

REPUBLIC OF NAMIBIA



**IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK
JUDGMENT**

Case No: HC-MD-CIV-ACT-DEL-2022/01468

In the matter between:

BETHOLD KAURIVI

PLAINTIFF

and

MINISTRY OF SAFETY AND SECURITY

1ST DEFENDANT

INSPECTOR GENERAL OF THE NAMIBIAN POLICE

2ND DEFENDANT

Neutral citation: *Kaurivi v Ministry of Safety and Security* (HC-MD-CIV-ACT-DEL-2022/01468) [2024] NAHCMD 98 (8 March 2024)

Coram: OOSTHUIZEN J

Heard: 13-15 June 2023

Delivered: 8 March 2024

Flynote: Motor vehicle accident — Damages — Expert witnesses — Expert Evidence — Opinion evidence.

Summary: On 12 October 2021, two motor vehicles collided at the robot controlled intersection. The plaintiff's vehicle entered the intersection with a green light. The defendants' vehicle entered the intersection against a red light but allegedly had the right of way due to an emergency and displaying emergency lights and sounding its sirens. Both vehicles were damaged. None of the parties proved their damages. Claim and counterclaim are dismissed.

ORDER

1. The plaintiff's claim is dismissed.
2. The defendants' counterclaim is dismissed.
3. Each party shall pay its own costs.
4. The case is finalized and removed from the roll.

JUDGMENT

OOSTHUIZEN J:

Background

[1] The plaintiff is an adult male from Windhoek, who was the owner of a 2015 Toyota Hilux 3.0 D-4D LEGEND, a Double Cab Vehicle, with a registration number N136276W.

[2] On 12 October 2021 the plaintiff was travelling from a southerly direction in Hosea Kutako Drive and approaching the intersection with John Meinert Street after 08h00 in the morning with his Toyota Hilux double cab vehicle.

[3] At that stage the motor vehicle of the Ministry of Safety and Security driven by traffic officer Shimbulu with registration number POL 8323 was approaching the intersection at the corner of John Meinert Street and Hosea Kutako Drive from a westerly direction (driving east) with its emergency lights and siren allegedly on.

[4] The POL (Police) vehicle driven by traffic officer Shimbulu was entering the intersection against a red light and the vehicle driven by plaintiff entered the intersection with the green traffic light in its favour.

[5] The two vehicles collided and were both damaged.

[6] The two drivers testified and their versions concerning who was to blame differ materially from each other.

The quantum of damages

[7] The plaintiff's motor vehicle was insured with OUTsurance Insurance Company of Namibia Ltd under policy number ON1158847.

[8] Mr Eiman testified that he is a motor vehicle assessor of FNB Short Term Insurance Company of Namibia Ltd (formerly OUTSURANCE) and was called by the plaintiff to testify as an expert on the damages sustained.

[9] Mr Eiman is an employee of the insurance company which insured the plaintiff's vehicle.

[10] Mr Eiman testified that he personally assessed the plaintiff's vehicle on 19 October 2021 and came to the following conclusion:

(a) the vehicle was damaged recently, which damage is consistent with it being in a motor vehicle collision, and that

(b) the fair and reasonable cost of repair of the vehicle is N\$187 814.79.

[11] Mr Eiman referred to and attached a complete report of his assessment (Exhibit "C").

[12] In paragraph 11 of his witness statement, Mr Eiman submitted that the nature and extent of the damage to the plaintiff's vehicle was to such an extent that the fair, reasonable and necessary repair costs of the vehicle would have exceeded the market value of the vehicle. Therefore, he concluded in paragraph 12 of his witness statement that as a result of the collision, the vehicle was damaged beyond economical repair. In paragraph 10 of his witness statement, Mr Eiman testified that the fair and reasonable value after the collision was N\$183 540.

[13] In paragraph 13 of his witness statement, Mr Eiman concluded: 'The total damages therefore suffered amount to N\$80, 017.25, which is made up as follows:

Market value: N\$257, 700.00

Minus Salvage: N\$183, 540.00

Sub Total: N\$74, 160.00

Plus Towing and Release: N\$5, 857.25

Total: N\$80, 017.25'

[14] A copy of the towing and release invoice is provided as Exhibit "D".

[15] There is no evidence on record, save the exhibit, that the costs of the towing and release of the damaged vehicle is fair and reasonable.

[16] The contents of paras 11 and 12 of the witness statement of Mr Eiman read with paragraphs 10 and 13 thereof is nonsensical and a *contradictio in terminis*.

[17] The bulk of the part prices relied upon by Mr Eiman in Exhibit "C", on his own version, was obtained from one Shuan of Indongo Toyota and one Robert from

Gregs Motors (Exhibit "C" page 8 of 9). Neither of these two persons were called by plaintiff to testify. The part prices (values) contained in Exhibit "C" run over 3 of the 9 pages thereof and add up to N\$102 512.29 (wherein an undamaged windscreen to the value of N\$2800 is included).¹

[18] Plaintiff's assessor did not disclose the source for the price of paint (N\$27 790).²

[19] About N\$130 000 of the assessment total of N\$163 317, derive from hearsay evidence.

[20] The code 2 write off uneconomical to repair obtained from Exhibit "C", page 8 of 9 is contradictory to Mr Eiman's evidence in paragraph 11 of his witness statement.

[21] The 'expert witness' of the defendants concerning the damage to the police vehicle did not even inspect the police vehicle and tendered a quotation created by someone else at his employer. I say nothing more, save that Mr Tobias' evidence is rejected without reservation.

[22] The plaintiff has failed to prove the quantum of his alleged damages in that the expert relied upon by him and who was supposed to be of appreciable assistance to the court, relied on hearsay evidence for his opinion, relied on uncorroborated data and contradicted himself to say the least. The plaintiff's expert's evidence was, and is unreliable.

[23] The requirements an expert has to satisfy is well documented in *Grove v Endjala*.³

[24] The failure of both the plaintiff and the defendants to prove their damages made it superfluous to decide the merits of who caused the motor vehicle collision.

¹ Exhibit "C", page 7 of 9 and page 4 of 9.

² Exhibit "C", page 7 of 9.

³ *Grove v Endjala* (HC-MD-CIV-ACT-CON-2019/05339) [2023] NAHCMD 117 (14 March 2023), paras [115] to [117].

[25] In the result the following orders are made:

1. The plaintiff's claim is dismissed.
2. The defendants' counterclaim is dismissed.
3. Each party shall pay its own costs.
4. The case is finalized and removed from the roll.

G H Oosthuizen
Judge

APPEARANCE

PLAINTIFF:

C Bohitile
LorentzAngula Inc, Windhoek

DEFENDANTS:

J Ludwig
Government - Office of the Government Attorney
Windhoek