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

Case Number:38476/2022

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|-----|-------------------------------------|
| (1) | REPORTABLE: YES / NO                |
| (2) | OF INTEREST TO OTHER JUDGES: YES/NO |
| (3) | REVISED: YES/NO                     |

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| DATE  | SIGNATURE |

In the matter between:

**SYFFERT: NEIL HENDRIK**

First Plaintiff

**SYFFERT: NEIL**

**obo SYFFERT: LIANIE**

Second Plaintiff

and

**ROAD ACCIDENT FUND**

First Defendant

**This judgment was delivered electronically by circulation to the parties' legal representatives and uploading on SAFLII. The time and date of delivery is 29 November 2024.**

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## JUDGMENT

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MAHALELO, J

### *Introduction*

[1] The first plaintiff instituted action against the defendant in his personal capacity for loss of support and representative capacity on behalf of his minor child, the second plaintiff claiming in excess of R7000 000. The action arises from an accident in which the plaintiff's wife and minor children were involved on 21 January 2022. The plaintiff's wife lost her life in the accident and the second plaintiff suffered injuries.

[2] At the outset of the trial, the parties agreed to separate the issues of merits and quantum and the matter only proceeded on the merits.

[3] The parties also agreed on the following facts:

1. On the 21 January 2022 and at N12, N3/N12 split Elands interchange Alberton, Christee Maureen Syffert (the deceased) was the driver of motor vehicle S[...], was involved in an accident with motor vehicle F[...] driven by Mr M Thabede ( the insured driver).
2. The parties agreed as evidence to the contents of the accident report filed by Constable EP Khoza, the sketch plan contained therein, his statement and all the photos therein.
3. The parties also agreed that the video footage contained in the links set out in case lines at 017 is the video footage of the accident and the video footage be admitted as evidence, amongst others, showing the deceased colliding in the rear of the insured driver's motor vehicle whereafter a further collision occurred with a third vehicle.
4. As a result of the accident, the deceased died because of the injuries she sustained in the accident.

5. At the time of her death, the deceased was married to the first plaintiff and the second plaintiff was born of the marriage relationship between the first plaintiff and the deceased. The deceased supported and maintained the first and second plaintiffs.

[4] This court is called upon to decide if there was a proverbial 1% negligence on the side of the insured driver in causing the accident, in which event the parties agreed that the defendant shall be liable to compensate the first and second plaintiffs in respect of any damages they suffered in respect of loss of support from the deceased.

[5] At the commencement of the trial, it was also contentious if the second plaintiff was a passenger in the deceased motor vehicle and whether the defendant was liable to compensate her for damages she suffered as a result of personal injuries sustained. After the hearing of evidence and on 31 May 2024 the defendant conceded the issue of negligence in respect of the second plaintiff. The merits of the claim of the second plaintiff has therefore been settled at 100% in favour of the second plaintiff.

### *The Evidence*

[6] The first plaintiff, Mr. Syffert, took to the stand and testified in support of his claim. He called an eyewitness, Ms Mdevu who testified on how the accident happened. The insured driver Mr Thabede gave his account on how the accident occurred. The evidence of the first plaintiff related to the fact that the second plaintiff was a passenger in the motor vehicle driven by the deceased on the day of the accident. It will not be analysed in this judgment since the defendant has conceded 100% liability in favour of the second plaintiff.

[7] Ms Mdevu testified that she was a passenger in her cousin's motor vehicle travelling on the freeway on the fast lane when she noticed the insured driver's motor vehicle stationary in the slow lane next to the emergency lane with its hazard lights on. She saw the motor vehicle driven by the deceased collide with the insured driver's

stationary motor vehicle at the back and proceeded to collide with the motor vehicle she was travelling in. The motor vehicle driven by the deceased overturned and two children flew out through the windows. She tried to assist the injured children until the emergency services arrived. She confirmed the video footage that depicted the accident and specifically testified that there was an emergency lane to the left of the insured driver and that there was nothing prohibiting the insured driver from moving into and stopping in the emergency lane.

[8] The insured driver testified that he was the driver of motor vehicle with registration letters and numbers F[...]. He was traveling on the N12 East, N3/ N12 Split, ELands interchange on the slow lane. His motor vehicle overheated, and he travelled very slow. He could not stop on the emergency lane because there was a motor vehicle which had stopped there. He could not stop in front of that motor vehicle because there were concrete bars prohibiting him to do so. He conceded that his motor vehicle was stationary in the slow lane when the deceased collided with it. During cross-examination he stated that he was travelling at approximately 20 km/h. During questioning by the court as to why he did not park on the emergency lane after that motor vehicle had left, he responded that he was still observing to see if it was safe, that is when the deceased' motor vehicle collided with his at the back. He was stationary on the slow lane at that stage.

### *The Video Footage*

[9] From the video footage, the following can be seen:

1. The insured driver was traveling on the N12 on the slow lane, a freeway with a speed limit of 120 kilometres per an hour.
2. The road has two lanes with an emergency lane to the left of the slow lane.
3. A motor vehicle had stopped on the emergency lane. The insured driver initially travelled slowly in the slow lane but stopped in the road. The motor vehicle which had stopped on the emergency lane left. Approximately 20 to 40

seconds after the insured driver stopped in the road, the deceased, travelling in the same lane, collided into the rear of the insured driver's motor vehicle.

4. The accident happened between 18h00 and 19h00 at a time when other road users had their headlights on, although not yet dark.

5. The insured driver had his hazard lights on.

### *The Law*

[10] The test for negligence as stated in *Mthetwa v Shield insurance Co Ltd*<sup>1</sup> is as follows:

"However, as was said in *Rondalia Assurance Corporation of SA Ltd v Mtkombeni* 1979 (3) SA 967 (A) at 972: '... each case in which it is said that a motorist is negligent must be decided on its own facts. Negligence can only be attributed by examining the facts of each case. Moreover, one does not draw inferences of negligence on a piecemeal approach. One must consider the totality of the facts and then decide whether the driver has exercised the standard of conduct which the law requires. The standard of care so required is that which a reasonable man would exercise in the circumstances. In all cases the question is whether the driver should reasonably in all the circumstances have foreseen the possibility of a collision."

[11] Regulation 304 of the National Road Traffic Act<sup>2</sup>, states *inter alia* as follows: -

"Except in order to avoid an accident, or in compliance with a road traffic sign or with a direction given by a traffic officer, or for any cause beyond the control of the driver, no person shall stop a vehicle on the roadway of a public road –

...

(j) in any other place where the stopping of a vehicle would or would be likely to constitute a danger or an obstruction to other traffic."

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<sup>1</sup> 1980(2) SA 954(AD) at 957C-D.

<sup>2</sup> 93 of 1996.

[12] The regulation specifically prohibits the stopping of a vehicle on the roadway except for a cause beyond the control of the driver.

[13] Thabede was a very unsatisfactory witness. At the outset, he testified that he was stationary when the deceased collided with him. This he changed later to say that he was travelling slowly prior to the accident and during cross-examination stated that he was travelling at approximately 20 km/h. During cross-examination and in line with the video footage and the evidence of Ms Mdevu, when confronted with the video footage, he conceded that he was stationary at the time of the accident.

[14] When he was confronted with the fact that it is by law prohibited to stop in the middle of the road, he was evasive and failed to answer. In fact, he was throughout cross-examination evasive and on various occasions simply did not answer questions. He tried to explain his actions by saying that he noticed that the temperature of his motor vehicle was high and that is why he was travelling slowly or stopped.

[15] The defendant argued that there was nothing that the insured driver could have done because his motor vehicle had a mechanical problem and that he could not stop on the emergency lane as there was another motor vehicle which had stopped there. Further that he could not stop in front of that motor vehicle because there were iron bars prohibiting him to do so.

[16] It was never pleaded by the defendant that the insured driver had some sort of mechanical problems and more importantly the insured driver never told the police this. According to the accident report, he was driving on the slow lane and “suddenly his motor vehicle was hit at the back”.

[17] By stopping in the road, the insured driver was contravening regulation 304 without any justification. The evidence shows that he was travelling on the road and then came to a standstill in the road next to the emergency lane. The uncontested

evidence is further that there was nothing preventing him from stopping in the emergency lane or travelling to a point where it was safe to stop out of the roadway.

[18] In the matter of *Odendaal v Road Accident Fund*<sup>3</sup>, the case I was referred to by Counsel for the plaintiffs, the court also found the insured driver to have contravened the Road Traffic Act, 29 of 1989 negligent by stopping a motor vehicle in the emergency lane. At page 84 the court said the following:

“(xvi) Having regard to the foregoing cases and dicta over the years, the view that I have of Dlamini’s conduct is that he not only acted unlawfully in stopping his vehicle where he did, but that he was negligent in so doing and that such negligence contributed towards the collision and the consequent injury to the plaintiffs. On Dlamini’s own version, he had travelled that road regularly and was aware of the fact that vehicles, and particularly heavy vehicles, sometimes travelled in the emergency lane. The presence of his stationary vehicle in that lane at night where there are no streetlights constituted a danger or obstruction to other traffic even when lit (and, a fortiori, even more so if it was unlit). Dlamini was fully aware of the fact that alongside the emergency lane was a grass verge onto which he could have pulled and which, had he done so, would have placed his vehicle entirely off the roadway. In fact he said in his evidence (which I have rejected) that this is what he did. (xvii) As a reasonable driver he should have foreseen that to have stopped the insured vehicle in the emergency lane, even with his lights and emergency lights on, would constitute a potential danger and an obstruction to other traffic. Other drivers may, to his knowledge and based upon his own experience, have been travelling in the emergency lane for some reason and may either not have seen the lights of his bakkie until a late stage or at all. I should say that there was no evidence as to how visible these lights in fact were even if they were burning. The bakkie was an old vehicle and the lights may, for all we know, have been inefficient, covered in dust or simply not particularly bright. It should also have been reasonably foreseeable that a following driver may have been distracted or blinded by the lights of an

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<sup>3</sup> 2002 (3) SA 70 (WLD).

approaching vehicle. (xviii) It would, in my view, defeat the object of the statute if I were to hold that, although Dlamini was not entitled, in law, to have stopped his vehicle where he did, he was not negligent vis-à-vis other traffic because he had his lights on and was, therefore, in his estimation sufficiently visible to other drivers approaching from behind. As it turned out, he was not seen by the deceased until it was too late for her to avoid the collision. Applying the 'causa sine qua non' test in relation to causation, this collision would not have occurred but for the presence of the insured vehicle in the path of the Toyota which was being negligently driven by the deceased. Dlamini could, and should, in the circumstances have pulled entirely off the road surface onto the grass verge, in which event the collision would, in all probability, never have occurred. (xix) The fact that the deceased was also negligent does not, of course, exonerate Dlamini (and therefore the defendant) from liability. Both drivers were, in my judgment, causally negligent in relation to the collision which caused her death and injured the plaintiffs. The degree of negligence of each of them is irrelevant to this finding since the plaintiffs are innocent third parties and it matters not that the deceased might have had a so called 'last opportunity' to avoid the collision."

[19] Thabede could and should have pulled off the roadway into the emergency lane (at the very least), although it seems that he could still travel and should have pulled off at a place where it was lawful and safe to do so. Mr Thabede should have foreseen the possibility of a collision by being stationary in the roadway and was therefore negligent.

[20] The deceased in this case was also negligent. But this fact does not, of course, exonerate Thabede (and therefore the defendant) from liability. Both drivers were, in my judgment, causally negligent in relation to the collision which caused the death of the deceased and injured the second plaintiff. The degree of negligence of each of them is irrelevant and it matters not that the deceased might have had the last opportunity to avoid the collision. But for the insured driver's stationary motor vehicle's presence on the road, the accident would not have occurred, and his negligence is therefore casually

connected to the collision. I am satisfied that the plaintiffs have made out a case for the relief they seek.

[21] With regards to experts' fees, it is my view that the court dealing with quantum is better suited to decide on the issue. The plaintiffs are successful, there are no reasons advanced why costs should not follow the result.

[22] In the premises the court finds in favour of the plaintiffs and order that the defendant is liable for the damages that the first and second plaintiff suffered as a result of the accident.

[23] In the result the following order is made:

#### *Order*

1. The Defendant is liable for 100% of the First and Second Plaintiffs' proven or agreed damages in respect of loss of support.
2. The Defendant is liable for 100% of the Second Plaintiff's proven or agreed damages in respect of the injuries she sustained.
3. The Defendant shall furnish the second Plaintiff with an Undertaking in terms of Section 17(4)(a) of the Road Accident Fund Act, 556 of 1996, as amended for 100% of the costs of the future accommodation of the Plaintiff in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to her arising out of the injuries sustained by her in the motor vehicle collision which occurred on 21 January 2022 after such costs have been incurred and upon proof thereof.
4. The Defendant shall pay the Plaintiff's taxed or agreed party costs on the High Court scale C, in accordance with the discretion of the Taxing Master, including, but not limited to:
  - a. The costs of counsel on trial to date, namely 17 May; 23 May, and 26 July 2024, including counsel's consultations with the attorney, plaintiff, and witnesses and the drafting of a case summary and/or heads of argument.

- b. The witness, Ms M Mdevu, is declared a necessary witness and the costs shall include the consultations held with the witness including her reasonable travelling, flight and accommodation costs.
  - c. The costs of the video footage that formed part of the evidence in court.
5. The parties shall first attempt to settle the Plaintiff's party and party costs. In the event that costs are not agreed, the Plaintiff shall:
- a. Serve a notice of taxation on the Defendant and
  - b. Allow the Defendant 14 calendar days to make payment of the taxed costs.

**B MAHALELO  
JUDGE OF THE HIGH COURT  
JOHANNESBURG**

APPEARANCES

Counsel for the Plaintiffs: Adv. D Combrink

Instructed by: Leon JJ Van Rensburg

Counsel for the Defendant: P. Nziyanziya

Instructed by: State Attorney

Date of Hearing: 26 July 2024

Date of Judgment: 29 November 2024