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

CASE NO: 28291/2022

(1) REPORTABLE: No

(2) OF INTEREST TO OTHER JUDGES: No

(3) REVISED.

DATE: 26/08/2024

SIGNATURE

In the matter between:

LEBOGANG GLADYS MOTSAPI

Plaintiff

And

ROAD ACCIDENT FUND

Defendant

JUDGMENT

PIENAAR AJ:

INTRODUCTION

[1] This is a claim for injuries sustained by the Plaintiff as a result of the motor vehicle accident on 13th of July 2021.

[2] The Defendant is the Road Accident Fund, a juristic person established in terms of the Act. In terms of Section 17(1) of the Act, as amended, and regulations promulgated thereunder, the Defendant is liable to compensate victims of motor vehicle accident arising from the driving of a motor vehicle where the identity of the owner or the driver thereof has been established and/or subject to any regulation made under Section 26 where the identity of neither the owner nor the driver thereof has been established.

[3] The Plaintiff issued summons for Past hospital expenses of R100 000,00, Future hospital and medical expenses of R100 000,00, Future loss of earnings of R3 000 000,00 and General Damages of R1 500 000,00 which were served on the defendant. [1]

[4] The notice of set down was served on the defendant on 10 April 2024. [2]
There was no appearance on behalf of the defendant.

[5] The Plaintiff applied for a default judgment by way of Rule 38(2) of the Uniform rules of court to have regard to the affidavits filed on record as the evidence that the Court need to consider to establish the quantum of the Plaintiff's claim and the issue of liability and I have granted that order.

[6] The matter is before me for both merits and quantum.

MERITS

[7] The merits evidence before the Court is, the Accident Report (AR) form, the Claimant's section 19(f) affidavit and the ID copy of the Claimant. According to the statement of the claimant, she was a passenger in a Silver Hyundai motor vehicle bearing the registration letters and numbers D[...] 1[...] C[...] G[...], driven by Mr TC Rasentsoere. She remembered approaching the stop sign as indicated at the sketch plan, but she cannot remember what happened after the stop sign.

[8] According to the Accident Report (AR), the Claimant's name doesn't appear on the AR Report. There is no description of the accident.

[9] The Plaintiff avers in her particulars of claim that the defendant is liable for the motor vehicle collision, as the driver of the vehicle, which collided with his solely by the negligence of the driver of the insured vehicle, D[...] 9[...] G[...] or alternatively D[...] 5[...] G[...] G[...], who was negligent in one or more or all the following respects:

- 9.1 They failed to keep a lookout, alternatively and proper lookout; and or
- 9.2 They failed to keep the motor vehicle of which he was the driver under any, alternatively any proper control; and or
- 9.3 They failed to avoid the collision when, by the exercise of reasonable care, he could and should have done so; and / or
- 9.4 They failed to apply the brakes of the motor vehicle of which he was the driver timeously or at all; and/or
- 9.5 They failed to pay due regard to the rights of other users of the road and in particular the rights of the Plaintiff aforesaid, and/or
- 9.6 They failed to exercise the care a reasonable person would and could have exercised under the circumstances;
- 9.7 They drove the insured vehicle without due regards to the rights of other road users and in particular the rights of Plaintiff.
- 9.8 They failed to reduce speed when he ought to and could have done so;

[10] It was contended on behalf of the Plaintiff that she was a passenger in a Silver Hyundai motor vehicle registration number and letter D[...] 1[...] C[...] G[...], and she remember approaching the stop sign indicated at the sketch plan, but she cannot remember what happened after the stop sign.

ISSUES FOR DETERMINATION

[11] The issue that stands for determination is whether or not the Plaintiff has demonstrated, as she ought to, that the insured driver was 1% negligent against the actions of the driver of D[...] 9[...] G[...] or alternatively D[...] 5[...] G[...] G[...].

[12] The Claimant on her own version cannot remember what happened after the stop sign.

[13] There is no description on the Accident Report how the accident occurred. The Claimant's name does not appear on the Accident Report. Also noted, that the date of the accident on the Accident Report is incomplete. **[3]**

THE LAW

[14] In *casu*, the Plaintiff was a passenger when the accident occurred and it is trite law that any person claiming from the RAF must prove only 1% negligence to prove the RAF's liability.

[15] In the present case it is clear that the Claimant cannot remember how the accident occurred.

CONCLUSION

[16] In conclusion, I find that the Plaintiff has failed to establish evidence upon which the Court, applying its mind reasonably thereto, could or might find in her favour. See *Claude Neon Lights (SA) Ltd v Daniel* 1976 (4) SA 403 (A) at 409G-H. **[4]** As stated in *Ntsala and Others*, the onus in this case rests on the Plaintiff to probe negligence. In light of the above and in particular the failure by the Plaintiff to establish how the accident took place, I find that the Plaintiff has failed to establish a *prima facie* case of how the accident occurred. Based on the above, I conclude that there is no evidence based on which a reasonable man might find in favour of the Plaintiff. I am accordingly satisfied that the appropriate order to be made would be

one of absolution from the instance.

[17] In light of the above, this Court is not willing to exercise its discretion and grant default judgment against the RAF.

ORDER

[18] For the above reasons, I make the following order:

1. Absolution from the instance is ordered.
2. Leave is granted for the Plaintiff to proceed on his/ her claim on the same papers amplified should she be so inclined.
3. No order as to costs.

M PIENAAR
ACTING JUDGE OF THE HIGH COURT,
GAUTENG DIVISION, PRETORIA

***Delivered:** This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties/ their legal representatives by e-mail and by uploading it to the electronic file of this matter on Caselines. The date and for hand-down is deemed to be 26 August 2024.*

APPEARANCES

Counsel for Plaintiff: Adv Philani Zuma
Instructed by: H.C Ramatladi Attorneys
For Defendant: No appearance

[1] Return of service: Road Accident Fund - Section 01 Summons and

return of service

- [2] Notice of set down - Section 013 Notice of set down
- [3] Lodgment documents - Section 11, item 8
- [4] Claude Neon Lights (SA) Ltd v Daniel 1976 (4) SA 403 (A) AT 409G-H.