



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: A2024-039000

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED.
	
SIGNATURE	DATE 25/03/2025

In the matter between:

JAMES WILLIAM ERASMUS

APPELLANT

and

ROAD ACCIDENT FUND

RESPONDENT

This Judgment was handed down electronically and by circulation to the parties' legal representatives by way of email and shall be uploaded on caselines. The date for hand down is deemed to be on 25 MARCH 2025

JUDGMENT

MABESELE J et MALI J et MAHOSI J

- [1] This is an appeal against the judgment and order of the single judge, Khan AJ delivered on 23 August 2023. The order reads:

"1. The insured driver is held to be 50 percent liable to the plaintiff, 50 percent to blame for the collision that occurred and consequently the Road Accident Fund is to compensate the plaintiff for 50% of his agreed or proved damages in due course....."

- [2] The matter concerns the claim for compensation for damages in terms of the Road Accident Fund Act 56 of 1996 (the Act). Section 17 (1) of the Act provides that it is "...the obligation of the Fund to compensate the third party for injuries suffered as a result of negligent driving by the insured driver."

- [3] The central issue in this appeal is whether the trial court/ *court a quo* erred in finding that the appellant negligently contributed to the accident to the extent of 50 % liability.

- [4] The evidence led in the trial court is that on 4 March 2015 the appellant was driving a motorcycle from Vanderbijlpark to Johannesburg. He was travelling in a two-lane highway, driving on the right-hand lane. Two motor vehicles were travelling on their respective lanes in front of him. Both vehicles were driven at a speed of about 80 kilometres an hour. The appellant was driving at a speed of about 123 to 125 kilometres an hour. He accelerated from the speed of 125 kilometres an hour to an unspecified speed to pass the motor vehicle on his left side. He noticed that the road suddenly began to close as the vehicle (Corsa model) from the left-hand side was moving towards the right lane. He began to conduct what he refers to as an evasive manoeuvre by moving to the left side of the road/shoulder of the road. He attempted to pass the insured driver from the left, inside the road, without moving over the yellow lane. The insured driver suddenly drove to the left side and crashed with his motorcycle.

- [5] It is the appellant's further evidence that the reason he decided to drive between the two vehicles was because they were driven slowly. He passed between the two in a manner he called lane split.
- [6] The trial court found that the appellant was travelling in excess speed of 120 kilometres an hour, the authorised speed on that road. Furthermore, the prescription of a speed of 120 kilometres an hour does not mean that the driving cannot be done at a lower speed. In the event the appellant was travelling at a lesser speed and had moved further to the shoulder of the road, the collision could have been averted. The court *quo* found that he was partly the cause of the accident and granted the order for apportionment of damages, thus reducing the fault on the part of the insured driver.

Apportionment of liability in case of contributory negligence

- [7] Section (1) of the Apportionment of Damages Act 34 of 1956 (Apportionment Act) reads.

(a) Where any person suffers damage which is caused partly by his own fault and partly by the fault of any other person, a claim in respect of that damage shall not be defeated by reason of the fault of the claimant but the damages recoverable in respect thereof shall be reduced by the court to such extent as the court may deem just and equitable having regard to the degree in which the claimant was at fault in relation to the damage.

(b) Damage shall for the purpose of paragraph (a) be regarded as having been caused by a person's fault notwithstanding the fact that another person had an opportunity of avoiding the consequences thereof and negligently failed to do so.

Section 2 of the Apportionment Act reads:

“Where in any primary effect of the Apportionment of Damages Act, is now the plaintiff may only recover damage not caused by his own fault but by the fault of the wrongdoer. Should plaintiff be at fault in relation to the causation of his/her damage, his damages are reduced proportionally to the fault he heard in the causation of such damage”

- [8] In this court, the submission on behalf of the appellant is that the court *a quo* erred in finding that his negligence partly contributed to the accident. Thus, the respondent should have been found to be 100% liable. In the alternative the court *a quo* should have apportioned the negligence to 20% on the part of the appellant, therefore holding the respondent 80% liable.

Test for negligence

- [9] The test for negligence was aptly stated in *Kruger v Coetzee* 1966 (2) SA 428 (A) at 430E-G as follows:

“For the purposes of liability culpa arises if –

(a) a diligens paterfamilias in the position of the defendant –

(i) would foresee the reasonable possibility of his conduct injuring another in his person or property and causing him patrimonial loss; and

(ii) would take reasonable steps to guard against such occurrence; and

(b) the defendant failed to take such steps. This has been constantly stated by this Court for some 50 years. Requirement (a)(ii) is sometimes overlooked. Whether a diligens paterfamilias in the position of the person concerned would take any guarding steps at all and, if so, what steps would be reasonable, must always depend upon the circumstances of each case. No hard and fast basis can be laid down. Hence the futility,

in general, of seeking guidance from the facts and results of other cases."

- [10] Applying the test for negligence in the facts herein, one cannot accept how the driver of the Corsa would have foreseen the reasonable possibility of him causing patrimonial loss when the driver was driving on his dedicated lane. This is further bolstered by the appellant's own evidence under cross examination, that he did not indicate that he was moving to the right. The Corsa driver could not have anticipated his move to the right-hand side of the road. The following excerpts from the cross examination of the appellant ex transcript are relevant:

MS GEVANA: After you passed the vehicle which was now on your right since you were now travelling on the shoulder of the road did you indicate to signal to the driver that you were now getting back on the road?

MR ERASMUS: No, there was, as I say this was an evasive 10 manoeuvre to go around this vehicle. There was no time to indicate. I was in an emergency, and I had to, I had to get around him as quick as possible.

COURT: So, you did not indicate?

MR ERASMUS: No, M'ord

MS GEVANA: Since you testified that you were travelling at a high speed, higher than the vehicles that were travelling alongside you did you at any stage reduce the speed or did the driver that collided with you or that you collided with at any stage increase their speed they were travelling in?

MR ERASMUS: I am not sure if the vehicle increased or decreased any speed. I am pretty sure I kept to my own speed at that time M'ord.

MS GEVANA: Would you agree with me to say that there was no way that the insured driver would have seen you coming because now the lane that he was

travelling on was 24-08-2023 the only lane on the left-hand side and where you were now travelling was not on the road but on the shoulder of the road.

*MR ERASMUS: It was still within the lane. **If that vehicle had not crossed into my lane** and closed the corridor, I would not have taken that manoeuvre. He forced me to take evasive manoeuvres.” COURT EMPHASIS*

[11] The appellant’s mischaracterisation of the accident scene is concerning, he refers to “**my lane**”. The appellant had no lane, he deliberately entered in between two vehicles which were in their respective lanes. On his own admission the road in question has two lanes. The third lane was simply his creation which caused the accident.

[12] The appellant’s contention that he found himself in a sudden emergency cannot be accepted. Reason being that he speedily and impatiently drove in between two motor vehicles which were rightfully driven on their lanes, thus he had no right of passage.

[13] Furthermore, Regulation 298 of National Road Traffic Regulations (Regulations), 2000, stipulates as follows:

“298. Passing of vehicle

(2)

(3) The driver of a vehicle on a public road shall, except in the circumstances referred to in the first proviso to sub regulation (1), upon becoming aware of other traffic proceeding in the same direction and wishing to pass his or her vehicle, cause his or her vehicle to travel as near to the left edge of the roadway as is possible, without endangering himself or herself or other traffic or property on the roadway, and shall not accelerate the speed of his or her vehicle until the other vehicle has passed.

(4) When about to pass oncoming traffic, the driver of a vehicle on a public road shall ensure that the vehicle driven by him or her

does not encroach on the roadway to his or her right in such manner as may obstruct or endanger such oncoming traffic.

- (5) Additionally, in respect of Section 296 of the Regulations, the following is stated:

"296. Vehicle to be driven on left side of roadway

(1) Any person driving a vehicle on a public road shall do so by driving on the left side of the roadway and, where such roadway is of sufficient width, in such manner as not to encroach on that half of the roadway to his or her right: Provided that such encroachment shall be permissible-

(a) where it can be done without obstructing or endangering other traffic or property which is or may be on such half and for a period and distance not longer than is necessary and prudent and provided that it is not prohibited by a road traffic sign; or

(b) in compliance with a direction of a traffic officer or a road traffic sign.

(2) The provisions of subregulation (1) shall not apply in the case of a public road which is restricted to traffic moving thereon in one direction only."

- [14] In the present appeal, the appellant on his own version, wishing to pass speedily, deliberately decided to encroach on other lanes. The person who should have foreseen the negligence that the accident would occur is the appellant only. The fact that he was driving a small motor, in the form of a motorcycle did not give him the right to write his own rules of the road. Every driver is supposed to follow the rules of the road, there is no special law or neither the law provides for any concessions for the drivers of motorcycle.

- [15] The appellant interposed between two motor vehicles. It follows, from his evidence that there was no sufficient width on both sides as both lanes are dedicated for the two motor vehicles which were already driven in their lanes. By doing so he was already negligent, to make things worse he accelerated in an attempt to avoid the collision. His evidence that if he had applied brakes, he would have been in a worse accident is countered by the fact that his driving from the onset was in an endangering manner in contravention of Regulation 298 (3), as above.
- [16] The trial court misdirected itself in finding that the insured driver contributed to the negligence which caused the appellant's injuries, therefore entitled to apportioned compensation. During the hearing, the issue that the appellant could have been the sole cause of the accident, based on the evidence presented to the court below, was raised with both counsel. Counsel for the appellant, in his argument, could not persuade the court otherwise. Therefore, this court concludes that the appellant is the sole cause of the accident. He is not entitled to compensation at all. In the result the appeal cannot succeed.

ORDER

1. The appeal is dismissed with costs on scale C.
2. The order of the court *a quo* is set aside, and replaced with the following:
 - (a) The plaintiff's claim is dismissed with costs on scale C.



N P MALI
JUDGE OF THE HIGH COURT

I agree,


[REDACTED]
M.MABESELE
JUDGE OF THE HIGH COURT

I agree,


[REDACTED]
D.MAHOSI
JUDGE OF THE HIGH COURT

APPEARANCES

For the appellant:	Adv F. Saint
For the respondent:	Ms. T. Tivana
Date of hearing:	29 January 2025
Date of Judgment:	25 March 2025