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

Case no: 53863/2022

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED.

DATE: 11 September 2024

SIGNATURE

In the matter between:

TAWANDA MTENGERAPATARE

Applicant/Plaintiff

and

THE ROAD ACCIDENT FUND

Respondent/Defendant

JUDGMENT

Pienaar (AJ)

Introduction

1. The Plaintiff claims damages arising from the motor vehicle collision on 31 of October 2021 along West Street, Pietermaritzburg, when a volkswagen Polo vehicle with registration numbers N[...] collided with a red and white motorcycle

bearing registration number N[...].

2. The Plaintiff launched a claim against the Road Accident Fund in terms of Section 17 of the Road Accident Fund Act 56 of 1996 amended (“the Act”) as a result of the injuries sustained in the motor vehicle accident that occurred on 31 October 2021. [1]
3. The Default judgment application in terms of Rule 31(2)(a) was served on the Defendant on 22nd April 2024. [2]
4. The notice of set down was served on the defendant on 16 April 2024 [3]
5. The Defendant has failed to file a plea in the matter, despite the notice of intention to defend being served on the Defendant. The Notice of Bar was served on the Defendant on 23 February 2024.[4]
6. The matter was enrolled for default judgment hearing on 2nd July 2024.
7. At the beginning of the hearing, Counsel requested that the matter proceed solely on the issue of merits, with the quantum to be *postponed sine die* in accordance with Rule 33(4). Counsel for the Plaintiff proceeded to present her case in respect of the issue of liability.
8. After hearing the evidence of the Plaintiff and argument by Counsel, I reserved judgment.

The evidence of the Plaintiff:

9. The Plaintiff bears the onus to prove that the RAF is liable under the provisions of the Act, to compensate him for damages suffered because of the injuries sustained in the collision. This includes the onus to prove that the driver of the

insured vehicle negligently caused the collision.

10. The Plaintiff pleaded that on or about 31st October 2021 at 21:00 at West Street, Pietermaritzburg, a collision occurred when a white Volkswagen Polo vehicle with registration numbers N[...] driven at the time by Mr Gabuza (“the insured vehicle”) collided with a red and white motorcycle bearing registration number N[...] driven at the time by the Plaintiff.
11. The Plaintiff testified that he was driving with his motorbike on 31 October 2021 at 21:00. As he was driving along West Street, Pietermaritzburg, the Insured Driver with registration numbers and letters N[...] suddenly and without warning made a u-turn and collided with him. He didn’t report the accident at the SAPS because he was taken to hospital directly after the accident.
12. The Plaintiff stated in his evidence in chief that he was unable to take avoiding action. The Insured Driver was negligence, because he was driving over the lanes, coming from the opposite direction.
13. The photographs revealed the direction from which the insured vehicle was travelling. The yellow arrow indicates the direction from which the Plaintiff was travelling.

Legal Principles:

14. In my view, having regard to plaintiff’s evidence, the Insured driver turned in front of him.
15. Plaintiff Counsel argued that the plaintiff did not contribute any negligence to the collision.
16. A driver is entitled to expect reasonableness rather than unreasonableness, and legality rather than illegality, from others users of the road. A driver thus is only

required to take precautions against reasonably foreseeable contingencies and not the reckless driving of other motorists. [5]

Latest case law of Foreigner matters:

17. In *Mudawo and others v Minister of Transport and Another* [6] the full Bench held that any person as contained in Section 17 of the Road Accident Fund Act 56 of 1996 does not exclude illegal foreigners (those without documentary proof of work visas, asylum seekers).

18. The above mentioned judgment is being appealed.

In the circumstances, I make the following order:

Order:

19.1 The Defendant is liable for 100% of the Plaintiff's proven and/or agreed damages.

19.2 The issue of merits and quantum are hereby separated in terms of Rule 33(4) and the aspect of quantum is *postponed sine die*.

19.3 The costs of the default judgment application be paid by the Defendant on Scale B

19.4 ***The effect of his order is hereby suspended pending the final outcome of the Appeal in Case no 011795/2022***

PIENAAR (AJ)
IN THE HIGH COURT OF SOUTH
AFRICA GAUTENG DIVISION, PRETORIA

This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to Caselines. The date for hand-down is deemed to be 11 September 2024.

Heard on : 02 July 2024

Delivered on : 11 September 2024

Appearances:

On behalf of the Plaintiff: Spruyt Inc Attorneys

Counsel on behalf of Plaintiff : Adv Hazel Worthington

On behalf of the Defendant: Road Accident Fund

No appearances

Link: ML-1212202267085

[1] Section 19 : Trial bundle, item 1 Lodgment letter

[2] Section A: Application for default judgment, item 9

[3] Section 15: Notice of set down, item 2

[4] Section A: Application for default judgment in terms of Rule 31(2)(A), item 7

[5] Rondalia Versekeringskorporasie van SA Bpk v De Beer 1976 (4) SA 707 (AD) at 711

[6] 2024 JDR 1394 (GP) (26 March 2024)