

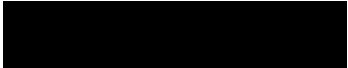
REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG DIVISION, PRETORIA

Case No: 31655/2022

Reportable: No
Of interest to other Judges: No
Revised: No


SIGNATURE

Date: 17 March 2025

In the matter between:

OBED RINGANE

Applicant (Plaintiff)

and

ROAD ACCIDENT FUND

Respondent (Defendant)

JUDGEMENT – APPLICATION FOR LEAVE TO APPEAL

- 1 The plaintiff seeks leave to appeal the order in which the court apportioned negligence and applied particular contingencies in relation to his claim against the Road Accident Fund.
- 2 The application is based on the following grounds, namely that the court erred:
 - 2.1 In finding that the plaintiff was towing a trailer;
 - 2.2 In finding that the plaintiff was not allowed to have a passenger;
 - 2.3 In apportioning liability at 20%;
 - 2.4 In applying a 25% contingency deduction in relation to past and future pre-morbid earnings, and
 - 2.5 In applying a 15% contingency deduction in relation to future post-morbid earnings.
- 3 The court made its order on 23 April 2024. I asked counsel why the application was not brought earlier. Counsel informed the court that the plaintiff had to obtain a transcript of the proceedings.
- 4 There was also a notice in terms of Rule 49(6)(a), which was served on the Road Accident Fund on 19 February 2025. The court enquired about this notice, given that there was no decision on the application for leave to appeal. Counsel informed the court that the notice was issued pre-maturely.
- 5 The plaintiff did not seek a written judgement before making his application. The record shows that the matter came before court in the unopposed roll. The plaintiff gave evidence. The court requested the plaintiff to furnish certain documents, with the plaintiff

later giving evidence on those documents. The court then determined liability, including the bases thereof, from the Bench. The court also determined contingencies, having debated with counsel. The court then made its order accordingly.

- 6 The plaintiff was injured whilst riding a motorcycle. The court accepts that there was no evidence that the plaintiff was hauling a trailer. The evidence was that the plaintiff was carrying a load at the back of the bike. The court held that a motorcycle was not intended for conveying passengers or for hauling a trailer and that it was probable that the plaintiff would otherwise have been able to control the motorcycle differently but for the passenger and the trailer. The court erred in finding that the plaintiff was hauling a trailer. I accept that another court may find differently on whether there is to be any apportionment given the absence of evidence that the plaintiff was hauling a trailer.
- 7 Contingencies are a measure by the court to assess claims by a plaintiff. I am not persuaded that the court erred in its determination of contingencies. The plaintiff's evidence on earnings was wholly unreliable. He told his experts that he earned R9000,00 per month, and supplied payslips showing that amount. These payslips formed part of the record.
- 8 The court requested the plaintiff to furnish copies of his bank statements. That was done. The plaintiff informed the court that he was paid either on the last day of a month or on the first day of a month. The bank statements by the plaintiff did not reflect payments in the amount of R9000.00. The plaintiff, when the court drew this to his attention, gave evidence that customers paid the business that employed the plaintiff in cash, and that is how the plaintiff was paid. This evidence was at odds with the plaintiff's case before the court requested bank statements.
- 9 I agree that the court erred as stated above.

10 I make the following order:

- (1) Leave to appeal is given to the Full Bench.
- (2) Leave is given only in relation to the court having apportioned liability to the plaintiff.
- (3) The costs of the application will be costs in the appeal.



O MOOKI

**JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA**

Appearance:

On behalf of the applicant
Instructed by:

A K Maluleka
Muchesa Attorneys

On behalf of the respondent

(No appearance)

Heard: 4 March 2025

Decided: 17 March 2025