



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

Case No:6517/19

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: YES 25 APRIL 2023

09 May 2022

SIGNATURE

DATE

In the matter between:

KUMALO XOLILE

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

DEFAULT JUDGMENT

NEUTRAL CITATION: *Kumalo v RAF* (Case No: 6517/19) [2023] ZAGP JHC 448 (9 May 2023)

INTRODUCTION

- [1] This is an application for default judgment, pursuant to a delictual claim instituted by the plaintiff, Mr. Kumalo Xolile, against the defendant, the Road Accident Fund.
- [2] The matter proceeded on a default basis because the defendant's defence was struck out on 8 October 2021, for its failure to comply with a compelling directive issued on 15 July 2021.
- [3] The matter was to proceed on both merits and quantum. I formed the view however, that the matter was not ripe to proceed on quantum and limited myself to the merits of the action.

THE MERITS

- [4] The plaintiff resides in Etsolo in the Eastern Cape and has been so resident since birth. On or about 17 March 2017, at or near Lansdowne Road in Khayelitsha, the plaintiff was walking on the pavement. He was knocked over by a motor vehicle, which he didn't see approaching. The vehicle left the driveable road area, skipped the pavement and collided with the plaintiff. The driver of the unknown vehicle fled the scene of the accident.
- [5] After he was knocked over by the vehicle, the plaintiff's friend, who accompanied him, called an ambulance, which transported the plaintiff to the

Khayelitsha Hospital, where he was admitted. The plaintiff sustained numerous injuries in the accident, notably he lost the use of his right arm.

[6] The evidence presented by the plaintiff was compelling and I have no hesitation in accepting the truthfulness thereof.

[7] It is immediately apparent that the negligent driving of the driver of the unknown vehicle, as claimed by the plaintiff in his Particulars of Claim, was the sole cause of the accident.

[8] In the result I make an order herein that the defendant shall be 100% liable for the plaintiff's agreed or proven damages arising from the accident.

ORDER

1. The defendant is 100% liable for the plaintiff's agreed or proven damages arising from the accident.
2. The defendant is ordered to furnish the plaintiff with an Undertaking in terms of Section 17(4)(a) of the Road Accident Fund Act, 56 of 1996, for the costs arising out of the injuries sustained by him in the motor vehicle collision of 17 March 2017, after such costs have been incurred and upon proof thereof.
3. The defendant is ordered to pay the plaintiff's costs of suit on party-and-party scale.
4. The issue of quantum is postponed *sine die*.


B. FORD

Acting Judge of the High Court
Gauteng Division of the High Court,
Johannesburg

Delivered: This judgment was prepared and authored by the Judge whose name is reflected on 09 May 2023 and is handed down electronically by circulation to the parties/their legal representatives by e-mail and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 16h00 on 09 May 2023.

Date of hearing: 25 January 2023

Date of judgment: 09 May 2023

Appearances:

For the plaintiff: Adv. V.J. Chabane
Instructed by: Mahlathi Dlamini Bhengu Inc

For the defendant: No appearance