

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 13129/2022

DATE: 29-11-2024

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: ~~YES~~ / NO.

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~ / NO.

(3) REVISED.

DATE 29/11/2024

SIGNATURE [REDACTED]

10 In the matter between

MOHLALA, SINAH M

Plaintiff

and

THE ROAD ACCIDENT FUND

Defendant

J U D G M E N T

WEIDEMAN, AJ: This matter was number 36 on the roll for the week of 8 October 2024. The minor involved in the
20 accident was born on 9 November 2009 and the accident from which this claim arose occurred on 1 June 2020. The minor was 10 years old at the time and rebuttably *doli incapax*.

The statutory Section 19(f) affidavit was attested to by the plaintiff and who was not present at the time of the accident. The content of her affidavit takes the matter no

further.

The only other document relating to the circumstances of the accident is the officer's accident report form and which is to be found at CaseLines 010-100. On page 2 of the OAR under the heading "accident sketch" it merely states "as per sketch plan", but there is no sketch plan.

Lower down on the same page and under the heading "description of the accident" it merely states "as
10 per A1", but there is no A1 uploaded.

The only suggestion of a possible explanation of how the accident may have occurred is to be found on page 4 of the OAR where someone, identity unknown, and under the heading "pedestrians and cyclists only" marked the following blocks with "X":

1. Roadway.
2. Within 50 metres of a crossing.
3. Under "pedestrian action" - "running".
4. Under "colour of clothing" - "light".

20 To summarise: the unknown author recorded that the accident occurred on the roadway, within 50 metres of a crossing, whilst a pedestrian in light clothing was running.

I would venture to guess that most, if not all, children in South Africa at the age of 10 know how to safely cross a road. However, even if the child is given the benefit

of the doubt as being rebuttably *doli incapax*, with no knowledge of how to cross a road, and in this regard the Court took cognisance of the information in the medical reports, that the child was prematurely born and had pre-existing learning vulnerabilities. Even then, the summary above is not enough to visit the driver of the vehicle with any negligence. It confirms a factual situation, but it does not speak to the question of negligence.

My order is accordingly as follows:

- 10 1. The application for default judgment is refused.
2. No order as to costs.

I hand down the judgment.



WEIDEMAN, AJ

JUDGE OF THE HIGH COURT

DATE: 11/12/2024