THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

JUDGMENT

Not Reportable
Case Number: 422 / 06

In the matter between

THE PIETERMARITZBURG SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS **APPELLANT**

and

JUNAID PEERBHAI **RESPONDENT**

Coram : CAMERON, PONNAN JJA ET SNYDERS AJA

Date of hearing : 18 MAY 2007

Date of delivery : 29 MAY 2007

SUMMARY

Motor vehicle collision - two irreconcilable versions - onus of proof - failure to discharge.

Neutral citation: This judgment may be referred to as :
***Pietermarizburg SPCA* v *Peerbhai* [2007] SCA 66 (RSA)**

J U D G M E N T

PONNAN JA

[1] This appeal is a sequel to a motor collision between a Nissan bakkie and a Toyota car that occurred at approximately 19:30 on 21 July 2001 in the vicinity of Woodhouse and Alice Grange Roads in Pietermaritzburg. In consequence of the collision the owner of the Nissan bakkie, the Pietermariztburg SPCA ('the appellant') sued the respondent, Mr Junaid Peerbhai, the driver of the Toyota, in the Pietermaritzburg Magistrates' Court for payment of R21 330 being damages allegedly suffered by it.

[2] The claim was dismissed by the trial court with costs, as was an appeal to the Pietermaritzburg High Court (Baqwa AJ and Hugo J). The further appeal to this Court is with the leave of the High Court (Hugo J and Lopes AJ).

[3] The magistrate in essence concluded that on a conspectus of all the evidence he was not persuaded one way or the other and, in the result, the appellant had not proved that the respondent was negligent. Moreover, according to the magistrate the appellant would in any event have failed on quantum as well. The conclusion that I reach on the first aspect renders it unnecessary for me to consider the second.

[4] Each driver alleged that the other motor vehicle had veered onto its incorrect side of the road. Each asserted that he had been forced to take avoiding action but was unable by the exercise of reasonable care and skill to avoid the collision. Mr Alec Stewart Wylie, an employee of the appellant who was the driver of the Nissan at the relevant time, testified that he was returning to the property of the appellant in Woodhouse Road, where he then resided, when he observed the lights of an oncoming motor vehicle. As he negotiated a bend in the road he realised, 'at the last second', that the lights of the oncoming vehicle were on his side of the road. The vehicle was then no more than two-and-a-half to three metres away. He braked,

hooted and swerved but was unable to avoid the collision with the oncoming motor vehicle, which according to him was straddling the middle line at the point of impact.

[5] Mr Junaid Peerhbai testified that he was travelling together with two passengers in his father's Toyota motor vehicle from his home in the suburb of Allandale to Durban Road. According to him, whilst travelling on an incline in Woodhouse Road and just before Alice Grange Road veered to his left off Woodhouse Road, he observed an oncoming vehicle 'beginning to usurp' his lane. To avoid what he described as a head-on collision he swerved into Alice Grange Road but was unable to avoid the collision, which on his version occurred in Alice Grange Road.

[6] The two versions were mutually destructive in the sense that the acceptance of the one necessarily had to lead to the rejection of the other.

[7] A third witness, Ms Louise Janse van Vuuren who had apparently also witnessed the collision in question was called by the plaintiff. One would have thought that her evidence would have tipped the scales one way or the other. The trial court concluded that it did not. In that conclusion, in my view, the trial court cannot be faulted. According to Ms Janse van Vuuren, that evening she was awaiting the arrival of a friend who was en route to her home to take her to the cinema. When her friend called to inform her that she had lost her way, Ms van Vuuren set off on foot down Alice Grange Road, where she then lived, in the expectation that she could meet her friend at the intersection of Alice Grange and Woodhouse Roads. As she was approaching that intersection she observed what she described as a collision between a white bakkie with a canopy and another motor vehicle. From her vantage point the white bakkie was travelling in a direction roughly away from her and the other vehicle towards her. She was emphatic that it was the driver of the other motor vehicle (not the bakkie) who was in the wrong as his vehicle had veered onto its incorrect side of the road. In other respects her evidence was not only less than certain but difficult to reconcile with what was either

common cause or undisputed between the drivers. Thus, for example, according to her, after the collision an argument ensued between the drivers. Both of them had testified, however, that they had exchanged particulars without any rancour or acrimony. Her evidence as to where the vehicles came to rest immediately after the impact was also at odds with the common cause facts. She did not observe the distinctive SPCA sign on the door of the bakkie, nor for that matter did she notice Peerbhai's two passengers.

[8] I accept, as was urged upon us by counsel, that Ms van Vuuren was an honest and impartial witness. That, however, in and of itself cannot exonerate her evidence from careful scrutiny. The blemishes in her evidence to which I have already alluded render her observations neither reliable nor credible. Whilst the poor lighting and the distance of her vantage point from the collision explain many of the unsatisfactory features in her evidence, they hardly serve to explain the audible argument between the drivers that she allegedly overheard. That seemingly inconsequential piece of evidence is particularly troubling for it is irreconcilable with the evidence of both Wylie and Peerhbai and impacts in a direct and substantial way on her cogency as a witness. Taken together with the other criticisms that can be levelled against her, it ultimately impels one to the conclusion that her evidence does little to assist the appellant in the discharge of the onus that confronted it.

[9] For, in a case such as the present, where there were two mutually destructive versions, the appellant, upon whom the onus rested, could succeed only if it satisfied the trial court on a preponderance of probabilities that its version was true and therefore acceptable, and the other version advanced by the respondent was either false or mistaken and fell to be rejected. That, in my view, the appellant did not do. Peerbhai came across as a mild-mannered, easy-going witness, who obviously made a good impression on the magistrate. Nothing in his evidence was inherently improbable and the version advanced by him was as plausible as that advanced by the appellant. In the circumstances the trial court was right to conclude that the onus resting on the appellant had not been discharged.

[10] One final aspect merits mention. The amount claimed in this matter was R21 330 — paltry when compared to the legal costs that have hitherto been incurred in the courts below and will be incurred in this Court. The case raised no question of principle and there were no considerations which called for the attention of this Court. In order to avoid the clogging of the roll of this Court with matters that do not require its attention, it is important that lower courts give careful consideration to the grant of leave to appeal to this Court. The inappropriate granting of such leave results in cases of greater complexity, which are truly deserving of the attention of this Court, having to compete for a place on the court roll with a case which is not. (*See Monyane and Others v The State* [2006] SCA 141 (RSA) para 28.)

[11] In the event the appeal is dismissed with costs

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V M PONNAN

JUDGE OF APPEAL

CONCUR:

CAMERON JA
SNYDERS AJA