



**IN THE HIGH COURT OF SOUTH AFRICA  
FREE STATE DIVISION, BLOEMFONTEIN**

**Not reportable**

Case No.: 5172/2018

In the matter between:

**DIKELEDI JULIA MOLEOFI**

Plaintiff

and

**ROAD ACCIDENT FUND**

Defendant

**Coram: Van Rhyn J**

**Heard: 4 March 2025**

**Delivered: 19 March 2025**

**Summary: Motor vehicle accidents - claim for compensation - unknown insured driver - no other version available - principles restated – plaintiff not negligent.**

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**ORDER**

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1. The defendant is 100% liable to compensate the plaintiff for all proven or agreed damages that the plaintiff has suffered on account of the injuries she sustained in the motor vehicle accident that is the subject of this action.

2. The defendant shall pay the plaintiff's taxed or agreed party and party costs of the action, including the costs of counsel on Scale B, which costs shall include the costs attendant upon drafting the heads of argument.

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## JUDGMENT

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[1] The plaintiff, Dikeledi Julia Moleofi, a female born, on 15 May 1961, issued summons against the defendant, the Road Accident Fund for payment of damages in terms of the Road Accident Fund Act 56 of 1996 (the 'RAF Act'). The plaintiff's action is defended. The plaintiff contends that she suffered injuries arising from a motor vehicle accident which occurred on 7 June 2016 at Market Street, Kroonstad, Free State Province. The collision occurred involving an unidentified motor vehicle and trailer being driven by an unknown driver and the plaintiff who was a pedestrian at the time.

[2] The plaintiff alleges in paragraph 4 of the particulars of claim that the sole cause of the collision was due to the negligence of the unknown insured driver having been negligent in one or more of the following respects:

- '4.1 He travelled at a high speed under the circumstances;
- 4.2 He omitted to keep a proper lookout;
- 4.3 He omitted to keep his motor vehicle under proper control;
- 4.4 He failed to comply with the statutory traffic rules;
- 4.5 He failed to avoid an accident when by the exercising of reasonable care, he should and could have done so;
- 4.6 He failed to adequately apply the controls and other mechanisms of his motor vehicle in such a way that it does not pose a threat to other road users;
- 4.7 He failed to adequately consider the presence, movement and clearly visible movements of the Plaintiff;
- 4.8 He failed to consider the rights of other road users.'

[3] The plaintiff avers that she suffered an injury to her left knee and suffered damages to the amount of R1 652 058.00 in respect of past medical and hospital expenses, estimated future medical treatment, loss of income and General Damages. The defendant deny that the insured driver was negligent and it is alleged that the accident was caused as a result of the sole negligence of the plaintiff in that she, *inter alia*, failed to keep a proper lookout, failed to take cognisance of the prevailing traffic conditions and failed to avoid a collision when, by the exercise of reasonable care and considerations, she could and should have done so. The defendant pleaded in the alternative that should it be found that the insured driver was casually negligent, then and in that event the accident was caused by the contributory negligence of the plaintiff and that any damages which the plaintiff may have suffered fall to be reduced in accordance with the provisions of the Apportionment of Damages Act 34 of 1956.

[4] The matter proceeded in respect of the merits of the action only, the parties having agreed to separate the issues in terms of the provisions of Rule 33(4) of the Uniform Rules of Court. The plaintiff, a resident of Maokeng, Kroonstad testified that on 7 June 2014 she left her place of employment to attend a prayer meeting or ceremony at the Alexander Bridge, one of the bridges in Kroonstad traversing the Vals River. The Alexander Bridge (also known as the Robot Bridge) connects the central business area with Suidrand neighbourhood. The bridge provides for single lane traffic regulated by traffic lights on both sides of the bridge. She travelled to the vicinity of the said bridge by car and walked across the bridge in the direction of the middle section of the bridge. According to the plaintiff she walked on the left side of the bridge, facing the direction of the traffic department which is located in the central business area of Kroonstad.

[5] On either side of the bridge, inside the bridge railings, are raised pedestrian walkways. While on the bridge a vehicle passed her and she was 'hooked' by something on her left shoulder and was thrown or knocked against the fence or railing of the bridge and then fell and landed with her lower body on the tarred road surface. Her upper body was still on the raised pedestrian walkway. According to the plaintiff she almost landed up in the river. She was picked up and transported to a medical practitioner by Mr Muller, who was present at the scene. The plaintiff identified herself on several photographs depicting the Alexander Bridge, the raised pedestrian

walkways on both sides of the bridge and the direction in which she was walking prior to the accident. The photographs are contained in a bundle handed in as Exhibit A by the plaintiff.

[6] During cross examination it was established that the plaintiff was standing on the raised walkway and was facing the river when the incident occurred. She had regularly used the bridge in the past to reach the central business area of Kroonstad and knows the area well.

[7] The plaintiff presented the testimony of Mr Nicolas David Muller ('Mr Muller'), a resident of Kroonstad at the time of the incident. He is, *inter alia*, a counsellor at Fezile Dabi District Municipality. On the 7<sup>th</sup> of June 2016, late morning, he was standing on the Alexander Bridge and was facing the river. He furthermore explained that a prayer meeting for rain was arranged to take place which he and many other residents of Kroonstad attended.

[8] While he was standing with his back against the railings of the bridge, he noticed a vehicle approaching from his right-hand side. It appeared to be a truck towing a trailer with something protruding from the side of the trailer. When it came closer, he was able to detect some branches or pieces of wood and knotted wire on the trailer. The truck towing the trailer was crossing the bridge from East to West. He was able to bend backwards to avoid contact with the objects protruding from the trailer but noticed how the objects, which extended further than the road surface and onto the walkway area, hit a pedestrian from behind whereafter she fell. Mr Muller explained that he tried to warn the said pedestrian of the oncoming danger, but to no avail. The pedestrian turned out to be the plaintiff in the matter. Mr Muller assisted the plaintiff to her feet and conveyed her to a local general practitioner for medical care.

[9] Mr Muller furthermore testified that his friend, who was on the bridge and also attended the prayer meeting, was struck by the same object protruding from the trailer and his shirt was ripped open at the back. According to Mr Muller pedestrians make use of the walkways across the Alexander Bridge on a daily basis and the raised walkways on each side of the road surface are specifically designed to provide safety for pedestrians. With reference to Exhibit A, Mr Muller testified that the pedestrian

walkways are raised approximately 20 cm above the road surface on both sides of the bridge. The walkway is approximately 92 cm in width, whereas the road is approximately 287 cm wide. The unidentified vehicle failed to stop after the incident.

[10] During cross examination Mr Muller explained that the level of the river was extremely low at the time due to the persisting drought during 2016. He was looking at a water pump situated in the river immediately prior to noticing the oncoming vehicle. He has never felt unsafe to use the bridge in the past and it provides a safe crossing for pedestrians.

[11] The plaintiff closed her case. The defendant did not present any evidence in rebuttal. On behalf of the plaintiff, it is submitted that the defendant is 100% liable for the damages suffered by the plaintiff in that the plaintiff has provided proof of her *locus standi*, proper submission of her claim in accordance with the provisions of the RAF Act and has furthermore proved that the unidentified driver was 100% negligent in one or more of the respects pleaded in the plaintiff's particulars of claim. During argument Ms Bornman, who appeared on behalf of the defendant, indicated that she has not received any instructions from her client and therefore no submissions were made on behalf of the defendant

[12] The plaintiff's evidence was not challenged to any meaningful degree. The plaintiff gave her evidence in a clear and honest manner. I perceived her as a trustworthy and reliable witness. Her version was corroborated by an independent witness, Mr Muller. Mr Muller's evidence was not challenged during cross examination and he presented his testimony in a comprehensible and reliable way. The plaintiff did not contradict her version as set out in her statement submitted to the defendant together with her RAF claim form as well as the case pleaded in her particulars of claim. The uncontested evidence is that the unidentified driver approached the plaintiff from behind. The plaintiff was walking on the raised walkway specifically allocated for pedestrians. Evidently dangerous objects were protruding from the trailer towed by the unidentified vehicle. The plaintiff's version is that she was struck or 'hooked' by an object on her left shoulder which caused her to fall, which version was corroborated by Mr Muller.

[13] There can, therefore, be no suggestion that the plaintiff was contributory negligent as to the causation of the accident. I accordingly find that the plaintiff discharged the onus resting on her. The defendant is found liable to compensate the plaintiff for all proven damages suffered by her. There is no reason why costs should not be awarded in favour of the plaintiff.

[14] I accordingly make the following Order:

1. The defendant is 100% liable to compensate the plaintiff for all proven or agreed damages that the plaintiff has suffered on account of the injuries she sustained in the motor vehicle accident that is the subject of this action.
2. The defendant shall pay the plaintiff's taxed or agreed party and party costs of the action, including the costs of counsel on Scale B, which costs shall include the costs attendant upon drafting the heads of argument.



IVAN RHYN

JUDGE OF THE HIGH COURT,  
FREE STATE DIVISION, BLOEMFONTEIN

#### **Appearances**

On behalf of the Plaintiff:  
Instructed by:

Adv. D Marx  
Du Plooy Attorneys  
Bloemfontein

On behalf of the Defendant:  
Instructed by:

Ms C Bornman  
State Attorneys, Bloemfontein