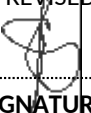




**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

Case No. **33595/2021**

(1) REPORTABLE: YES/NO	
(2) OF INTEREST TO OTHERS JUDGES: YES/NO	
(3) REVISED 18/7/2023	
 SIGNATURE19 JULY 2023 DATE

In the matter between:

PHINDISA BHALANGILE

Plaintiff

and

THE ROAD ACCIDENT FUND

Defendant

JUDGMENT

YENDE AJ

INTRODUCTION

[1] At the commencement of this trial, counsel for the plaintiff informed the court that both merits and quantum have not been settled. That the parties have agreed on the separation of merits from quantum in terms of Rule 33 and the matter proceeded on the merits only (see caselines paginated page 007-8).

- [2] The background facts were comprehensively set out by the plaintiff in its heads of argument however for the purpose of this judgment the following I consider most relevant. This is a claim for damages arising from a motor vehicle accident that occurred on or about the 18th of September 2018 at approximately 03:00 along N3 freeway southbound in Escort, KwaZulu Natal Province.
- [3] The plaintiff testified under oath that he was the driver of a motor vehicle to wit, a truck with registration letters and numbers [...] that collided with a stationery motor vehicle to wit a truck with registration letters and numbers [...] which was at the time driven by the insured. The accident was caused by the negligence of the insured driver who had parked his motor vehicle, *to wit*, a truck in the middle of the road with no cautionary signs.
- [4] According to the plaintiff he only noticed the insured motor vehicle when he was close to it and as a result, he collided to the insured motor vehicle. Because of the said accident the sustained injuries, and he was taken to a nearby hospital by ambulance.
- [5] The plaintiff further testified that at the time of the accident the visibility was poor due to the mist and the road was wet. This is the reason why he did not see the insured motor vehicle and most importantly it was stationary in the middle of the road with no warning signs. The plaintiff testified further that he could not avoid the accident since there was a Bus that was travelling on the fast lane on his right side and on his left side there was a ditch.
- [6] The Plaintiff was cross-examined, and he maintained his version. It was put to the plaintiff that the police accident report noted that the visibility was clear, and the road tarmac was dry to which the plaintiff denied. It was also put to the plaintiff that according to the Medical experts that assessed him for his injuries it is recorded on their reports that *"He was driving a truck while on duty when he lost control due to a disturbance by a bus that was behind him and then hit a stationery car which was in front of him"* to which he denied and explained that he never made such an account about the accident to the Medical experts and

does not know where such a report was obtained from. It was also put to the plaintiff that he contributed to this accident in that he did not keep a proper lookout while driving his truck on the day in question and that he was disturbed by the bus to which he denied.

- [7] The plaintiff closed its case, and the defendant requested the copy of the accident report to be handed in as exhibit 'A' there been no objection thereto same was accepted by the court as such. The defended closed its case without leading evidence. The court was faced only with the testimony of the plaintiff.

Legal framework, applicable Law, and Authorities

- [8] The Road Accident Fund (RAF) is a juristic person established by the Road Accident Act¹ (The Act). It is a critical organ of the state which provides social insurance cover to all road users within the borders of South Africa. In terms of the Act at all material times the defendant is obliged to deal with this claim and to make proper financial compensation to the plaintiff being a victim of a motor vehicle accident in terms of the act and the regulations promulgated thereunder.
- [9] The question of liability turns on whether the driver of the vehicle was negligent and whether such negligence caused the damage suffered by the plaintiff. If so, the defendant will be liable to compensate the plaintiff for the loss or damages suffered as the result of any bodily injury caused or arising from the said negligent driving.
- [10] In *S v Mokgethi & Others*², Van Heerden JA held that there is no single and general criterion for legal causation which is applicable in all instances. He suggested a flexible approach where the court has the freedom in each case to apply a theory which serves reasonableness and justice, considering the circumstances, taking into account considerations of policy. The basic question is whether there is a close enough relationship between the wrongdoer's

¹ Act 56 of 1996 as amended.

² 1990 (1) SA 32 (A) 40-41.

conduct and its consequence for such consequence to be imputed to the wrongdoer in view of policy considerations based on reasonableness, fairness and justice.

[11] In *Fox v Road Accident Fund*³ the court held that it is trite that the onus rests on the plaintiff to prove the defendant's negligence which caused the damages suffered on a balance of probabilities. To avoid liability, the defendant must produce evidence to disprove the inference of negligence on his part, failing which he/she risk the possibility of being found to be liable for damages suffered by the plaintiff.

[12] Where the defendant pleaded contributory negligence and an apportionment, the defendant would have to adduce evidence to establish negligence on the part of the plaintiff on a balance of probabilities. In *Road Accident Fund v Grobler*⁴ the court held "*The party alleging contributory negligence bears the onus of proof*".

Analysis of Evidence

[13] There is only one version about how the accident occurred before court, and it is that of the plaintiff. The defendant failed to present evidence to gainsay the version of the plaintiff. The court pertinently enquired from the counsel for the defendant why the insured driver or the officer who drew the accident report was not called to testify on the defendant's behalf and no satisfactorily answer was forthcoming.

[14] The question to be considered by the court is whether the plaintiff has succeeded in proving the negligence of the insured driver on the preponderance of probabilities. Having considered the evidence presented by the plaintiff the court cannot but accept his testimony as to how the accident occurred. The court accepts that on 18 September 2018 at about 03:00, at or near N3 freeway Southbound, Escourt, Kwa-Zulu Natal Province, an accident occurred between a motor vehicle *to wit*, a truck with registration letters and

³ (A548/16) [2018] ZAGPPHC 285 (26 April 2018) [12].

⁴ 2007 (6) SA 230 (SCA) at para [3].

numbers [...] which was driven by the insured and a motor vehicle to wit a truck with registration letters and numbers [...] which was driven by the plaintiff. Furthermore, that the accident was caused by the negligence of the insured driver who parked his motor vehicle, a truck, in the middle of the road with no cautionary signs to other road users.

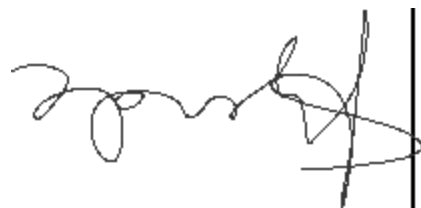
[15] The court also finds that the defendant has failed to disprove the inference of negligence on its part. Although the defendant has pleaded contributory negligence, the court finds that the defendant has failed dismally to adduce evidence to prove same.

[16] Consequently, the court finds that the plaintiff has succeeded in proving that the insured driver was the sole cause of this accident.

ORDER

[17] The following order is made:

- [1] The plaintiff has succeeded to prove 100% negligence against the insured driver.
- [2] The determination of the plaintiff's quantum is postponed *sine die*;
- [3] The defendant is ordered to pay the plaintiff's agreed or party and party High Court costs including the costs of counsel.



J J YENDE
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Delivered: This judgment was handed down electronically by circulation to the parties' /their legal representatives by e-mail and uploaded on caselines electronic platform by the Judge or his / her secretary. The date of the judgment deemed to be 19 July 2023 .

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Date heard: 05 June 2023

Date of Judgment: 19 July 2023