

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

CASE NO: 80152/2018

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED.

DATE: 14 June 2023

SIGNATURE: M Pienaar

In the matter between:

TSHEPISO VANESSA ROBERT

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

PIENAAR (AJ)

INTRODUCTION

[1] This is an application for default judgment in an action instituted against the Road Accident Fund, the Defendant as the body that is, in terms of the Road Accident Fund Act, 56 of 1996 ("the Act") responsible for any loss suffered as a result of the negligent driving of motor vehicles, for damages for personal injuries the Plaintiff sustained in a motor vehicle collision that occurred on 29 December 2017 at N3 North direction before Grey Avenue off ramp.

[2] At the time of the accident the Plaintiff was a passenger in the Insured motor vehicle. She blamed the negligent driving of the Insured driver for the accident and, consequently, sued the RAF for damages she suffered of the amount of R4 060 000,00

[3] The Defendant entered an appearance to defend and filed a plea, but at some stage the attorneys of record for the Defendant withdrew and no attorneys were appointed. On 27 October 2021 before the Honorable Justice Manyathi (AJ) the Defendant's defence was struck off. It is on that basis that the Plaintiff proceed with an application for default judgment.

[4] The matter came before me on 29 March 2023. Mr Mojamabu appeared for the Plaintiff. Ms Mokaumbe appeared for the Defendant. I requested that the matter stands down until 31st March 2023, for the Plaintiff to testify.

[5] On 31st March 2023 both Mr Mojamabu and Ms Mokaumbe appeared in Court. I informed Ms Mokaumbe that the Defendant's defense was struck off, which means the Defendant cannot be part of the hearing.

[6] The Plaintiff applied for separation of the merits and the quantum of the Plaintiff's damages. Therefore, the matter proceed on the issue of merits of the claim only.

[7] The Plaintiff's case is on or about 29 December 2017, at N3 North an accident occurred involving a motor vehicle with registration numbers and letters M[...] (hereinafter referred as insured driver motor vehicle) driven by Thambi Mokhethi (hereinafter referred to as insured driver), who lost control of the insured motor vehicle and crashed.

[8] For sake of completeness the following documents are uploaded onto Caselines as exhibits for the trial, namely:

8.1 Plaintiff's notice in terms of Rule 35(9) - Inquest report as Exhibit A

8.2 Plaintiff's lodgment documents as Exhibit B

8.3 Plaintiff's pleading documents as Exhibit C

8.4 Plaintiff application to compel and strike out as Exhibit D

EVIDENCE ON THE MERITS

[9] In the Plaintiff's particulars of claims that on 29 December 2017 at N3 North an accident occurred involving a motor vehicle with registration numbers and letters M[...] 7[...] driven by Thambi Mokhethi who lost control of the insured motor vehicle and crashed. At the time of the accident the Plaintiff was a passenger in the insured motor vehicle. The Plaintiff claims that the collision was caused by the negligence of the insured driver because of the following reasons:

- a) He failed to keep a proper lookout;
- b) He drove at a speed that was excessive having regarded to the circumstances prevailing at the time of the collision;
- c) He failed to apply the brakes of his respective motor vehicles timeously or at all, at a stage and/or time when he could and/or should have done so;
- d) He failed to avoid a collision by exercising reasonable care he could and should have done so.

[10] The Plaintiff, Tshepiso Vanessa Roberts took the witness' stand and testified under oath. There was also an Interpreter to assist the Plaintiff with the language. Ms Robert testified that on 29 December 2017 the accident occurred at the N3 North off ramp, and at the time of the accident the driver was Thambi Mokhethi. She was sitting on the left front seat, seated as a passenger. Mr Mokheti (the driver) and herself were lovers at that time. The mood between the Mr Mokheti and Ms Roberts was impetuous at the time of the accident. During the trip the driver slapped her with

an open hand. Ms Robert kept silent. The driver decided to stop in the yellow line, but the vehicle was still stationery. Mr Mokhethi attacked her while the vehicle was stationery. Ms Robert try to escape, and moved over to the drivers seat. Ms Robert doesn't have license. An accident occurred and Mr Mokhethi died as result of the accident.

[11] Mr Mojamabu referred me to the Police docket which is also before the Court.

[12] On 18 March 2018, under case number 541/12/2017 wherein the Plaintiff made a statement. She confirmed that she immediately jumped to the driver's seat and Mr Mokhethi got into the front passenger side. She pulled the automatic handle down and the vehicle started to reverse backwards. It was then when a truck hit the black Volkswagen motor vehicle from the back.

[13] On 29 December 2017, Lucas Erolly Phetla who reported to be employed by Ekurhuleni Metro Police Department as a Metro Police Officer made a statement and confirmed that he attended a scene on the date and place as indicated by the Plaintiff in her particulars. He confirmed that he found it was driven by an unknown black female and she sustained serious injuries and was taken to Baragwanath Hospital. She had a black male passenger and he passed away on the scene.

[14] Considering all the facts placed before me, I find that the Plaintiff was the driver at the time of the accident.

[15] On the facts I am not persuaded that the Plaintiff was a passenger at the time of the accident as indicated in her particulars of Claim.

[16] The evidence in the form of the witness testified, police statement from the Plaintiff and Constable Lucas Erolly Phetla who visited the scene directly after the accident correspond to the relating statements.

[17] In the result I make the following order:

17.1 The Plaintiff's claim is dismissed.

17.2 No order as to costs

MPIENAAR

M PIENAAR (AJ)

Acting Judge of the High Court
Gauteng Division, Pretoria

Heard on : 31st March 2023

Judgement date : 14 June 2023

Appearance on behalf of the Plaintiff : Adv Mojamabu
sammojamabu@yahoo.com

Instructed by : R S Tau Attorneys
ndweleni@rstauatorneys.co.za

Appearance on behalf of the Defendant: State Attorney
Ms Mokaumbe
Defence has been struck out
Link no: 4418496

- [1] Caselines 008 : bundle 4 Trial Bundles pg 008-145
- [2] Caselines 014 : bundle 9 Notice of Set down pg 014-672
- [3] Caselines 012 : bundle 4 Court Order
- [4] Caselines 024 : Police docket
- [5] Caselines 024 : Notice in terms of rule 35(9) death certificate, pg 024-23
- [6] Caselines 024: Notice in terms of Rule 35(9) Statement of Tshepo Robert pg 024-41
- [7] Caselines 024: Notice in terms of Rule 35(9) Statement of Locus Erolly Phetla, pg 024-52