

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

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

Case Number: 2022/11006

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES:NO
(3)	REVISED: NO
DATE 08/11/2024	SIGNATURE

In the matter between-

GILBERT MATLOU MOKGOTHO

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

NGENO AJ

1. This action arises from a motor vehicle accident that occurred on 12 September 2020 along R511 road between Brits and Thabazimbi which involved a Hundai i20 motor vehicle bearing registration numbers K[...]. At the time of the accident, plaintiff was a driver of the said vehicle.

2. Plaintiff now sues for personal injuries which he sustained in that accident. He contends that the accident occurred as a result of the negligent driving of the unidentified insured driver.

3. Plaintiff testified that on the day of the incident at approximately 17H00, he was on his way to a friend's place. Whilst driving, on a gentle curve, there was a convoy of vehicle driving in the opposite direction. He noticed a brown 4x4 Bakkie overtaking a convoy of cars, driving on his lane. In order to avoid a head on collision, he applied brakes and swerved. While swerving and in the process of trying to avoid a collision, his vehicle hit a danger barrier and overturned. It ended up in a ditch nearby.

4. As a result of the accident, plaintiff suffered bodily injuries and was admitted at Brits Medical Hospital. He testified that he spent two days at the hospital after which he was discharged.

5. On the day of his discharge from hospital, he went to report the accident at the Brits Police Station and was accompanied by his daughter, Angela Mokgotho. Angela Mokgotho came to testify in support of the plaintiff's case. After reporting the accident, he did not ask for a copy of the accident report. Angela Mokgotho corroborated plaintiff's testimony that he reported the accident immediately after he was discharged from the hospital. She also testified that she accompanied the plaintiff when he went to report the accident.

6. It is only when his attorneys asked for a copy of the accident report that he went to the police station to request same. This request was done after a period of more than a year after the accident had occurred. Plaintiff testified that the police could not find a copy of the accident report. The police advised him to report the accident again. He reported the accident again on 10 November 2021. It was for this reason that he only managed to get a copy of the accident report dated 10 November 2021.

7. Defendant disputed liability. Defendant's plea contains bare denials.

8. The parties reached an agreement in a pre-trial minute dated 22 October 2022 that the matter will first proceed on the merits. Accordingly, what is currently before court is the determination of merits only.

9. During the trial, defendant's counsel limited the cross examination around the issue relating to the number of days that the plaintiff spent confined at the hospital. Plaintiff was also cross examined on the issue relating to the accident report that was dated 10 November 2021 which was done more than a year after the accident had occurred. I must say that the cross examination was uneventful. The defendant did not put a version before court and could not dispute the plaintiff's version of events.

10. After plaintiff had closed his case, defendant did not call any witness and decided to close its case.

11. During argument, plaintiff's counsel submitted that there was only one version before the court and it is that of the plaintiff. That being the case, plaintiff's counsel submitted that plaintiff's version must be accepted as defendant failed to put its version.

12. Defendant's counsel conceded, correctly, that he was constrained as defendant did not put any version before court. Defendant's counsel also submitted that he was also constrained to make submissions for contributory negligence as no case was made for it and this was not pleaded in the defendant's plea. Defendant's counsel therefore submitted that he was leaving everything in the hands of the court.

13. In terms of section 17(1) of the Road Accident Fund Act¹, defendant is liable to compensate any person for any loss or damage which the person has suffered as a result of any bodily injury to himself, caused by or arising from the driving of a motor vehicle by any place at any place in the Republic, if the injury is due to the negligence or other wrongful act of the driver or owner of the motor vehicle.

¹ Road Accident Fund Act 56 of 1996 as amended

14. It is trite that the onus is on the plaintiff to prove negligence on the part of the driver of the vehicle which is claimed to have caused the accident in order for the plaintiff's claim to succeed against the defendant. This being a civil case, the plaintiff must discharge the onus on a preponderance of probabilities.

15. The plaintiff's version of how the accident occurred was not challenged and no doubt was cast on it. I am satisfied that the driver of the unidentified insured driver was negligent. He drove over to the lane of the oncoming vehicle whilst overtaking a convoy of other vehicles at an inopportune moment and when it was dangerous to do so since there was a vehicle on the lane he ventured to. The plaintiff, attempting to avoid a head-on collision was forced to swerve and his vehicle overturned. I find no reason to reject the plaintiff's version. The plaintiff's version must therefore be accepted.

16. As stated above, there was no case made for any contributory negligence on the part of the plaintiff and none can be applied. In the circumstances, the plaintiff has succeeded to discharge the onus to prove negligence on the part of the unidentified insured driver. Accordingly, the plaintiff's claim must succeed. I am of the view that the costs must follow the event. There is no reason to deviate from this principle and it was not argued otherwise.

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

17.1 Defendant shall pay **100%** of the Plaintiff's proven or agreed damages.

17.1.1.1 Defendant shall pay the Plaintiff's taxed or agreed party and party costs on the High Court scale in respect of the merits, up to and including 05 November 2024.

T NGENO
ACTING JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION
JOHANNESBURG

APPEARANCES

Heard on:	05 November 2024
Judgment delivered on:	08 November 2024
For the Plaintiff:	Adv R Oosthuizen Instructed by A Wolmarans Incorporated Randburg
For the Defendant:	Mr Mtshemla Instructed by State Attorney, Johannesburg