

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION JOHANNESBURG

CASE NO: 87438/2023

DATE: 27-03-2025

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED

SIGNATURE

DATE:

[Signature]
27/3/2025

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NKOSINATHI NXUMALO

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

J U D G M E N T

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WEIDEMAN, AJ: In the matter of N Nxumalo, I have before me two applications, the first is an application in terms of Rule 38(2) and which was discussed with counsel, when the matter was called. That application was granted.

The second was an application in terms of Rule 33(4) to separate the aspects of liability and quantum and for the aspect of quantum to be postponed *sine die*. That

application was also granted.

As far as the aspect of liability is concerned, the evidence before Court is that the plaintiff was a pedestrian directly next to the road, after dark, walking with his back to an approaching vehicle. A truck and trailer came past and the trailer collided with him. There is no evidence before Court to gainsay that version, it is not improbable and it is plausible.

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On that basis, counsel readily conceded that given the plaintiff's action there should be a contribution of negligence from the plaintiff's side and proposed an 80/20 apportionment in favour of the plaintiff.

I concur with counsel's submission and my order is therefore as follows:

ORDER

20 [1] The plaintiff's application in terms of Rule 38(2) is granted.

[2] The plaintiff's application in terms of Rule 33(4) for the separation of liability from quantum, and for the aspect of quantum to be postponed *sine die*, is granted.

[3] The defendant shall be liable to the plaintiff for 80% of such damages as the plaintiff may be able to

substantiate.

[4] The plaintiff having been substantially successful is entitled to his costs as taxed or agreed.

[5] Counsel's fees to be on Scale B. The costs will include counsels fee both for the 25th and the 27th of March.

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WEIDEMAN, AJ

JUDGE OF THE HIGH COURT

DATE: 27/3/2025