SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and SAFLII Policy

IN THE HIGH COURT OF SOUTH AFRICA

FREE STATE DIVISION, BLOEMFONTEIN

Reportable: YES/NO
Of Interest to other Judges: YES/NO
Circulate to Magistrates: YES/NO
Case no: **6409/2023**

In the matter between:

ALFONZO DON NIEL DE KOKER Plaintiff

and

ROAD ACCIDENT FUND Defendant

Coram: **De Kock AJ**

Heard: 4 and 5 February 2025

Delivered: This judgment was handed down and released to SAFLII. The date for hand-down is deemed to be 14 February 2025.

Summary: Liability of the Road Accident Fund: rear-end collision – the Road Accident Fund is 100% (one hundred percent) liable for the Plaintiff's agreed or proven damages.

ORDER

1. The defendant is liable for payment of 100% of the plaintiff's proven or agreed damages.

2. The defendant will pay the plaintiff's taxed or agreed party and party costs, such costs to include:

2.1 the fees of Counsel in terms of amended rule 67A(3)*(a)* read with rule 69(7) on Scale A which costs shall include, but is not limited to, the trial dates of 4 and 5 February 2025.

2.2 In the event of default on the payment of the costs, interest shall accrue on such outstanding amount at the statutory *mora* rate on the date of taxation/settlement of the bill of cost, as per the Prescribed Rate of Interest Act 55 of 1975 per annum, calculated from due date until the date of payment.

JUDGMENT

De Kock AJ

Introduction:

[1] This is an action for damages in which the plaintiff seeks recourse against the defendant due to a motor vehicle collision which occurred on 4 June 2022 on Normandie Road, Bloemfontein, Free State Province.

[2] The parties agreed that the merits and quantum be separated in terms of Uniform Rule 33(4). A formal order to the latter effect was made. The issue of liability thus stands to be adjudicated.

[3] The Plaintiff in his particulars of claim and specifically para 5 thereof averred:

‘5. **<u>CAUSAL NEGLIGENCE</u>**:

The collision was caused by the sole negligence of the insured driver. The insured driver who was negligent in one, more or all of the following respects:

5.1 he/she drove at an excessive speed in the prevailing circumstances.

5.3 he/she failed to keep any lookout, alternatively any proper lookout.

5.4 he/she failed to apply the brakes of the insured vehicle timeously, adequately or at all.

5.5 he/she failed to swerve and to take evasive action timeously, adequately or at all.

5.6 he/she failed to avoid the accident by the exercise of reasonable care, he could and should have done so.

5.7 he/she failed to keep proper control over the insured vehicle.' [sic]

[4] The defendant in its plea and, in particular in paras 5 to 8, averred:

'**AD PARAGRAPH 5 THEREOF:**

5.

The content of the paragraph is denied as if specifically traversed and the Plaintiff is put to the proof thereof.

6.

Should the Honourable Court find that the collision occurred as alleged by the Plaintiff in paragraph 3 and 5 of the Plaintiff's particulars of claim, then the Defendant pleads as follows:

7.

The Defendant denies that **the unidentified driver** ('the insured driver') the driver of the motor vehicle with registration number and letters **unknown** ('the insured vehicle') was negligent as alleged or otherwise.

8.

IN THE ALTERNATIVE to paragraph 7 above, should the Honourable Court find that the insured driver was negligent as alleged or otherwise (which the Defendant denies), then the Defendant denies that such negligence was the cause of the collision and pleads that the sole cause of the collision was the negligence of the Plaintiff as driver of the motorcycle with registration numbers and letters **HRY […]**, who was negligent, in one or more of the following respects:

8.1 He failed to keep a proper lookout.

8.2 He failed to take cognisance of the prevailing traffic and/or the prevailing traffic conditions.

8.3 He failed to keep his vehicle under proper control.

8.4 He failed to apply the brakes of his vehicle timeously or at all.

8.5 He drove at a speed which was excessive in the prevailing circumstances.

8.6 He failed to avoid a collision, when by the exercise of reasonable care and consideration, he could and should have done so.

8.7 He failed to adjust the speed at which he was travelling to the volume of traffic travelling in the road.

8.8 He overtook another vehicle at a time when it was not safe to do so.

8.9 He overtook another vehicle without keeping a proper lookout to establish if he can safely overtake.

8.10 He changed lanes unexpectedly.

8.11 He changed lanes without signalling or, without signalling his intent to do so.

8.12 He changed lanes without regard for other vehicles making use of the road.

8.13 He did not give way to traffic approaching from his right when entering in an intersection controlled by a traffic island (circle).

8.14 He changed lanes and/or overtook another vehicle while proceeding through an intersection controlled by a traffic island (circle).

8.15 He did not keep to his left.

8.16 He did not allow for lateral movement while overtaking another vehicle.

8.17 He accelerated unexpectedly.

8.18 He overtook another vehicle in a bent or while manoeuvring a circle.

8.19 Or any other ground(s) which may be proven during the course of the trial.' [sic]

[5] The plaintiff testified on behalf of his own case and called one further witness. The defendant led no evidence on behalf of its case.

Legal principles:

[6] It is trite that a driver who collides with the rear of a vehicle in front of him is *prima facie* negligent. In *Union and South West Africa Insurance Co Ltd v Bezuidenhout*,[1] it was held:

> 'that the failure of a driver in a rear vehicle to foresee that traffic might for whatever reason suddenly slow down and even stop and to conduct himself accordingly, was negligent. Moreover, the doctrine of foreseeability does not require that a person sought to be held liable should have foreseen the general nature of the harm that might, as a result of his conduct befall someone exposed to risk of harm of such conduct.'[2]

[7] In *Van Der Berg v Road Accident Fund*,[3] citing Kloppers, it was stated as follows: 'A driver who collides with the rear of a vehicle in front of him is prima facie

---

[1] *Union and South West Africa Insurance Co Ltd v Bezuidenhout* 1982 (3) SA 957 (A).
[2] See also *Kruger v Van der Merwe and Another* 1966 (2) SA 266 (A) at 272F-G.
[3] *Van Der Berg v Road Accident Fund* [2013] ZAGPHC 94.

negligent unless he or she can give an explanation indicating that he or she was not negligent.'[4]

Evidence on behalf of the plaintiff's case:

The Plaintiff's evidence:

[8] The plaintiff testified that the collision occurred on 4 June 2022 before the circle in Normandie and Gladstone streets, between 17h00 and 19h00 in the afternoon. He was the driver of a motorcycle.

[9] He testified that before the point of impact he was in Normandie Street, approaching the circle. Normandie Street has double lanes going up to the circle and that he was driving in the right-hand lane. He passed two vehicles and both were driving in the left-hand lane. He testified before he reached the circle, there was impact to the rear wheel of his motorcycle.

[10] He testified that he gained consciousness in the hospital and was informed by his fiancé that he was involved in a collision, and that their neighbour, Mr van den Bergh, was the one that had informed her of what happened on 4 June 2022.

[11] He testified that his neighbour's name is Phillip. However, he does not remember his surname as they are merely acquaintances.

[12] During cross-examination, he testified that he travelled at a speed between 50 km and 55 km/h and that the taillight of the motorcycle was in good working condition. He also testified that his motorcycle's lights were on as the lights are automatically activated when he switches on the ignition.

Evidence of Philippus Petrus Van den Bergh (Mr Van den Berg):

[13] Mr Van den Berg testified that the collision occurred on 4 June 2022 in Normandie Street close to the traffic circle and it was in the early hours of the evening between 17h00 and 19h00. He was driving in the left lane on his way to his residence when he saw a motorcycle passing him. He testified that the motorcycle was reducing speed for the traffic circle at Normandie Street. It was at that moment

---

[4] Ibid para 14.

that he noticed a black Polo speeding past him and collided into the motorcycle. The motor vehicle swerved out and exited the circle at the second exit. He saw the motorcycle and driver collapse.

[14] He testified that he tried to follow the Polo to see the registration, but the it was faster than his vehicle. He decided to turn back and check on the person that fell with the motorcycle. He further testified he did not recognize the driver of the motorcycle immediately. It was only at a later stage that he found out that it was his neighbour. He testified that the motorcycle's lights were on and that he had noticed the brake lights of the plaintiff as he was slowing down, approaching the circle.

[15] During cross-examination he testified that the motor vehicle that he tried to follow had no registration number. He further testified that the plaintiff was merely an acquaintance and that he had no reason to give false evidence. He was asked if the plaintiff could or should have done anything to prevent the collision, whereto he answered that the plaintiff did nothing wrong. The plaintiff reduced his speed in order to safely navigate the traffic circle and that the person who collided with the motorcycle did not observe properly.

Evaluation and Analysis:

[16] The plaintiff's evidence was clear and straight forward. In addition, Mr van den Bergh made the impression as a neutral and honest witness. His evidence corroborated that of the plaintiff in all material respects.

[17] I found no improbabilities or inconsistencies in the evidence presented on behalf of the plaintiff. It is my considered view that the evidence presented supports the plaintiff's pleaded grounds of negligence. In contrast thereto, the evidence does not support that of the defendant. I found nothing in the evidence presented before me indicating that the plaintiff was negligent or contributory negligent. It is further my considered view that nothing in the evidence indicated that the insured driver was faced with sudden emergency. The plaintiff is therefore entitled to recover 100% of his proven or agreed damages.

[18] It is trite that costs follow the result.

Orders:

[19] In the result, the following orders are granted:

1. The defendant is liable for payment of 100% of the plaintiff's proven or agreed damages.

2. The defendant will pay the plaintiff's taxed or agreed party and party costs, such costs to include:

2.1 the fees of Counsel in terms of amended rule 67A(3)*(a)* read with rule 69(7) on Scale A which costs shall include, but is not limited to, the trial dates of 4 and 5 February 2025.

2.2 In the event of default on the payment of the costs, interest shall accrue on such outstanding amount at the statutory *mora* rate on the date of taxation/settlement of the bill of cost, as per the Prescribed Rate of Interest Act 55 of 1975 per annum, calculated from due date until the date of payment.

De Kock AJ

Appearances:

For Plaintiff:	MB Mojake Bloemfontein
Instructed by:	Maduba Incorporated Attorneys Bloemfontein
For Defendant:	J Gouws c/o Office of the State Attorney BLOEMFONTEIN