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**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NO: 15/20327

(1)	<u>REPORTABLE: NO</u>
(2)	<u>OF INTEREST TO OTHER JUDGES: NO</u>
(3)	<u>REVISED.</u>
4 November 2024	
DATE	SIGNATURE

In the matter between:

GALENI SIPIWO

Plaintiff

and

THE ROAD ACCIDENT FUND

Defendant

JUDGEMENT

PIENAAR (AJ)

1. This matter was on the default judgment roll for 03 September 2024. When the matter was called, Adv de Kok appeared for the Plaintiff and Mr Madese from the State Attorney's Office on behalf of the Defendant.
2. I was advised by Mr de Kok that the RAF made an Offer for both merits and quantum. Plaintiff accepted the offer for quantum, but rejected the merits offer. The plaintiff applied for separation of the merits and the quantum of the plaintiff's damages. I accordingly ruled that the matter will proceed on the issue of merits of the claim only.
3. The Defendant defence has been struck out before the Honourable Judge Twala on 25 day of March 2024.
4. The Plaintiff is claiming damages arising from out of a motor vehicle accident which occurred on 8th day of June 2013. At the time of the accident, the Plaintiff was a pedestrian, when a motor vehicle with registration numbers J[...] collided with the plaintiff.
5. The plaintiff lodged a claim with the defendant ("the RAF") on 18 October 2013 in terms of the provisions of the Road Accident Fund Act, No. 56 of 1996 ("the Act") claiming damages resulting from the injuries sustained in the collision.
6. After hearing the evidence of the plaintiff and argument by counsel, I reserved judgment.

The plaintiff's case

7. Mr Galeni Sipiwo testified that he cannot remember how the accident happened. Mr De Kock asked the witness what was the date when the accident occurred? Mr Sipiwo testified that the year is 2013 and the month is 06 [which means the month is June]. He couldn't remember the day of the accident.

8. He testified that he couldn't remember how the accident happened.

Submissions by the plaintiff and defendant

9. Counsel for the plaintiff argued that contributory negligence must be pleaded on behalf of the Defendant. And the defendant defence has been struck off.

10. The State Attorney argued that the plaintiff cannot give a description of the accident

11. According to the statements himself, it was nowhere to be found that he was walking on the pavement.

12. The State Attorney is of the view that there should be an apportionment of 70% in favour of the Claimant.

The Law

13. The question before me in the present matter is whether the plaintiff provided his case on a balance of probabilities in that he was injured during a pedestrian motor vehicle accident.

14. The Plaintiff during a trial must present the court with evidence, be it through witnesses, documents or other means accepted in law. Once the plaintiff has provided evidence to the court, it is up to the defendant to respond to the evidence presented.

15. In *National employees General Insurance v Jagers* [4] Eksteen AJP had this to say about onus of proof:

“It seems to me, with respect, that in any civil case, as in any criminal case, the onus can ordinarily be discharged by adducing credible evidence to support the case of the party on whom the onus rests. In a civil case the onus is obviously not as heavy as it is in a criminal case, but nevertheless where the onus rests on the plaintiff...”

16. 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.

Evaluation

17. In the present matter the plaintiff did not make a good impression on the court. Mr Galeni couldn't tell the court how the accident happened.

18. In the view of a move, amongst others, I have to consider the averments made in the documentation lodged by the plaintiff with the RAF in support of his claim.

19. Firstly, an AR was compiled on 08 June 2013 and there is no description of the accident.

20. Secondly, in terms of the Section 19(f) statement dated 11 June 2013, the plaintiff stated the following:

“On 8th June 2013 at 15h30 in the afternoon, I was involved in a motor vehicle accident. I was a pedestrian in Lenasia South on or near Sheffield Road, when all of a sudden a motor vehicle collided with me and drove away. The registration numbers of the insured driver is J[...].”

21. Thirdly, in terms of the statement of Imraan Farooqui [5] he stated that a white microbus drove pass him and he looked left for traffic, he heard a bang sound. He saw

an African male just being knocked down by the microbus that drove passed him. After knocking the pedestrian, the driver drove off without stopping.

22. Lastly, according to the Police sketch plan the accident occurred on the side of the road.

Conclusion

23. I am not satisfied that the plaintiff has discharged the onus of establishing his case in respect of liability.

24. I again emphasise that the burden proving that a pedestrian motor vehicle collision happened as a result of the negligent driving of another in consequence of which the Plaintiff sustained injuries, remains the duty of the plaintiff.

25. As per the statement of the Claimant and witnesses it is not stated that the accident occurred on the pavement or the side of the road.

26. Section 1(1)(a) of the Apportionment of Damages Act, supra, gives the court discretion to reduce the plaintiff's claim for damages suffered on a just and equitable basis and to apportion the degree of liability. Where apportionment is to be determined, the courts consider the evidence as a whole in assessing the degrees of negligence of the parties.

27. As a result, the defendant is liable to pay 50% of the plaintiff's proven damages.

ORDER

28. In the result, I make the following order:

1. The Defendant is liable for the plaintiff's proven damages to pay 50% of the plaintiff's proven damages.

2. The issue of *quantum is postponed sine die*.

3. The Defendant is liable for the plaintiff's costs up until the Offer tender for the plaintiff.

4. The costs of Counsel on Scale B, up until the date of the Offer from the RAF.

5. The defendant shall pay the plaintiff's taxed or agreed party and party costs on the High Court scale, up until the date of the Offer from the RAF.

M PIENAAR (AJ)
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

Appearances:

For the Applicant: Adv H M de Kock , instructed by N T Mdlalose Inc

For the Respondent Mr Madasele, State Attorney for RAF

Link no: 3427090

Date of hearing: 03 September 2024

Date of judgment: 4 November 2024

1. Caselines 12: Draft Order 25 March 2024 - item 3
2. Caselines 01 Pleadings, item 2 Particulars of claim, pg 01-6
3. Caselines 02 documents, item 8
4. National employees General Insurance v Jagers (87/87) [1987] ZASCA 85 (15 September 1987)
5. Caselines 02: documents, item 8, pg 02-40
6. Kruger v Coetzee 1966 (2) SA 428 (A) at 430 E-G