



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

Case No: 70967/2017

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
	
MAKHOB A J	DATE: 24/02/2025

In the matter between:

MLOTSHWA CONNY ANNAH

PLAINTIFF

and

THE ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

MAKHOB A J:

[1] The Plaintiff instituted an action against the Defendant for damages suffered as a result of injuries sustained in a motor vehicle accident that occurred on the 17th May 2015.

[2] On the date of trial, the Defendant was not represented and the attempt to settle the matter did not yield any results. Counsel for the Plaintiff asked the court for default judgment in favour of the Plaintiff. When he addressed the court, the court asked him to address it on liability by the Defendant.

[3] In order to prove liability (merits) the Plaintiff testified. In her testimony She testified that when the accident occurred she was asleep in the motor vehicle. She later discovered that she was admitted at Jane Furse hospital. She was informed by the staff members at the hospital that she was involved in a motor vehicle accident. This complete evidence of the Plaintiff on the merits and the Plaintiff closed her case.

[4] Counsel for the Plaintiff requested to submit the heads of argument which same was filed on the 21st February 2025. In his heads of argument Counsel argued that the Plaintiff succeeded in proving that the Defendant was one percent negligent and liable for the Plaintiff's proven damages.

[5] The issue in this matter is whether the Defendant is liable for the Plaintiff's damages.

[6] In our law, the Plaintiff must prove only one percent on the Defendant's negligence. In other words, it is enough to hold the Defendant liable if it is proven that the Defendant was one percent negligent.

[7] It is trite that onus rests on the Plaintiff to prove her case on a balance of probabilities. See *Pillay v Krishna 1946 SA 946*. Thus, the duty is on the Plaintiff to prove the one percent negligence by the Defendant's insured driver.

[8] The only witness for the Plaintiff is the Plaintiff herself. In her testimony she testified that she did not see how the accident occurred and that she only found herself in hospital.

[9] Furthermore the Plaintiff reiterate in her affidavit what she told the court under oath.

[10] In the absence of evidence of how the accident occurred, the court is unable to say that the Defendant is liable for damages suffered by the Plaintiff. The Plaintiff in my view

failed to prove on balance of probabilities that the Defendant is liable for her claim of damages against the Defendant.

[11] I therefore make the following order:

11.1. The Plaintiff's claim is dismissed;

11.2. I make no order as to costs.



MAKHOB
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail. The date and time for hand-down is deemed to be on the 24 February 2025.

APPERANCES

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