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IN THK NORTH GAI TLNG HIGH CQ.IRT PRETORIA

Case No: 22642/OS

In the matter between:

TEMCHEWE

Plaintiff

$$V_S$$

THE ROAD ACCIDENT FUND      Respondent

## JUDGEMENT

SAPIRE. A J:

The Plaintiff sues both in her personal capacity and as mother and guardian of her four minor children The Defendant is the Road Accident Fund Plaintiffs claim arises out of the death of the Plaintiff s husband and father of the minor children who died in a road accident which took place on the 17<sup>th</sup> of May 2003 on the Louis Trichardt Polokwane road The deceased was travelling as a passenger in a motor vehicle with registration numbers D..... which collided with a motor vehicle with registration numbers B..... then and there driven by one Kgomoesoana The Plaintiff alleges that the accident was caused by the negligence of the driver of the vehicle B.....

When the matter was called for trial the parties had agreed to separate the issues of negligence from the issue of the quantum of damages. I was asked to determine only the question of negligence

The Plaintiff called as a witness the driver of the car in which the deceased was travelling. He is one James Ramahuma. He described that when it was already dark at about 7:30 in the evening he was driving along the main road from Polokwane to Louis Trichardt intending to go to Elim. Which requires a right turn from the main road at a T junction.

He described how he approached a point in the road where there is a turn off to the right to the road leading to Elim. There he stopped before proceeding to make his turn. He says he saw the lights of a motorcar on the far side of the road which he had to traverse in making his right turn and assumed that the car was stationary. He proceeded to make his turn but a collision took place at the entrance to the Elim road. It appears that the vehicle which was seen by the driver, James, was not stationary.

The driver of the insured vehicle was called by the Defendant who gave a different version of what happened.

He said that he was travelling in the opposite direction to the vehicle in which the deceased was a passenger and he observed the lights of a vehicle apparently wishing to turn right to enter

the Elim road

Ahead of him were two motor vehicles which passed the T-junction formed by the main road and the Elim road these two vehicles passed in safety and he had no indication that the vehicle which intended to turn right would make its move so as to endanger him He therefore proceeded but at the intersection his vehicle was struck

by that of the vehicle in which the deceased was a passenger. He was insistent that he had no reason to believe that the vehicle would act irregularly or that there was any danger in him continuing his journey following the two vehicles which had passed the intersection.

On the evidence there is nothing to contradict this. As far as the other vehicle is concerned it is clear that the driver made a right turn and proceeded onto the road in the face of oncoming traffic.

It is clear that in so doing he was negligent. I must reject his evidence that he thought that the oncoming vehicle was stationary on the distal side of the road. The evidence of the insured driver is in this respect more cogent in contradicting the evidence of the driver of the vehicle in which the deceased was struck.

I therefore found that the accident was caused by the sole negligence of the driver of vehicle D.....

I make no order as to costs. This question will have to be decided when the issue of damages is determined by the parties.  
SW SAP I RE ACTING JUDGE NORTH GAUTENG HIGH COURT

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