

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 129389/2023

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 [Signature]

10 In the matter between

MANYANDIWANE MANNAZANE LETTIE

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

J U D G M E N T

WEIDEMAN, AJ:

- 20
1. The accident from which this claim arose occurred on the 21st of August 2022. The plaintiff was born on the 1st of April 1967.
 2. At the commencement of proceedings counsel moved an application in terms of Rule 38(2). It was pointed out to counsel that the application, as formulated, only speaks to the aspect of quantum and that it does

not address the aspect of the defendant's liability. A supplementary application was moved from the bar to include items 4, 5, 6, 7 and 9 of the discovery bundle under pocket 05 on Caselines.

3. According to the plaintiff's section 19(f) affidavit, the following happened:

"On the 21st of August 2022 and at about 18:15, in the vicinity of Tsakane, I was a pedestrian walking on the pavement of Masakhane Street, when an unknown driver of a Toyota Quantum ("the insured driver") collided with me on the left leg."

- 4.

"I did not attend to the hospital immediately as the pain was severe only on 29 August 2022. I requested my husband to accompany me to the Pholosong Hospital and it was discovered I sustained a fractured left ankle."

- 20 5. The year in which the accident occurred seems to be uncertain. Paragraph 4 of the pre-amended particulars of claim records that it was on the 21st of August 2021. This date was rectified by an amendment to paragraph 4 of the particulars of claim and the amended page, containing the amendment of

the date of the accident from 21 August 2021 to 21 August 2022, was filed on the 5th of November 2024.

6. This later amendment has not put an end to the matter. Paragraph 7 of the particulars of claim, reads as follows;

“From the scene of the accident the plaintiff went home. On the 29th of August 2023, the plaintiff was conveyed to Pholosong hospital by her husband, where she was admitted.”

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7. The amended paragraph 4, read with the unamended paragraph 7 of the particulars of claim suggest that the accident occurred on the 21st of August 2022 and that the plaintiff went to hospital on the 29th of August 2023, one year and eight days after the accident. This is highly improbable. The particulars of claim is in conflict with itself.

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8. But for the plaintiff's statutory section 19(f) affidavit, the only other document relating to negligence is the OAR. All the information contained in the OAR originated from the plaintiff. It is clear from the content of this document that she reported the alleged accident on the 14th of September 2022, the date on which the OAR was completed. The section 19(f) affidavit was signed on the 15th of November

2022.

9. The description of the accident in the OAR reads as follows:

“Pedestrian alleged that she was walking along Masikane Street, Extension 11, Tsakane, then the driver of the white Toyota Quantum hit her on the left leg and he never stopped after the accident. She sustained left leg injury and admitted at Pholosong hospital on the 29th of August 2022.”

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10. The available documentation does not indicate whether the vehicle was approaching from the front or the rear. From the bar, counsel indicated that it was from the rear.

11. The documentation placed before Court is highly unsatisfactory. A discussion between the Court and counsel, based on the documentation that had been presented, could not address the Court's concerns. If the plaintiff was walking on the pavement, as she averred, with her back to the approaching vehicle, it is improbable that her only injury will be a fractured ankle of the left leg. This leg was not facing the road whilst she was on the pavement. There is no averment of any other primary point of contact or

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impact between the Toyota Quantum, which is a sizeable vehicle, and the plaintiff. Only the left ankle.

12. According to the plaintiff's RAF1 form, there was a witness to the alleged accident. No affidavit or statement from this witness formed part of the documentation before Court. There is no reference to this person in the OAR. A negative inference must be drawn.

10 13. The plaintiff's version, that she either waited eight days before seeking medical attention for a fractured ankle, or a year and eight days according to the particulars of claim, is highly improbable.

14. The order reads as follows:

[1] The plaintiff's claim is dismissed.

[2] No order as to costs.

I hand down the judgment.

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WEIDEMAN, AJ

JUDGE OF THE HIGH COURT

DATE: 29/11/2024