IN THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION, KIMBERLEY)

CASE NUMBER: **1345/22**
DATE HEARD: **06 JUNE 2023**
DATE DELIVERED: **22 MARCH 2024**

In the matter between:

BOMELA, MBULELO ISHMAEL Plaintiff

and

ROAD ACCIDENT FUND Defendant

Coram: Nxumalo J

JUDGMENT

***Per* NXUMALO J:**

1. Plaintiff in these proceedings, a major male resident within the jurisdiction of this Court, claims payment of compensation for damages from the Road Accident Fund (defendant). The said damages are alleged to be resulting from certain bodily injuries caused by a motor vehicle collision involving a vehicle at the time driven by the plaintiff and a certain vehicle at the time driven by one insured driver, S Ngonyama. The insured driver and three other passengers have apparently died as a result of this collision.

2. The collision allegedly took place on or about 10 October 2020 at approximately 21h40 on the R58 road stretching between Bethulie and Norvalspont, here in the Northern Cape Province. The said collision allegedly occurred when the insured driver, travelling in the opposite direction of the plaintiff, overtook a truck on a bend or curve in the road, resulting in a head-on collision between the insured driver's vehicle and the plaintiff's vehicle.

3. According to the plaintiff, the said collision was caused as a result of the sole negligence of the insured driver; who was negligent in one or more or all of the following respects: He drove too fast under the prevailing circumstances; he failed to keep a proper lookout; he failed to apply the brakes of the vehicle he was driving effectively or at all; he failed to drive the vehicle with the necessary skill expected of a reasonable driver in the circumstances; he failed to avoid the motor vehicle collision when he could and should have done so; he executed an overtaking maneuver at a time when it was dangerous and inopportune to do so; and he drove his vehicle on the incorrect side of the road when it was dangerous and inopportune to do so.

4. Plaintiff also alleges that as a result of the said collision, he sustained severe physical injuries, the extent, nature and duration of which appear more fully from the medico-legal reports and the "*RAF 4*" Serious Injury Assessment report, compiled by one Dr A Vlok, an orthopedic surgeon, which reports are annexed to the particulars of claim as annexure A, B and C respectively.[1]

1 Paras 1-6, pp4-6, Pleadings

5. The Defendant, for its own part, delivered two special pleas and one plea *simplisitur*, in resistance of the plaintiff's claim. The parties have, however, agreed to separate the question of the merits from that of quantum, in terms of rule 33(4) of the Uniform Rules. Consequently, this judgment pertains to the merits only.

6. Save for admitting the names of the parties, the defendant, in sum, denied each of the foregoing allegations and put the plaintiff to the proof thereof. In particular, the defendant denied that the insured driver was negligent, as alleged or at all. It is also averred that should this Court find that a collision occurred as alleged by the plaintiff, then the defendant pleads that the plaintiff: drove too fast under the prevailing circumstances; did not keep a proper lookout; failed to give the insured driver right of way; and failed to avoid the collision when he could and should have done so.

7. Alternatively, should this Court find that the insured driver was negligent as alleged or at all (which the defendant denied) and that such negligence contributed to the collision, which defendant also denied, then defendant pleaded that plaintiff was contributorily negligent in one or more of the following respects; to *wit*: he drove too fast under the prevailing circumstances; he did not keep a proper lookout; he failed to give the insured driver right of way; he failed to avoid the collision when he could and should have done so.

8. Also alternatively, should this Court find that the said insured driver was negligent as alleged or at all (which the defendant denied) and that such negligence contributed to the collision,

which the defendant also denied, then the defendant pleaded that the said driver was confronted with a situation of sudden emergency and despite having taken all steps which could reasonably be expected of him in the circumstances, was unable to prevent the collision from occurring.

9. The Plaintiff was a single witness. By agreement between the parties, Exhibit A, drawn by the plaintiff with the assistance of counsel, was admitted into evidence. Exhibit A, is a rough sketch of the layout of the collision scene. He testified that at all material times hereto, he saw three vehicles approaching. The rectangle marked "*A*" depicts his vehicle before the collision, travelling in the left-hand lane in an easterly direction; "*T*" depicts the truck travelling on the right-hand lane, in a westerly direction; "*B*" depicts the insured driver's vehicle, that sought to overtake the truck and entered his lane of travel shortly before the collision; and "*C*" is the second vehicle that plaintiff saw following B, behind the truck, shortly before the collision. The mark "*X*" depicts the point where the plaintiff was told by the police that the collision occurred between his vehicle and vehicle B.

10. Plaintiff, *inter alia*, testified as follows; that: He was a 61-year-old teacher by profession. He has a Code 8 drivers' licence, which he acquired in 1983. On the night of the impugned collision, he was traveling from Bethulie to Colesberg; *via* Norvalspont, where he resides. Thereafter he proceeded to Colesberg, to get something to eat.

11. On his way from Norvalspont, after buying food at around 22h00, and when he had just reached Colesberg, travelling from west-to-east, he observed oncoming vehicles in front of

him, shortly before vehicle B collided with his, on his side of the road. Vehicle B, at all material times hereto, was the second vehicle that was travelling in the opposite direction. This second vehicle (vehicle B), at all material times hereto was overtaking vehicle T.

12. He was travelling at approximately 60 kilometres *per* hour at all material times hereto, but could not tell at what speed the oncoming vehicle was travelling. The stretch of the road on which he was travelling, was a 60 kilometre zone and had an approximately 15-centimetre-high pavement on the left.

13. The collision took place near Panomino, where the road curved gently to his right-hand side. It was dark because the street lights were off. This stretch of the road was made up of one lane to and fro, demarcated by a solid line in the middle. There were no yellow lanes on this stretch of the road. His and vehicle B's headlights were dim at all material times hereto. There were other vehicles (two or three) following vehicle B.

14. There was nothing he could have done to avoid the collision, despite his long experience as a driver. For instance, he could not swerve to the left as he would have hit the pavement, nor could he swerve to the right, as that would have practically brought him into a head-on collision with the oncoming traffic. He also did not have sufficient time to apply his brakes. Even if he had done so, same could not have averted the collision because the collision happened suddenly, unexpectedly and too quickly, such that he could not avert same or react timely.

15. Everything happened so quickly that he cannot recall what happened thereafter. He was unconscious after the collision and taken to hospital in Colesberg. Thereafter, he was transferred to Bloemfontein Hospital for further treatment. Under cross-examination he testified as follows, in sum. That he first observed the said vehicles approximately 10 metres away and further; to *wit*:

"And further. You can see. Even if it is on a straight line, even 400 metres you can see a car."

16. When he was asked as to when did he first notice the two vehicles that were coming in his direction; he responded as follows:

"PLAINTIFF: M'Lord, I think, and the answer should be because of it is at night and the cars, the lights are on, and then this is, it is not a, it is not a curve like, ***it is gentle curve****. You can immediately see there is an oncoming car. Immediately you, on the road, you can see there is a car that is coming in front of you because of, the lights are on.*

MR MOGANO: Are you able to tell the Court, after you first noticed the two vehicles, how long did it take for the collision to, to occur, or for you to hear the impact of the two cars colliding?

PLAINTIFF: M'Lord, as I have said in the, and thing it happens at a quick time, because I did not expect now this would happen because we were driving on this road. ***But now abruptly, in the nick of time, then this thing happened."***

MR MOGANO: All right.

PLAINTIFF: ***It was as quick as possible, directly. I did not expect it to happen."***[2]

2 p21, Record, 06/06/23

17. Regard being had to the foregoing, this Court is of the opinion that, *inter alia*, the following salient issues are joined and therefore fall for determination briefly, in turn.

Whether there is any evidence that the collision took place on the plaintiff's side of the road?

18. In this regard, the plaintiff *inter alia*, testified as follows: That it was not the first time he was driving on that road. He knew that there was a curve on that stretch, but same was not such that one would not see oncoming traffic. When he was asked whether he saw the vehicle he collided with, he testified that the said vehicle was following the truck because he could see its headlights behind the latter, but did not expect anything untoward; to *wit*:

"... The car, the truck is coming and I am just passing the truck. Once I pass the truck, this car is coming this way. I am confused..."

19. The Plaintiff also testified that vehicle B collided with him when it sought to overtake the said truck. That the said vehicle was *"...driving on the rear of the truck"* the last time he saw it and that *"...everything just happened quickly."* Whilst he saw the insured vehicle behind the truck at some distance away, he did not see it coming into his lane immediately before the collision because*: "[I]t was just a quick thing..."*. At all material times hereto, he was driving approximately 60 kilometres per hour.

20. He also testified that after the impact, he was “out” and therefore does not remember anything more. The next time he regained consciousness was in hospital. He was later told by one Police officer that the collision happened near Panomino in his lane and that at all material times hereto, he was in his lane and never left it. That whilst at all material times hereto, his headlights were dimmed. He could, however, see the truck approaching about five metres away.

21. As alluded to above, the plaintiff is a single witness in this part of the proceedings. In the premise, on behalf of the defendant, the following was submitted: Whilst it might be so that the accident occurred, the most important question remained as to how it happened. That this Court only has one version before it. That plaintiff's evidence cannot just be simply accepted by this Court, despite it being the only version before it.

22. That the plaintiff’s evidence must be based on facts and nothing else. What the plaintiff failed to prove in his testimony is that he saw the insured driver come into his lane of travel. That on the probabilities of where the accident took place, in light of his failure to testify seeing the insured driver entering his lane of travel, this Court should find that the accident did not occur in the plaintiff’s lane of travel; alternatively, it should be inferred by this Court that the insured driver did not go into the plaintiff’s lane of travel.

23. That there is no tangible evidence before this Court that shows that the point of impact was on the plaintiff’s side because he simply did not see the vehicle he is alleging was wrong. That it might be so because the plaintiff did not keep a

proper lookout, at all material times hereto. It is against this backdrop that this Court was urged not to rely on the point of impact pointed out by the plaintiff in the document marked Exhibit A.

24. All evidence requires the trier of facts to engage in inferential reasoning by drawing various inferences regarding the truth or otherwise of the testimony. These inferences are common to all cases where evidence is led. It is trite in our law that there is no rule of thumb or formula to apply with regards to the consideration of the credibility of a single witness. It is therefore sufficient for the trial court to only weigh the evidence of the single witness and to consider its merits and demerits and having done so, to decide whether it is trustworthy and whether it is satisfied that the truth has been told, despite the shortcomings or defects or contradictions in the evidence.[3]

25. It is so that circumstantial evidence is not necessarily of less probative value than direct evidence.[4] Not infrequently, our courts are required to engage in second trier inferential reasoning. These inferences may be drawn from circumstantial evidence. In such a process, following certain rules of logic in some instances, circumstantial evidence may even be of more value than direct evidence.[5]

26. This Court has fully weighed the plaintiff's evidence and considered its merits and demerits and having done so, is of

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3 ***S v Sauls*** 1981 (3) SA 172 (A) at 180E–G

4 In ***S v Reddy and Others*** 1996 (2) SACR 1 (A), Zulman AJA quoted *Best on Evidence* 10 Ed at para 297; *to wit: "[E]ven two articles of circumstantial evidence, though each taken by itself weigh but as a feather, join them together, you will find them pressing on a delinquent with the weight of a mill-stone…"*

5 ***S v Musingadi and Others*** 2005 (1) SACR 395 (SCA) at para 20

the opinion that there are no major shortcomings, defects or contradictions in same. It was conceded for the defendant that, at all material times hereto, the plaintiff never left his lane. This Court is therefore satisfied that the collision, on a balance of probabilities, took place between the plaintiff's vehicle and vehicle B on the plaintiff's side of the road.

27. The impugned hearsay evidence of the said police officer merely corroborates which side of the road the collision took place. Section 3(1)(c) of the **LAW OF EVIDENCE AMENDMENT ACT**[6] empowers this Court to admit hearsay evidence, if in this Court's opinion, the evidence ought to be admitted in the interests of justice. This Court finds that it is in the interest of justice that same be admitted and is admitted accordingly.

Whether the plaintiff should have foreseen the possibility of encountering the defendant's vehicle on his side of the road?

28. In sum, the plaintiff's case coagulates as follows: He, at all material times hereto, was driving in his lane. He saw oncoming vehicles and all of a sudden vehicle B appeared in front of him and collided with him. He assumed that the reason why the impugned vehicle ended up in his lane of travel was because it sought to overtake the truck immediately before the collision. The stretch of the road on which the collision occurred had one lane in each direction.

29. He did not apply brakes because everything happened suddenly. Even if he had applied brakes, doing so would still not have avoided the accident. He did not have time to avoid the accident in any way. He could not swerve to the left

6 45 of 1988

because of the height of the pavement to his left, nor could he have swerved to his right because of the oncoming vehicles behind the vehicle that collided with him. And before that, of course, the truck.

30. Whilst it is trite that the assumption that a motorist keeping to his side of the road is entitled to assume that approaching traffic will do likewise does not entitle a driver on the correct side to remain passive in the face of threatening danger.[7] And whilst it is so that as soon as the danger of collision becomes evident, he is under a duty to take all reasonable steps to avert one.[8] It is further so that the latter should only go onto his incorrect side as a very last resort, because inherent in such a maneuver is the risk that as he does so, the approaching driver may return to his correct side.[9]

31. The foregoing notwithstanding, it is also trite in our law that very rarely will a driver be found to have acted unreasonably for remaining in his correct side of the road.[10] It is so because the observance of "the rule of the road" which decrees traffic to keep to the left of the center of the road is of such importance that even when an approaching vehicle is on its incorrect side of the road, a driver on his correct side is entitled to assume that the former will return timeously to its correct side.[11]

32. In the circumstances, this Court finds that the plaintiff could not have foreseen the possibility of encountering the defendant's vehicle on his side of the road, nor could he

7 ***Walpole and Another v Santam Insurance CO Ltd*** 1973 (1) SA 357 (T) at 361D-G
8 ***Burger v Santam*** 1981 (2) SA 703 (A)
9 ***President Insurance CO Ltd v Tshabalala*** 1981 (1) SA 1016 (A) at 1020C
10 ***Marais v Caledonian Insurance Co Ltd*** 1967 (4) SA 199 (E) at 202F
11 ***Walpole v Santam*** (*supra*)

avoid the collision, even if he had applied brakes. It is also so that even if the plaintiff was driving at a speed at which he would have been able to stop within the range of his vision, he would not have seen the defendant's vehicle in time to avoid the collision.

Which party was negligent, and if so, to what extent; regard being had to the facts and circumstances of this case?

33. The Defendant, for its own part, contended as follows: That a reasonable person in the position of the plaintiff, at all material times hereto, should have known that the situation on the said road was not normal. That even if he saw where he was going, he should have taken into consideration that other drivers might not have a clear visibility as he did. This contention was predicated against the following *dictum*:

> ***"****MR MOGANO:* *It says:*
> *'While the stop sign together with the necessary stop line was absent from the southern* ***entrance to the intersection****,* ***a driver approaching the intersection*** *from that side would not commit an offense if he did not stop* ***before entering the intersection****. That, however, did not relieve him of the duty to exercise special care* ***before entering or crossing the intersection*** *through the road, particularly in view of the fact that he had to emerge from a blind corner.'*
> *And then the last sentence which we rely on is:*
> *'A reasonable man proceeding in the* ***through road*** *would have been aware of this.'"*[12]

12 ***Diale v Commercial Union Assurance Co. of S.A. Ltd***. 1975(4) SA 572 (A) at p 577; see also ***National Employers General Insurance Co Ltd v Sullivan*** 1988 (1) PH J3 (AD)

34. In the premise, it was contended for the defendant that any claim which the plaintiff may have, should be reduced in accordance with the provisions of the **APPORTIONMENT OF DAMAGES ACT 34 of 1956**.[13]

35. The following was submitted for the plaintiff in this regard, That the *onus* rested on the defendant, which it failed to discharge. That the defendant did not adduce any evidence illustrating that the plaintiff was negligent or that same, if at all, was causally connected to the collision, despite cross-examination to that effect. On that basis therefore, the *onus* to prove any contributory negligence on the part of the plaintiff was not discharged by the defendant. And that on that basis, this Court should find that the insured driver is solely to blame for the collision and the defendant is therefore liable for 100% of plaintiff's agreed or damages to be proved.

36. That Whilst it is trite that the plaintiff bears the *onus* to prove negligence on the part of a defendant, the moment it is found by this Court that the collision occurred in the plaintiff's lane, then the plaintiff has proved negligence. Since it is so that vehicle B encroached into the plaintiff's lane or drove into his lane, then surely there was negligence on the part of the driver of vehicle B, because same was at all material times hereto within the plaintiff's lane.

37. That since it has not been proved that when the plaintiff saw vehicle B encroaching onto his lane, which he did not even see because it happened so fast, he could have taken reasonable "avoiding action" and that on probabilities, the avoiding action, would have averted the collision. Therefore,

13 The ***"Damages Act"***

under those circumstances, it follows that 100% of the negligence must be apportioned to the driver of vehicle B, which was at all material times hereto driving in the plaintiff's lane. That otherwise, if that was not so, the collision would not have occurred.

38. That whilst on his lane, the plaintiff could not swerve to his left or right and applying brakes would not have been effective. To the extent that there was literally nothing the plaintiff could have done to avoid the accident, he could not have been contributorily negligent.

39. It is so that a defendant faced with a delictual claim may in the plea request apportionment of damages based on the contributory negligence of the plaintiff. It is also so that by comparing the respective degrees of negligence of the parties, a Court can determine the extent of each party's negligence in causing the damages at issue.[14]

40. Whilst the defendant has alleged the failure of the plaintiff to keep a proper lookout, it did not prove any of the elements pertaining to the negligence of the plaintiff. This notwithstanding, it was contended for the defendant that to the extent that the plea forms part of the record of the trial, the defendant's position in this regard is already known. This is not a correct statement of law.

41. It is trite in our law, that it is not sufficient for a defendant counterclaiming negligence against a claimant to merely allege so. It is so because it bears the onus of proving

14 Section 1 of the Damages Act; *see also* ***South British Insurance CO Ltd v Smit*** 1962(3) SA 826 (A)

negligence on the part of the plaintiff before apportionment of damages can be triggered.

42. The mere finding by the trial Court that a party had not been keeping a proper lookout at the time of a collision was not sufficient to *ipso facto* render such a party liable. That it is so since the other party had to prove that the former's failure to keep a proper lookout was causally connected with the collision - ***Guardian National Insurance CO Ltd v Saal*** 1993 (2) SA 161(C).

43. It follows from the foregoing that it was incumbent on the defendant to elicit some evidence demonstrating that the plaintiff did not only fail to keep a proper lookout, but that failure to do so was causally connected with the collision. The Defendant has failed on both counts.

44. It has not been seriously disputed that at all material times hereto, the plaintiff was driving at an approximate speed of 60km/h, in a 60km/h zone. It is common cause that the street lights at all material times hereto were off and that this part of the road curved gently. In the premise, it was contended for the defendant that the road was not normal. That despite that, the plaintiff failed to take reasonable steps to avoid the accident by reducing his driving speed. It was submitted for the defendant that a *diligens paterfamilias* approaching a curve ought to slow down or reduce his speed.

45. It is so in our law that for the purposes of liability, *culpa* arises if, and only if: *(a) a diligens paterfamilias in the position of the party concerned- (i) would foresee the reasonable possibility of his/her conduct injuring another in his person or property and causing him/her patrimonial loss;*

and (ii) would take reasonable steps to guard against such occurrence; and (b) the person concerned failed to take such steps."[15]

46. The Defendant's submissions, however, overlook requirement (a)(ii); to *wit*: whether a *diligens paterfamilias* in the position of the plaintiff would take any guarding steps at all; and if so, what steps would be reasonable, regard being had to the facts and circumstances of each case. The ultimate issue is thus always whether the facts establish negligence, not whether they show that the driver in question failed to keep his speed within the range of his vision, though such failure may in a particular case be a crucial factor in deciding whether or not there was negligence.[16]

47. The secondary questions arising from the foregoing are therefore, *inter alia*, to *wit*: (a) whether the plaintiff should have foreseen the possibility of encountering vehicle B in the circumstances in which the collision occurred? (b) Secondly, whether even if the plaintiff was driving at a speed at which he would have been able to stop within the range of his vision, he would not have seen the defendant's vehicle in time to avoid the collision? (c) Thirdly, it is whether the collision occurred through the sole negligence of vehicle B?

48. It is so that road users are generically entitled to assume that others will act reasonably, observing the codes and conventions which govern the movement of traffic on public roads.[17] In fact, until the contrary is proved, a driver is entitled to assume that other road users will not conduct

15 ***Kruger v Coetzee*** 1966 (2) SA 428 (A) at 430
16 ***Ntsele v AA Mutual Insurance Association Ltd*** 1980 (3) SA 441 (C) at 444D
17 ***Santam v Letlojane*** 1982 (3) SA 318 (A) at 329B

themselves with suicidal abandon.[18] It follows from the foregoing that the plaintiff was entitled to make certain assumptions about the conduct of other drivers including the insured driver, whether he had seen their vehicles or whether their presence was unknown because they were hidden by other traffic, buildings or hedges.[19]

49. Negligence is a conduct which involves an unreasonable risk of harm to others. It is the failure, in given circumstances to exercise that degree of care which the circumstances on the occasion demand. This duty of care of course involves doing or omitting to do something which may have as its reasonable and probable consequence injury to others. The duty is owed to those whom injury may reasonably and probably be anticipated, if the duty is not observed. The risk of harm must, of course, be reasonably foreseen- ***Goode v SA Mutual Fire & General Insurance*** 1979 (4) SA 301 (W).

50. In the premise, this Court finds that the plaintiff should not have foreseen the possibility of encountering vehicle B in the circumstances in which the collision occurred. Secondly, even if the plaintiff was driving at a speed at which he would have been able to stop within the range of his vision, this Court is of the opinion that he could not have seen vehicle B in time to avoid the collision. Applying brakes would also not have avoided the collision.

51. The occurrence of the impugned collision proclaims negligence. Human experience evinces that in circumstances like in *casu*, where the collision took place on the side of the plaintiff, it is most improbable that the collision would have

18 ***Lotter v BP Southern Africa Pty Ltd*** 1967 (2) PH 48 (O); see also ***Cooper v Armstrong*** 1939 OPD 140
19 ***Van der Merwe v Union Government*** 1936 TPD 185

taken place without the negligence on the part of the insured driver. Proof that a vehicle was on the incorrect side of the road at the time of the collision is accepted as *prima facie* proof of the driver's negligence.[20]

52. The insured driver owed a duty to the plaintiff not to drive on his incorrect side of the road or towards the plaintiff when it was dangerous to do so. It is so that if the conduct of a person who owes a duty of care falls, even in the slightest degree, below the standard of a reasonably prudent person, such a person is guilty of negligence. The degree of care required depends on the likelihood of injury being in fact caused and the gravity of the consequences, if an accident should occur. This Court is of the opinion that both these considerations were present were present to a high degree in casu. The insured driver therefore owed a great amount of care to the plaintiff- ***Goode v SA Mutual Fire & General Insurance*** *(supra).*

53. Consequently, in this Court's opinion, the plaintiff has proven facts from which an inference of negligence may, in the absence of an explanation, be drawn, regard being had to the doctrine of *res ipsa liquitur*. The doctrine conveniently states the obvious. It conceptualises circumstances in which a defendant is required to give an explanation for the occurrence of an accident and in default, being held liable.

54. It was incumbent on the defendant to displace the *prima facie* inference by means of an explanation. No such evidence has been adduced in this proceedings. A finding of *res ipsa loquitur* means that the collision impels an inference of negligence on the part of the insured driver, in the absence of

20 ***Marais v Caledonian Insurance*** (*supra*)

an explanation. As the defendant has failed to lead any exculpatory evidence, this Court ineluctably finds the insured driver negligent and solely liable towards the plaintiff.

55. The insured driver in all probabilities executed an overtaking maneuver at a time when it was dangerous and inopportune to do so and drove his vehicle on the incorrect side of the road when it was dangerous and inopportune to do so. It is trite that an emergency due to a driver's own negligence cannot avail him.

56. The remainder is the matter of costs. Mr. Poho, for the plaintiff, urged this Court that in the event of it coming to a decision favourable to the plaintiff, this Court should contemporaneously award costs in favour of the plaintiff. In this regard, this Court was referred to ***Grootboom v Graaff-Reinet Municipality***, without more.[21]

57. Mr. *Mogano*, on the other hand, submitted that the issue of costs should be reserved for decision by the quantum Court. It was, in sum, submitted for the defendant that regard being had to the possibility that the plaintiff's claim, though currently quantified above the jurisdiction of the Magistrate Court, might ultimately only be proven or settled at the latter's jurisdiction. That it is therefore not clear at this stage of the proceedings if the proven or settlement amount would be within the threshold of the Magistrate Court or not. If it is, obviously the plaintiff would not be entitled to costs on a High Court scale.

58. This Court notes that in ***Grootboom***, unlike in this case, the issues raised were not without difficulty, both factually and in

21 2001 (3) SA 373 (E)

law. In fact, some of the answers in law in that case had to be found without the guiding light of precedent. Those considerations tended to support that matter having been brought in the Supreme Court, as it then was.

59. It is trite that generically, a litigant instituting proceedings in a High Court when he ought to have proceeded in a lower Court will be mulcted in costs in so far as he will, if successful in his claim, be awarded costs only on a scale applicable in the forum he ought to have chosen. This Court is not in a position to make that determination at present.

60. A court's discretion with regard to costs is wide, unfettered and equitable. This Court is therefore of the considered opinion that determining the award of costs presently, on whatever scale, would unduly fetter or restrict the discretion of the quantum Court. Such would introduce a mechanical aspect which obviously would be alien to the concept of judicial discretion with regard to costs.

ORDER:

61. In the premise, the following order issues:

(a) DEFENDANT IS HELD LIABLE FOR DAMAGES, IF ANY, THAT PLAINTIFF HAS SUFFERED IN CONSEQUENCE OF THE MOTOR VEHICLE COLLISION THAT OCCURRED ON 10 OCTOBER 2020, WITH THE DEGREE OF FAULT IN RELATION THERETO BEING APPORTIONED 100% TO THE DEFENDANT;

(b) THE DETERMINATION OF THE SAID DAMAGES IS POSTPONED *SINE DIE*; AND

(c) COSTS ARE RESERVED.

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JUDGE APS NXUMALO
HIGH COURT OF SOUTH AFRICA
NORTHERN CAPE DIVISION
KIMBERLEY

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Instructed by:	Office of the State Attorney, Kimberley

Edited:	*YES*/NO
Revised:	*YES*/NO
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Date:	.....