

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

CASE NUMBER: 89057/2019

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO
DATE: **26 /04/2023**
SIGNATURE

In the matter between:

PHEZUKONKE LINDOKUHLE HLABISA

PLAINTIFF

and

**ROAD
DEFENDANT**

ACCIDENT

FUND

JUDGMENT

OOSTHUIZEN-SENEKAL CSP AJ:

- [1] Mr Phezukonke Lindokuhle Hlabisa, the plaintiff instituted action against the Road Accident Fund ("RAF"), the defendant, in which he claims damages as a result of injuries he sustained in an alleged motor vehicle accident.
- [2] The RAF defended the claim and the matter came before me on trial on 25 April 2023.
- [3] At the commencement of the trial the parties agreed that only the defendant's liability be dealt with and the question of the plaintiff's quantum claim be dealt with later.
- [4] The relevant portions of the plaintiff's particulars of claim aver that on 28 June 2015 he was a passenger in a motor vehicle with registration number N[...]

1[...], when the driver of the motor vehicle, his uncle, lost control of the motor vehicle while driving and as a result it collided with a wall.

[5] It was further alleged that the driver of the motor vehicle was negligent in one or more of the following respects;

5.1 He failed to keep proper lookout,

5.2 He failed to take any or adequate steps to avoid the accident when by his exercise of reasonable care and diligence, he could and should have done so,

5.3 He failed to keep the vehicle he was driving under proper and effective control,

5.4 He failed to apply his brakes either timeously, adequately or at all thereafter lost control of his motor vehicle and it collided with a wall, and

5.5 He failed to reduce speed of the vehicle he was driving when he ought to and could have done so.

[6] As a result of the motor vehicle accident the plaintiff sustained the following injuries;

6.1 Lower limb injury, and

6.2 Head injury.

[7] Due to the injuries sustained the plaintiff has suffered damages of R 1 500 000.00, which is made up as follows:

1. General damages	R800 000.00
2. Future medical expenses	R100 000.00

3. Loss of earnings

R600 000.00

- [8] The matter proceeded accordingly. The plaintiff was the only witness called to testify in the matter.
- [9] The plaintiff testified on 28 June 2015 he was a passenger in a motor vehicle driven by his uncle on their way to attend a family ceremony in Melmoth. He was seated on a bench on the back of the motor vehicle. While proceeding up a mountain, the driver of the motor vehicle lost control of the motor vehicle which resulted in the motor vehicle moving backwards hitting a wall.
- [10] The plaintiff testified that he was ejected from the motor vehicle after which he lost consciousness. He only regained consciousness at the hospital. The plaintiff stated that after members of his family arrived at the hospital he was transported to the Hlabisa Hospital.
- [11] The plaintiff testified that he was 16 (sixteen) years old at the time of the accident. He did not report the accident to the South African Police Services ("SAPS") because he lacked the necessary knowledge regarding the process to following after being involved in a motor vehicle collision. He testified that no accident report was compiled.
- [12] Nothing turned on the cross examination of the plaintiff more so that counsel for the defendant would not have been able to put a version to the Plaintiff;
- [13] The defendant did not call any witnesses.
- [14] In terms of Section 17 (1) (a) and (b) of the Road Accident Fund Act, Act 56 of 1996 as amended has an obligation to compensate a plaintiff (third party) for loss or damages as a result of injuries sustained due to a motor vehicle accident regardless of whether the driver or the owner of a motor vehicle was identified or not. In this matter, the plaintiff sustained injuries and loss due to the motor vehicle accident and not only the driver was identified but also the description and registration numbers of the motor vehicle.

[15] In *MS v Road Accident Fund*¹ Fisher J states as follows:

“The statutory nature of the liability is such that the RAF insures the third party for any loss or damage which the third party has suffered as a result of any bodily injury to himself ... if the injury ... is due to the negligence or other wrongful act of ... the insured driver.”

[16] it is trite law that any person claiming from the defendant must only prove 1 % to prove the defendant’s liability as reiterated previously. In the matter of *Prins v Road Accident Fund* ²Mojapelo DJP as he then was stated as follows:

“It is common cause that a passenger needs only to prove the proverbial 1% negligence on the part of an insured driver in order to get 100 % of damages that he is entitled to recover from the Fund.”

[17] The only evidence before this Court was that of the plaintiff whose version was not contradicted or assailed in any manner.

[18] The witness’s statement was submitted to the RAF in support of the plaintiff’s claim. The Melmoth hospital, specifically the out patient records was used as the basis for disputing the witness’s evidence. This was despite the hospital records not being proved. The hospital records referred to the fact that the plaintiff attended to the Melmoth hospital, out-patient department on 11 August 2015.

[19] In any event, the hospital records is hearsay. No evidence was adduced by any person with personal knowledge of the document, and its contents. Whilst it appears that a doctor or nurse may have completed this hospital record, that person was not called as a witness and where in any event it is not clear where

¹ (10133/2018) [2019] ZAGPJHC 84, [2019] All SA 626 (GJ).

² (21261/08) [2013] ZAGPJHC 106.

the information had come from that was used to populate the report. The hospital record has little if any probative value, even assuming it to be admissible.

[20] There are no material differences between the witness's version adduced in evidence before me and the section 19(F) affidavit deposed to by him on 22 July 2019. In fact, his evidence and the statement were consistent. Furthermore, the plaintiff testified in a clear, forthright and open manner. No reasons were articulated on behalf of the RAF for rejecting the evidence of the plaintiff.

[21] I am satisfied that the plaintiff has discharged the *onus* of proving that the defendant through the insured driver negligently caused the accident which resulted in the plaintiff sustaining injuries.

[22] In the circumstances, the plaintiff's version stands to be accepted and the RAF is found liable to compensate the plaintiff for 100 % of the plaintiff's proven damages.

[23] In the premises I make the following order:

1. In terms of Rule 33(4) issues of liability/merits and quantum are separated.
2. The defendant is liable 100% to the plaintiff on all proven damages sustained during the motor vehicle accident which occurred on 28 June 2015.
3. The determination of quantum is postponed *sine die*.
4. The defendant is ordered to pay the plaintiff's taxed or agreed costs on the High Court Scale as between party and party, which costs shall include costs of one counsel.

**CSP OOSTHUIZEN-SENEKAL
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA**

This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to *Case Lines* and by release to SAFLII. The date and time for hand-down is deemed to be 16h00 on 26 April 2023.

DATE OF HEARING: 25 April 2023

DATE JUDGMENT DELIVERED: 26 April 2023

APPEARANCES:

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