiff alleges that its vehicle was damaged beyond economical repair. It is further averred that the amount of N$ 159,306.25 claimed in damages was arrived at as follows: that the fair and reasonable market value of the of plaintiff's vehicle prior to the collision was N$ 174,830, towing fees amounted to N$ 7,850 and the vehicle assessment fees of N$ 1, 207.50, less salvage value.

[6] The defendant pleaded no knowledge of the ownership of the plaintiff's vehicle. It further denied the allegation that its vehicle had faulty brakes and that Mr. Lifasi drove at an excessive speed. The defendant further, in its plea, threw jabs at the plaintiff by stating that Mr. Matheus Shikesho solely caused the collision when he drove the plaintiff's vehicle negligently in that:

(a) He failed to keep a proper lookout;
(b) He failed to take cognizance of the oncoming traffic before overtaking the defendant's vehicle;
(c) He overtook the defendant's vehicle when it was dangerous and inopportune to do so;
(d) He failed to prevent the collision when it was reasonably possible to do so.

[7] The defendant further pleaded in the alternative and only in the event that its employee Mr. Lifasi is found to have caused the collision through negligent driving, that Mr. Shikesho contributed to the collision arising from his negligent driving as stated in the preceding paragraph. The defendant prayed for dismissal of the plaintiff's claim with costs. No counterclaim was filed by the defendant.

The pre-trial order

[8] The pre-trial order issued by this court provides that the issues for determination at trial are the following:

(a) Whether the plaintiff was the registered owner or bona fide possessor of the Volkswagen Caddy bearing registration number N 61987 W;
(b) Whether a rear-end collision occurred between the plaintiff's stationary vehicle driven by Mr. Shikesho and the defendant's vehicle driven by Mr. Lifasi while in the course and scope of his employment;
(c) Whether the cause of the collision emanated from the negligent driving of Mr. Lifasi;
(d) Whether the plaintiff's vehicle was damaged beyond economical repair, resulting in the plaintiff suffering damages in the amount of N$ 159,306. 25.

[9] The pre-trial order recorded the following facts which are common cause between the parties:

(a) The citation of the parties;
(b) The jurisdiction of the court to adjudicate on the matter;
(c) That Mr. Lifasi drove the defendant's vehicle;

[10] I find it worthy to point out at this early stage of the judgment that during pre-trial proceedings, the plaintiff stated that it will call Mr. Shikesho (on the merits of the case) and Mr Roan Swiggers (the expert witness to testify on the quantum). Mr. Beukes from Henry Shimutwikeni & Co Inc, who appeared for the defendant at the pre-trial proceedings, informed the court that the plaintiff will not call any witnesses but preferred to have Mr. Lifasi called by subpoena. The pre-trial order recorded the above regarding witnesses. The court was taken by surprise by the stance adopted by the defendant not

to call any witnesses on the merits and consequently not to file witness statements. What became apparent however is that, this was a choice made by the defendant which it was entitled to make if it so wished.

[11] At the commencement of the trial, Mr. Boonzaaier for the plaintiff and Ms. Chinsembu for the defendant agreed that it is not disputed that the collision occurred after Mr. Lifasi bumped the vehicle driven by Mr. Shikesho at the rear. It was further agreed between the parties that the quantum will not be disputed. The agreement dispensed with the expert witness who may have been called to testify on the quantum. The expert summary relating to the quantum, the curriculum vitae of Mr. Swiggers together with photographs of the plaintiff's vehicle were therefore submitted into evidence by consent of the defendant.[1] The quantum was thus put to rest.

[12] It is now opportune to consider the evidence led by the parties.

Evidence and analysis

Plaintiff's case

[13] In its endeavour to prove its case, the plaintiff led the evidence of one witness Mr. Shikesho.

[14] Mr. Shikesho testified, *inter alia*, that: he is employed by the plaintiff as an Information Technology (IT) engineer, a position he held at the time of the collision in 2017. He testified that at around 15h30 on the day of the collision, he drove the plaintiff's vehicle, a Volkswagen Caddy bearing registration number N 61987 W, from work in town to the plaintiff's data centre situated in Prosperita. The plaintiff produced a Deregistration Certificate of the said vehicle.[2] The Deregistration Certificate identifies the vehicle in question as belonging to the plaintiff and which vehicle was deregistered on 18 July 2017 after being scrapped.

[1] Exhibit "G".
[2] Exhibit "C".

[15] Mr. Shikesho testified further that while driving to Prosperita from north to the southerly direction, he took notice of the defendant's tipper truck while driving in Auas Road which has since been renamed Rehobother Road. He testified that Rehobother Road had dual lanes in each opposite direction. He drove on the outer left lane while the defendant's tipper truck was driven on the inner right lane while both vehicles drove in the same direction. At the intersection of the said road with Shaun McBride Street, he stopped the vehicle and when the traffic lights turned green, he proceeded to drive towards the traffic circle which connects with the Western Bypass. It was his testimony further that shortly after driving from the traffic lights he accelerated, passed by the defendant's truck, indicated to turn right onto the lane of the truck and turned in front of the truck when it was safe for him to do so.

[16] Mr. Shikesho further testified that while driving, he observed in his rear-view mirror that the truck was far from him whereafter he applied brakes and stopped behind other vehicles at the traffic circle. While being stationary for about 10 seconds behind a Toyota Hilux, the truck rammed into the rear of the plaintiff's vehicle, the force of which pushed it to bump into the Toyota Hilux which in turn bumped a Volkwasgen Polo which was in front of the Toyota Hilux, so the testimony went about the roller coaster that unfolded.

[17] Mr. Shikesho proceeded to testify that after the collision, he approached Mr. Lifasi and inquired as to what happened, whereafter Mr. Lifasi responded that the truck's braking system failed that is why he could not stop it before the collision.

[18] Mr Shikesho produced an accident report into evidence dated 26 May 2017[3] and a motor vehicle insurance claim form dated 06 June 2017.[4] In both the accident report and the insurance claim, Mr Shikesho explained the events that led to the collision of the vehicles.

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[3] Exhibit "D".
[4] Exhibit "E".

[19] In cross-examination, Ms. Chinsembu pointed out to Mr. Shikesho that the second page of the accident report provides that Mr. Shikesho reported to the police officer who recorded the said report that both vehicles travelled straight at the time of the collision and therefore the plaintiff's vehicle was not stationary. Mr. Shikesho responded that this was an error as at the time of the collision, the plaintiff's vehicle was stationary.

[20] Since the defendant filed no witness statement from which a version of events could emanate, no version of what transpired at the collision was strictly speaking put to Mr. Shikesho. Ms. Chinsembu on several occasions in cross-examination put statements to Mr. Shikesho that he did not keep a proper lookout and that he overtook the defendant's vehicle when it was not opportune to do so. The difficulty with this line of questioning is that it hanged in the air as there was no witness statement on which the said version of events could be based. Ms. Chinsembu could not explain why a witness statement was not recorded from Mr. Lifasi to provide a version which could be advanced to gainsay the evidence of Mr. Shikesho. To her credit, Ms. Chinsembu was not involved at the pre-trial stages of this matter and the court sympathises with her regarding the predicament in which she found herself.

[21] The defendant however should take full responsibility for the approach taken for the preparation and advancement of its defence. It must be mentioned that it is permissible for a defendant to defend a claim without filing witness statements and proceed to challenge the witnesses for the plaintiff's recollection of events together with the veracity and reasonableness of the assertions made by such witnesses. This approach, however, has its shortcomings as alluded to above.

Defendant's case

[22] The defendant caused Mr. Lifasi to testify after being subpoenaed. Consequently, and without a witness statement obtained from him, Mr. Lifasi testified that on the day of the collision, he drove the defendant's truck loaded with materials

from the northerly to the southerly direction on the Rehobother Road. His testimony was further that of the two lanes from the traffic lights at the intersection of Rehobother Road and Shaun McBride Street, he drove on the left lane while Mr. Shikesho drove on the right lane. Shortly before reaching the traffic circle, Mr. Shikesho suddenly overtook the defendant's truck and moved to the left lane in front of the said truck. Mr.Lifasi applied brakes and pulled up the hand brake in attempt to avoid the collision without success. The truck collided with the rear of the vehicle driven by Mr. Shikesho, which in turn bumped another vehicle, so he testified.

[23] Mr. Lifasi insisted in his testimony that from the traffic lights, he drove at the speed of about 40 kilometres per hour but immediately prior to the collision, he applied brakes and reduced speed. The plaintiff's vehicle was still in motion and not stationary at the time of the collision, while other vehicles were stationary at the traffic circle, so he testified. He could however not enlighten the court on the distance at which he observed the other vehicles stopped at the traffic circle. He was adamant that Mr. Shikesho caused the collision when he suddenly overtook the truck just before the circle and applied brakes immediately thereafter while in front of the truck. He disputed the version of Mr. Shikesho that he said the brakes of the truck failed hence he could not bring it to a standstill.

[24] Mr. Lifasi confirmed that he provided a report of the collision to the police officer who recorded the accident report. He also signed the said report. In cross-examination, Mr. Boonzaaier put the following version to Mr. Lifasi, which Mr. Lifasi provided to the police officer, that as he approached the traffic circle, the plaintiff's vehicle overtook the truck and stopped because there were other vehicles in front of plaintiff's vehicle. Mr. Lifasi disputed this version and stated that the plaintiff's vehicle did not come to a standstill. When he said in the accident report that plaintiff's vehicle stopped, he meant to say that plaintiff's vehicle applied brakes and was in the process to stop.

[25] Mr. Boonzaaier further put the version to Mr. Lifasi that upon being approached by Mr. Shikesho after the collision, he informed Mr. Shikesho that the braking system of

the truck failed as a result he could not bring it to a standstill. This version was disputed by Mr. Lifasi who stated that what he said was that the collision occurred as the fully loaded truck could not stop at such short distance even when brakes are applied. He also denied driving at an excessive speed.

Analysis of the evidence

[26] It is trite law that he who alleges bears the burden of proof of such allegation on a balance of probabilities in order to sustain his claim. In casu, it is apparent that the parties tendered mutually destructive versions. It becomes appropriate to repeat the well established approach to the assessment by the court of different versions of the parties.

[27] Masuku AJ (as he then was) in *Ndabeni v Nandu*[5] and *Life Office of Namibia v Amakali,*[6] the court quoted with approval a passage from *SFW Group Ltd and Another v Martell Et Cie and Others,*[7] where it was stated that:

'The technique generally employed by our courts in resolving factual disputes of this nature may conveniently be summarised as follows. To come to a conclusion on the disputed issues, a court must make findings on (a) the credibility of the various factual witnesses; (b) their reliability; and (c) the probabilities. As to (a), the court's finding on the credibility of a particular witness will depend on its impression about the veracity of the witness. That, in turn, will depend on a variety of subsidiary factors, not necessarily in order of importance, such as (i) the witness' candour and demeanour; (ii) his bias, latent and blatant; (iii) internal contradictions in his evidence; (iv) external contradictions with what was pleaded or what was put on his behalf, or with established fact and his with his own extra-curial statements or actions; (v) the probability or improbability of particular aspects of his version; (vi) the calibre and cogency of his performance compared to that of other witnesses testifying about the same incident or events. . .'

[5] *Ndabeni v Nandu* (I 343/2013) [2015] NAHCMD 110 (11 May 2015).

[6] *Life Office of Namibia v Amakali* (LCA78/2013) [2014] NALCMD 17 (17 April 2014).

[7] *SFW Group Ltd and Another v Martell Et Cie and* 2003 (1) SA 11 (SCA) at page 14H – 15E.

[28] This court finds the approach set out above compelling in the exercise of assessment of mutually destructive versions. In determining the issues in this matter therefore, this court will be guided by the above-mentioned approach.

[29] At the outset, I must point out that notwithstanding the materially different versions, the parties agreed, backed by the evidence, that the defendant's vehicle collided with the rear-end of the plaintiff's vehicle. This court in *Midway Recovery and Transport CC v Heigauseb*[8] at para 44 said the following regarding rear-end motor vehicle collisions:

> 'It is settled law that where there is a rear-end collision, the driver who collides with the rear of a vehicle in front of him is prima facie negligent unless he can show that he was not negligent.[9] Therefore, in the absence of evidence to the contrary, it must follow that such negligence was the cause of the collision.'[10]

[30] Bearing the said principle in mind, I proceed to analyse the evidence led. It is critical to point out as highlighted above that the version of events testified to by Mr. Shikesho was by and large left unchallenged. This resulted from the non-existence of a basis at the time of the cross-examination of Mr Shikesho on which a different version could be put to him. To put this into context, the following statements were left unchallenged:

(a) That prior to the collision, Mr. Shikesho drove the plaintiff's vehicle in the left lane while Mr. Lifasi drove the truck in the right lane;

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[8] *Midway Recovery and Transport CC v Heigauseb* (HC-MD-CIV-ACT-DEl-2019/05125) [2021] NAHCMD 349 (30 July 2021).

[9] *H B Kloppers: The Law of Collision in South Africa* 7th ed p.78. *Maletzky v Haindongo* (HC-MD-CIV-ACT-CON-DEL-2018/02063) [2020] NAHCMD 506 (O5 November 2020) para 13.

[10] *Union and South West Africa Insurance Co Ltd v Bezuidenhout* 1982 (3) SA 957 (A) at 966 A-B; *Gerber v Road Accident Fund* (11/3022) [2015] ZAGPJHC 155 (26 June 2015).

(b) That soon after the traffic lights, Mr. Shikesho accelerated, passed the plaintiff's vehicle, overtook the truck and turned in front of the truck far away from the traffic circle;

(c) That subsequent to the collision, Mr. Shikesho approached Mr. Lifasi to inquire on his driving, where Mr. Lifasi responded that the braking system failed, hence he could not bring the truck to a standstill.

[31] A party has a duty to put its version to an opposing witness. On this subject, this court in *Namibia Protection Services (Proprietary) Limited v Humphries*[11] at para 103 quoted with approval the following passage from *Namdeb (Pty) Ltd v Gaseb*[12] where Hoff JA faced with an unchallenged version of an opposing witness said the following:

'It is trite law that a party who calls a witness is entitled to assume that such a witness's evidence has been accepted as correct if it has not been challenged in cross-examination. In *Small v Smith* 1954 (3) SA 434 (S.W.A) at 438E-G the following was said in respect of this aspect:

> 'It is, in my opinion, elementary and standard practice for a party to put to each opposing witness so much of his own case or defence as concerns that witness and if need be to inform him, if he has not been given notice thereof, that other witnesses will contradict him, so as to give him fair warning and an opportunity of explaining the contradiction and defending his own character. It is grossly unfair and improper to let a witness's evidence go unchallenged in cross-examination and afterwards argue that he must be disbelieved. Once a witness's evidence on a point in dispute has been deliberately left unchallenged in cross-examination and particularly by a legal practitioner, the party calling that witness is normally entitled to assume in the absence of a notice to the contrary that the witness's testimony is accepted as correct.
> . . . unless the testimony is so manifestly absurd, fantastic or of so romancing a character that no reasonable person can attach any credence to it whatsoever.'"[13]

[11] (HC-MD-CIV-ACT-DEL-2018/02888) [2019] NAHCMD 509 (20 November 2019).
[12] (SA 66/2016) [2019] NASC (9 October 2019) at para 61.
[13] See also *President of the Republic of South Africa & others v South Africa Rugby Football Union and others* 2000 (1) SA 1 CC at 36J-38B – 'cross-examination not only constituted a right; it also imposed certain obligations'.

[32] It was testified by Mr. Lifasi that although he had since left employment with the defendant, he did not refuse to cooperate with the defendant to provide a witness statement in this matter. No reason was also put forward by the defendant why it opted not to obtain a witness statement from Mr. Lifasi. In the absence of such explanation, it can be taken that it was out of choice that the defendant did not obtain a witness statement from Mr. Lifasi. As the saying goes, if you make the bed, you must lie in it.

[33] Notwithstanding the failure by the defendant to challenge the aforesaid evidence of Mr. Shikesho, Mr Lifasi testified to the contrary that he drove on the left lane. He further testified that Mr. Shikesho overtook the truck close to the traffic circle and not the traffic lights. He further denied the version of the alleged failure of the braking system of the truck.

[34] The drawback with the said version of Mr. Lifasi is that Mr. Shikesho was not afforded an opportunity to respond to Mr. Lifasi's version because same was not put to him. Mr. Shikesho's version on the aforesaid remained uncontradicted and it is not out of order to accept it as the correct version of events hence it was not gainsaid. Once again, the approach engaged by the defendant not to record a witness statement from Mr. Lifasi in order to make his version available for consideration by the plaintiff and particularly by Mr. Shikesho, for no reason, finds no favour from this court. I find that the consequential effect of a legally represented party who fails to challenge the version of an opposing witness, is tantamount to acceptance of the said version as correct. I am not afforded reasons to the contrary, therefore I accept the said version of Mr. Shikesho over and above that of Mr. Lifasi on the said averments.

[35] Mr. Lifasi testified that the plaintiff's vehicle was still in motion when the collision occurred, while in the accident report recorded barely two days after the collision, he stated that the plaintiff's vehicle stopped prior to the collision. His attempts to try to reinvent the definition of the word "stop" to mean that Mr. Shikesho was applying brakes and trying to stop in my considered view amounts to grasping at straws. Stop means

halt, standstill and such definition remains unwavered, whether it favours an opposing party or not. I therefore find that Mr. Lifasi's evidence on this subject is highly improbable and same is rejected. In the same vein, I find that the version of Mr. Shikesho that at the time of the collision, plaintiff's vehicle was stationary is highly probable and thus accepted as correct.

[36] Having accepted that the plaintiff's vehicle was stationary at the time of the collision, no explanation is available why Mr. Lifasi could not apply brakes to bring the truck to a standstill before the collision. Even by his own version, Mr. Lifasi does not explain the distance at which he observed the other vehicles which were stationary in front of the plaintiff's vehicle. He also does not explain why he could not stop the truck after having observed the stationary vehicles in front of the plaintiff's vehicle.

[37] As I conclude this matter, I am reminded of a passage from *Johannes v South West Transport (Pty) Ltd*[14] where it was stated that in cases of motor vehicle collisions courts should consider the following:

> 'Each case in which it is said that a motorist is negligent must be decided on its own facts. Negligence can only be attributed by examining the facts of each case. Moreover, one does not make inferences on a piecemeal approach. One must consider the totality of the facts and then decide whether the driver has exercised the standard of conduct the law requires. The standard of care required is that of which a reasonable man would exercise in the circumstances. In all cases the question is whether the driver should reasonably in all the circumstances have foreseen the possibility of a collision.'

[38] In view of the evidence led, the findings made and conclusions reached, I am of the considered view that Mr. Lifasi did not exercise reasonable care while he was driving the truck prior to the collision. He failed to drive the truck fully loaded with materials in a manner expected of a reasonable person in which he could have avoided the collision with a stationary vehicle by timeously applying brakes.

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[14] *Johannes v South West Transport (Pty) Ltd* 1992 NR 385 (HC) at 358.

Conclusion

[39] I find in the premises that Mr. Lifasi failed to keep a proper lookout when the truck collided with the rear-end of the stationary plaintiff's vehicle. I further find that his failure to bring the fully loaded truck with materials to a standstill prior to the collision negligently caused the accident. From the conclusions and findings above, this court accepts the version of Mr. Shikesho to be probably true and rejects that of Mr. Lifasi as being highly improbable and unreliable.

[40] After a careful consideration of the evidence I am unable to place any negligence, solely or contributory to the cause of the collision, at the doorstep of Mr. Shikesho. As a result I find that the negligent conduct of Mr. Lifasi solely caused the accident.

[41] The issue of quantum was agreed to and therefore resolved between the parties.

Costs

[42] Ordinarily costs follow the cause. No compelling reasons were advanced to the court why costs should not follow the event. I could also not find reasons to the contrary.

[43] Mr. Boonzaaier refrained from making submissions on whether this matter is worthy of costs consequent upon the employment of two counsel (one instructing and one instructed). I hold the view that this was a proper approach to take although I expected Mr. Boonzaaier to be bold and clearly state that this was not a complicated matter for the plaintiff to pursue. More so particularly where the defendant opted not to file any witness statements nor raise any counterclaim. In the premises and in the exercise of my discretion, I find that the circumstances of this matter do not warrant the employment of two counsel.

Order

[44] In view of the foregoing, I order that:

1. The defendant must pay to the plaintiff the amount of N$ 159, 306.25 for damages sustained resulting from the motor vehicle collision.
2. The defendant must pay interest on the aforesaid amount in paragraph 1, at the rate of 20% per annum calculated from date of judgment to date of final payment.
3. Costs of suit limited to costs of one counsel.
4. The matter is regarded finalized and removed from the roll.

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O S Sibeya

Judge

APPEARANCES:

PLAINTIFF:	M Boonzaaier Instructed by Dr Weder, Kauta & Hoveka Inc Windhoek
DEFENDANT:	W Chinsembu Of Henry Shimutwikeni & Co Inc Windhoek