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

Case number: 62874/20

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED.

DATE: 1/12/2023

SIGNATURE:

In the matter between:

M[...] M N OBO MINOR CHILDREN

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

This judgment is deemed to be handed down upon uploading by the Registrar to the electronic court file.

PIENAAR AJ

Introduction

1. The Plaintiff, M[...] M[...] N[...] an adult female person who is currently 45 years of age residing at No 4[...] W[...] V[...], Mpumalanga Province who sues herein in her personal capacity and in a representative capacity as a mother and natural guardian of the minor children.

2. At all times relevant hereto, the deceased, Skosana Shelby Kleinboy, a South African National, who resides in the Republic of South Africa prior to his death in 2019, with ID no 7[...] as a driver at the time of the said accident. [1]

3. The matter came before me on the default judgment roll on 22nd September 2023. There was no appearance on behalf of the RAF. The trial in the matter proceeded only with regard to the issues relating to the merits. The issues relating to quantum are to be postponed sine die. After listening to brief oral submissions by Mr Thumbathi I reserved this judgment. Mr Thumbathi also filed Heads of Argument or submissions for which I am grateful.

Onus

4. The plaintiff has to prove on a “balance of probabilities” involvement of the Insured motor vehicle which was driven negligently in that a reasonable driver would not have driven in the same manner under the circumstances.

5. It is noted that the deceased lost control of his motor vehicle because he was dazzled by the shining bright lights of the Insured motor vehicle which came from the opposite direction as it failed to dim its lights for him.

6. What requires to be decided is whether the accident was caused by the negligent conduct of the insured driver or whether the plaintiff is the sole cause of the accident.

7. For the Plaintiff to succeed he must show that there was an insured motor vehicle involved and he needs to prove only 1% negligence on the part of such a driver.

8. In the case of *Odendaal v Road Accident Fund* [3] the court said -

(a) The Plaintiff's are "innocent third parties" and for them to succeed, they bear the *onus* of establishing on the balance of probabilities that Dlamini was guilty of some negligence which was causally connected to the collision and therefore to the damages suffered by them. No question of apportionment of fault or of damages arises here since there was no contributory negligence on their part"

(b) That any causal negligence on the part of Dlamini, whatever the degree thereof in relation to the collision would render the defendant liable, as the insurer under the Road Accident Fund Act for the full amount of the damages suffered by each plaintiff.

9. It is noted that the Plaintiff amended the Particulars of Claim in terms of Rule 28 as follows: "On the 21st April 2019 at between Modderfontein Road, Bronkhorstspuit, Gauteng Province, the accident occurred between unknown motor vehicle bearing unknown registration letters and numbers there and then driven by unknown driver collided with a vehicle with registration letters and numbers B[...] O[...] G[...] driven by the deceased". [2]

10. The Accident Report (AR) form has a brief description of the accident and also a portion of accident sketch plan and both do not indicate involvement of any car other than that of the Plaintiff. [4]

11. The conduct of the alleged insured driver failing to dim bright lights is a material fact which ought to have been in mind of the passenger when making statements to the police.

12. Moses Emanuel Masombuka stated that he was a front seat passenger in a Mazda Rustler bantam bakkie with registration number B[...] O[...] G[...]. It was dark and the condition of the road was wet since it did rain earlier and there's no street lights. The

driver was traveling at a high speed when approaching the curve there was an oncoming vehicle. The driver tried to avoid the collision and lost control of the vehicle and overturned. They were thrown out the bakkie and the driver was trapped inside the vehicle”

13. In application of the reasonable man test, I find that the deceased was driving at a high speed and could have acted in avoiding to lost control of his own vehicle. A driver will be negligent if the unreasonable conduct is generally foreseeable and he/she does not take reasonable preventative action to avoid a collision.

14. Yekiso J in the matter of Denissora v Heyns Helicopters [5] said “What I have before me, for purposes of making the required determination, is the uncontested evidence of Steynberg which would normally in the absence of any contradictory evidence, be accepted as being *prima facie* true. It does not, however, follow that because evidence is uncontested, therefore it is true. The evidence may be so impossible in the light of all other evidence that it cannot be accepted (*see in this regard Meyer v Kirner*) (6). The fact that evidence stands uncontradicted does not relieve the party from the obligation to discharge the onus resting on him (See *Minister of Justice v Saarnetso* 1963 3 SA 530 (A) at 5340-H).

15. In civil matters the onus is discharged upon a balance of probabilities but, no doubt, this simplistic statement must be used with caution since, even if the onus-bearing party puts into his “pan of the scale of probability ” slender evidence, as against no counter-balance on the part of the opponent, and although the scale would therefore automatically go down on the side of the onus bearing party the court may still hold that the evidence tendered is not sufficiently cogent and convincing (*see Ramakulukusha v Commander, Venda National Force* 1989 2 SA 813 (V) at 838H and other authorities cited therein).

Order:

In the result I make the following order:

16. In the result I make the following order:

16.1 Absolution from the instance is ordered.

16.2 Leave is granted for the Plaintiff to proceed on his/her claim on the same papers duly amplified should he be so inclined.

16.3 No order as to costs.

PIENAAR (AJ)
ACTING JUDGE OF THE GAUTENG DIVISION, PRETORIA

Counsel for Plaintiff : Adv Thumbathi

Instructed by : Komane Attorneys
email: happy@komanelaw.co.za

For the Defendant : No appearance
Road Accident Fund
Link no:

[1] At Caselines 068 Notice of amendment

[2] At Caselines 0068 Notice of amendment

[3] Odendaal v Road Accident Fund 2002 3 SA 70 at 750 - F

[4] At Caselines 044 Index to Pleadings pg 044-46

[5] Denissora v Heyns Helicopters 2003 (4) All SA 74 (C)

[6] Meyer v Kirner 1974 4 SA 90 (W) at 930-H