

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: HC-MD-CIV-ACT-DEL-2022/00502

In the matter between:

NEHEMIA SHAFUDA

PLAINTIFF

and

ELINA TUUHULU HANGO N.O.

1<sup>ST</sup> DEFENDANT

ANDREAS TONATEN KAMBONDE

2<sup>ND</sup> DEFENDANT

**Neutral Citation:** *Shafuda v Hango N.O.* (HC-MD-CIV-ACT-DEL-2022/00502)

[2024] NAHCMD 238 (17 May 2024)

**Coram:** OOSTHUIZEN J

**Heard:** 14 and 17 November 2023 and 18 January 2024

**Delivered:** 17 May 2024

**Flynote:** Motor vehicle accident — Accident reconstruction — Expert evidence.

**Summary:** On 12 August 2020 at approximately 21h00 at night a head on motor vehicle collision occurred. The driver of one vehicle died. Expert evidence of an

accident reconstruction witness for plaintiff accepted. The late husband of the first defendant was negligent and caused the fatal accident.

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**ORDER**

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**IT IS ORDERED THAT:**

1. The first defendant shall pay the amount of N\$145 000 to the plaintiff.
2. The first defendant shall pay interest at the rate of 20% per annum on the sum of N\$145 000 from 17 May 2024 to date of final payment.
3. The first defendant shall pay the costs of suit of the plaintiff, which costs shall not include costs occasioned as a result of plaintiff's pursuit of the second defendant.
4. The matter is regarded as finalized and removed from the roll.

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**JUDGMENT**

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OOSTHUIZEN J:

[1] The plaintiff is Nehemia Shafuda, a major male of Oshandi Village, Ohangwena Region, Republic of Namibia.

[2] The first defendant is Elina Tuuhulu Hango N.O, a major female executrix of the estate of the late Abed Augustus Uushona who died in the motor vehicle accident which is the subject of this litigation.

[3] On 12 August 2020 at approximately 21h00 and on the road between Onethindi and Oshigambo, a collision occurred between a Toyota Hilux motor vehicle and a Mazda Drifter motor vehicle.

[4] The Toyota was driven by the plaintiff who was the owner thereof.

[5] The Mazda was driven by the deceased who was the owner thereof.

[6] The issue between the parties is who caused the motor vehicle collision and who is liable for the resultant damages.

#### Witnesses

[7] The plaintiff, his wife and an accident reconstruction expert, a Mr Joubert, testified on behalf of the plaintiff.

[8] The plaintiff and the first defendant settled the quantum of the damages suffered by the plaintiff on N\$145 000.

[9] The first defendant counterclaimed for damages against the plaintiff, which counterclaim was abandoned during the trial.

[10] The first defendant, the former wife of the deceased, Ms Hango and one Mr Kakuva and Mr Nambahu testified on behalf of the first defendant.

[11] None of the first defendant's witnesses were present when the fatal motor vehicle accident occurred.

[12] Only the plaintiff and his wife out of all the witnesses were present when the accident occurred.

#### Evidence

[13] The plaintiff testified that he was driving with his wife and two children during the evening to his home. In the back of the Toyota he was transporting containers with green paint. It was dark and his headlights were on. He slowed down for a vehicle in front of him which was turning off. He observed a vehicle coming from the

front and realized too late that the vehicle was approaching in his lane of travel and not in the oncoming vehicle's lane of travel. He mentioned it to his wife and the collision occurred. The plaintiff testified that he drove in his correct lane of travel and his recollection still is that the accident occurred in his lane of travel. Plaintiff, his wife and two children were all seriously injured in the accident.

[14] The plaintiff's wife also testified but could not really contribute anything to the evidential landscape.

[15] Mr Joubert testified as an expert witness in the field of accident reconstruction. Mr Joubert has vast applicable experience and qualifications and is a known reconstruction expert with a long resume.

[16] Mr Joubert, who is based in Cape Town, South Africa, did not visit the actual accident scene. Mr Joubert was provided with the following material in order to do the accident reconstruction:

- (a) Copy of the Namibian road accident form.
- (b) Hollard motor accident claim form.
- (c) Photographs of the damages to both vehicles involved in the accident.
- (d) Photo album, Omuthiya Scene of Crime Unit from Detective Sergeant Kakuva.

[17] Mr Joubert prepared an accident reconstruction report based on the above information which in essence constituted his evidence, findings and reasons for his opinions.

[18] Mr Joubert testified with the aid of visual demonstrations in court. From the photoplan, exhibit "D3", Mr Joubert identified a gauge mark and the position of the vehicles at maximum engagement. Using the damage profile of both vehicles the principle direction of force and the post impact rotation for each vehicle was determined.

[19] The court finds the evidence, findings and opinions of Mr Joubert of great appreciable value in order to reach a conclusion on how the collision occurred and who, on a balance of probabilities, was responsible for the accident.

[20] The first defendant could not contribute meaningfully to the relevant evidence. She was not present or involved in the accident.

[21] Detective Sergeant Kakuva visited the scene of the accident under instruction of a certain Detective Sergeant Shikongo on the 13<sup>th</sup> of August 2020, the day after the accident. Although the defence wanted to portray Detective Sergeant Kakuva as an expert, the value he has brought to the table in the form of applicable evidence, are the photographs taken by him and contained the photo plan he has compiled. His own observations and opinion were mediocre and incomplete. He relied heavily on hearsay.

[22] Mr Nambahu was called as an accident reconstruction expert by the defence. After hearing the evidence of Mr Nambahu and reviewing his applicable qualifications and experience and hearing his evidence, the court concluded that he was not an accident reconstruction expert and not of appreciable assistance. Reliance was not placed on his evidence.

### Conclusion and findings

[23] The deceased travelled on the wrong side of the road just before the accident occurred and was returning to the correct side of the road when colliding with the plaintiff who was busy with evasive action in order to avoid the accident from happening.

[24] A head on collision occurred with the point of maximum engagement just inside the lane of travel of the deceased. The accident was fatal for the Mazda driver.

[25] The accident reconstruction by Mr Joubert for the plaintiff is accepted.

[26] In the result, the deceased was the cause of the accident and solely negligent.

[27] Costs will follow the result.

[28] In the premises, the following orders are made:

1. The first defendant shall pay the amount of N\$145 000 to the plaintiff.
2. The first defendant shall pay interest at the rate of 20% per annum on the sum of N\$145 000 from 17 May 2024 to date of final payment.
3. The first defendant shall pay the costs of suit of the plaintiff, which costs shall not include costs occasioned as a result of plaintiff's pursuit of the second defendant.
4. The matter is regarded as finalized and removed from the roll.

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G H OOSTHUIZEN

Judge

## APPEARANCE

PLAINTIFF: F Pretorius  
of Francois Erasmus & Partners, Windhoek

DEFENDANTS: M Tjiteere  
of Dr Weder, Kauta & Hoveka Inc, Windhoek