THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MBOMBELA MAIN SEAT

CASE NO: 3214 / 2019

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

04 April 2022 ....
DATE SIGNATURE

In the matter between:

TSEPO DAN MONATE **PLAINTIFF**

and

ROAD ACCIDENT FUND **DEFENDANT**

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email. The date and time for hand-down is deemed to be 10H00 on 04 April 2022.

JUDGMENT

RATSHIBVUMO J

[1] This is a claim for general damages, medical expenses and loss of earnings totalling R5 100 000.00 by the Plaintiff, against the Road Accident Fund. The trial proceeded by way of default as there was non-appearance for the Defendant. Court ordered the separation of the quantum from the merits in accordance with Rule 33(4), at the request by the Plaintiff. The trial proceeded in respect of the merits only. The issue relating to quantum was postponed s*ine die*.

[2] Tsepo Dan Monate was the only witness who testified. He is the Plaintiff in this case. He testified that on 03 March 2019, he was a driver of an Audi A5 motor vehicle driving along R101 Old Pretoria Road, from Nelsville to Kanyamazane. He was traveling alone having left Nelsville at about 18h30. It was already dark as he had his headlamps on. He was driving at a speed of 80 km/h. Suddenly, a motor vehicle came from behind and hit his motor vehicle from behind. After being hit from behind, he lost control of his motor vehicle and it rolled to the right side of the road. He was unconscious for a while but when he regained consciousness, he was being treated by the paramedics at the scene of the accident. He was later taken to the hospital where he was admitted for 14 days.

[3] When he was discharged, he went to the police station to find out if the police have managed to trace the driver of the motor vehicle that drove into his. The police told him they had not. He was however made aware by the police that the Accident Report reflected that it was a single motor vehicle accident. This was however not true. The police also told him they could not change the content of the report. From the bundle of pleadings there is a report prepared by Dr. Tladi, an Orthopaedic Surgeon who consulted with the Plaintiff two years after the accident. In this report, Dr. Tladi wrote that the Plaintiff said he

was the "restrained driver of a car that rolled after he lost control of a car while trying to avoid an animal on the road." When asked by the court to comment on this, the Plaintiff denied having told this to Dr. Tladi.

[4] This evidence concluded case for the Plaintiff.

[5] In his address, Plaintiff's Counsel requested the court to find that the Road Accident Fund was liable as the injuries were direct results of negligent driving by the insured driver whose details were unknown.

[6] This case has striking resemblances of case no. 1180/2018 between Nkuna and the RAF, whose judgment is also handed down today. The same legal representatives are also involved in that matter. This should explain the similar judgment handed down.

[7] I must emphasise at this stage that the onus to decide whether the insured driver was negligent and to what extent, rests on the plaintiff, who must show on a balance of probabilities that the insured driver was negligent and that the negligence was the cause of the collision from which he sustained the bodily injuries. There is no onus on the Defendant to prove anything. The Defendant may have an evidentiary burden to rebut a *prima facie* case established by the Plaintiff.[1]

[8] The liability of the Road Accident Fund finds its basis and application from the Road Accident Fund Act[2] which provides that the Fund shall be obliged to compensate any person (the third party) for any loss or damage which the third party has suffered as a result of any bodily injury to himself or herself or the death of or any bodily injury to any other person, caused by or arising

---

[1] *Ninteretse v Road Accident Fund* (29586/13) [2018] ZAGPPHC 439 (2 February 2018) per Raulinga J
[2] See section 17(1) of the Road Accident Fund Act, 56 of 1996.

from the driving of a motor vehicle by any person at any place within the Republic, if the injury or death is due to the negligence or other wrongful act of the driver or of the owner of the motor vehicle or of his or her employee in the performance of the employee's duties as employee: Provided that the obligation of the Fund to compensate a third party for non-pecuniary loss shall be limited to compensation for a serious injury as contemplated in subsection (1A) and shall be paid by way of a lump sum.

[9] It follows from the above that the liability of the Fund shall follow the injury sustained by the Plaintiff only if he is able to prove on a balance of probabilities that the injury was caused by the negligent driving of an insured driver. The Fund's liability is excluded where the cause of the injury cannot be linked to the negligent driving of an insured driver or where the cause can be attributed to the Plaintiff alone. It is trite that the Fund would not be liable in instances where the claimant is the driver of a motor vehicle that was involved in an accident alone without the involvement of another motor vehicle in any manner as this would be indicative of sole negligence on the part of the driver or the claimant.

[10] The Plaintiff *in casu* must have been conscious of the onus on his shoulders the moment it came to his attention that the Accident Report reflects that he lost control of the motor vehicle and it rolled, without any involvement of another motor vehicle. The details of the officer who completed the Accident Report were there in the report. No efforts were done to rectify those contents if they were not reflective of what happened. There is no doubt that rectifying these would not be easy without presenting the police with evidence that proves the involvement of another car.

[11] While the task is obviously not an easy one, it should however be simple if there was indeed another motor vehicle involved. Before there could be a

"correction" of Accident Report, one would expect the Plaintiff to explain where Dr. Tladi got the information about him avoiding an animal on the road from. The consultation between him and Dr. Tladi took place about two years after the accident. Dr. Tladi who is one of his expert witnesses was not called to explain this part of the report which is very relevant to the merits of the case. If the statement by Dr. Tladi is true, then the claim against the Fund would be misplaced as it should have been directed against the animal owner. The Fund's insurance is limited to motor vehicle drivers whose negligence results in accident that causes human injuries. This will surely not cover the animals, unless the claim is directed against the animal owner.

[12] Some of the steps that the Plaintiff could have taken in "rectifying" the "faulty accident report" would entail obtaining photographs of the motor vehicle taken soon after the accident so as to demonstrate the rear damages and/or paint of the other motor vehicle in it, if any. It appears this was not done or no such evidence was presented before me. The officer who completed the Accident Report was not called to give evidence. All these steps were also not undertaken for purposes of trial.

[13] It follows therefore that the Plaintiff failed to show on balance of probabilities that the injuries he sustained were a direct result of negligent driving by the insured driver. The court has sympathy for the Plaintiff over the injuries sustained in the accident. As Steyn J puts it, it would be inappropriate to make an order burdening the already strained Fund based on sympathy one has for the Plaintiff.[3] For reasons stated above, the claim should fail. There shall be no costs order as the action was undefended.

[14] The following order is therefore made:

[3] *Auret N.O obo Kieser v Road Accident Fund* (14206/2014) [2020] ZAWCHC 192 (28 April 2020) at para 62.

[14.1] The claim is dismissed.

[14.2] No cost order is made.

TV RATSHIBVUMO

JUDGE OF THE HIGH COURT

FOR THE PLAINTIFF	**: ADV. MOGAGABE**
INSTRUCTED BY	**: MACBETH ATTORNEYS MBOMBELA**
FOR THE DEFENDANT	**: NO APPEARANCE**
DATE HEARD	**: 14 FEBRUARY 2022**
JUDGMENT DELIVERED	**: 04 APRIL 2022**