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**IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE**

CASE NO: 1363/2021

(1) REPORTABLE: NO

(2) OF INTEREST TO THE JUDGES: YES

(3) REVISED.

DATE: 15.5.2025

SIGNATURE

In the matter between:

**HAMIDABIDI MOHAMEDAMIN
OBO MUSHI HAFASA MOHAMED**

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

REASONS FOR JUDGMENT

MATHABATHE AJ

Introduction

- [1] This is an action instituted by the plaintiff, Mrs. Munshi Hamidabibi Mohamedanin against the defendant, the Road Accident Fund (RAF) for damages arising from the bodily injuries suffered by him in a motor vehicle accident that occurred on 11 September 2019. The RAF defended the matter by delivering a plea resisting the action. At the trial of the action on 17 September 2024, this Court received oral testimony from the plaintiff and at the end of the plaintiff's case, the defendant moved for absolution from instance, which was granted, and I order both parties to file heads of argument, only the RAF filed argument, to this day the court did not receive heads from the plaintiff representative. This is my reasons for granting absolution from instance.

Factual Background

- [2] On 11 September 2019 at approximately 18:50 at near Mooketsi to Giyani Road (R81) Modjadjiskloof, in Limpopo, a motor vehicle accident occurred, between a Toyota Etios Sprint with registration letter and number E[...], which at that time was driven by the plaintiff's husband (Munshi Mohamed Amin "the deceased") and a Toyota Hilux with registration number and letters B[...], which at the time driven by Nukeri Fikile ("insure driver").
- [3] The Plaintiff and the deceased were married to each other and the marriage subsisted until the death of the deceased. Two minor children were born of their marriage.
- [4] On 21 October 2019, the plaintiff lodged a claim with the RAF. In page 7 of the merits bundle, RAF1, under clause 12 "Witnesses", the plaintiff categorically stated that N/A.

[5] On 3 March 2021, the plaintiff issued summon, in paragraph 7 of the particulars of claim the plaintiff stated that:

The sole cause of the said accident was the negligent driving of the said insured driver who was negligent and/or acted unlawfully in one or more at all of the following respect:

- (a) He/she failed to keep a proper lookout,
- (b) He/she failed to avoid the collision when, by the exercise of reasonable care and skill, he/she could and should have done so,
- (c) He/she travelled at an excessive speed,
- (d) He/she failed to control the insured vehicle under proper control,
- (e) He/she failed to control the vehicle driven by her adequately or at all,
- (f) He/she failed to ensure that the insured vehicle was in a proper roadworthy condition,
- (g) He failed to apply brakes timeously alternatively at all
- (h) He/she failed to take any, alternative sufficient cognizance of the presence, the action and visibility and/or alternatively probable further action of the other road users.

Evidence tendered

[6] The plaintiff called one witness, Mr Sherfaraz Patel ("Patel"), who testified as a factual witness with regard to the accident and the negligence of the insured driver on the day of the accident.

[7] Patel testified that on 11 September 2019, he was travelling from Giyani to Polokwane on Mooketsi-Giyani Road, R81, which was his weekly routine travel from Polokwane to Giyani every Monday and drive back to Polokwane on Friday.

- [8] Patel testified that in the morning on 11 September 2019, called by the deceased informing him that will be travelling from Tzaneen to Polokwane in his new car using the very same road, Mooketsi-Giyani R81.
- [9] Patel testified driving behind the deceased on the same lane at about 110Km/h and 120Km/h at a distance between 3 to 4 cars, it was about 10 meters.
- [10] Patel testified that two hours after leaving Guyani and some 15Km after starting to follow the deceased, he saw dust head of him on the road and he realized that the deceased was involved in the accident with a bakkie and the deceased's car flow to the right-hand side of the road.
- [11] Patel further testified that accident happened on the left side of the road as head on collision while the deceased was driving down the slope. There was no car inform of the deceased's car as the road was empty and the weather was clear.
- [12] Patel testified that he stooped his car and rushed to the deceased's car to check if he was well following the accident. When he arrived at the car he found the deceased covered with blood and further with an opening on his head.
- [13] Patel testified that he called an ambulance and further call some other friends and family from Tzaneen and Polokwane to inform them. He stated that he was the first person arrived at the scene.
- [12] Patel testified that the deceased's car after the collision was facing the face on nearby farm, but he does not recall where the bakkie was facing. He remembers seeing the driver of the bakkie opening his door.
- [14] He testified that the accident happened it was late in the afternoon at around 17:55 and the assistance of the light was needed. When the police arrived at the scene they found him there and he assisted them to ascertain who the deceased was.

[15] Patel testified that he never made a statement to the police as no one approached him for a statement. He testified that he been driving for about six years, when the accident happened, and he knows the rules of the road and apologizes for not making statement to the police and opening a case.

[16] Under cross-examination Patel changes his version the effect that: He was not close with the deceased but only knew him as they stayed in the same location and attended the same mosque. He testified that he cannot remember what had caused him to travel back to Polokwane on that Wednesday after being shown that the accident happened on Wednesday on the accident report.

[17] At the end of Patel testimony, the Defendant counsel move an order for absolution from instance of the basis of the plaintiff's pleaded case and evidence presented cannot proof negligent on part of the insured driver.

[18] Rule 39(6) of the Rules which reads as follows:

"At the close of the case for the plaintiff, the defendant may apply for absolution from the instance, in which case the defendant or one advocate on his behalf may address the court and the plaintiff or one advocate on his behalf may reply. The defendant or his advocate may thereupon reply on any matter arising out of the address of the plaintiff or his advocate."

[19] An absolution from the instance application is generally brought at the end of the plaintiff's case, when the plaintiff does not appear when the trial is called or at the conclusion of the whole case.

[20] The test to apply in considering an application for absolution is not that the evidence led by the plaintiff established a case that would be sustained if the case was to proceed to its final conclusion. The essential inquiry in determining whether to grant absolution from the instance is whether there is evidence upon which a court, when applying its mind reasonably, could or might find for the plaintiff. In other words, a

court would not grant absolution from the instance in a case where the plaintiff has, at the end of his or her case, presented an answerable case or prima facie case. The test, as stated in *Supreme Service Station (1969) (Pvt) Ltd v Fox and Goodridge (Pvt) Ltd*,¹ is not “what ought a reasonable court to do” at the close of the defendant’s case. Thus the threshold required by the law, which the plaintiff has to satisfy in opposing an application for absolution from the instance at the close of his or her case, is very low.

[21] The test for absolution was set out in *Claude Neon Lights (SA) Ltd v Daniel*, as follows:

“(W)hen absolution from the instance is sought at the close of plaintiff’s case, the test to be applied is not whether the evidence led by plaintiff establishes what would finally be required to be established, but whether there is evidence upon which a Court, applying its mind reasonably to such evidence, could or might (not should, nor ought to) find for the plaintiff. (*Gascoyne v Paul and Hunter*, 1917 T.P.D 170 at 173; *Ruto Flour Mills (Pty) Ltd v Adelson* (2) 1958 (4) SA 307 (T).)²”

[22] It is tried that in person injury claims negligence becomes the key prove that a party need to establish in order for the court to rule in the party’s favour.

[23] The test for negligence is straightforward and summarised in the frequently cited judgment of *Kruger v Coetzee*³.

“It is so in our law that for the purposes of liability, culpa arises if, and only if: (a) a diligens paterfamilias in the position of the party concerned- (i) would foresee the reasonable possibility of his/her conduct injuring another in his person or property and causing him/her patrimonial loss; and (ii) would take

¹ 1995 (1) ZLR 87(S).

² 1976 (4) SA 403. (AD).

³ *Kruger v Coetzee* 1966 (2) SA 428 (A) at 430

reasonable steps to guard against such occurrence; and (b) the person concerned failed to take such steps.”.

- [24] The court noted both the plaintiff's particulars of claim and section 19(f) affidavit, both do not mention that the insured driver was driving on incorrect line. Patel's contradiction the police arrived at the scene they found him there and he assisted them to ascertain who the deceased was and that he never made a statement to the police as no one approached him for a statement.
- [25] Another contradiction Patel testified that on 11 September 2019, he was travelling from Giyani to Polokwane on Mooketsi-Giyani Road, R81, which weekly routine travel from Polokwane to Giyani every Monday and drive back to Polokwane of Friday and under cross examination Patel testified that he cannot remember what had caused him to travel back to Polokwane on that Wednesday after being shown that the accident happened on Wednesday on the accident report.
- [26] Patel only saw dust head of him on the road and he realized that the deceased was involved in the accident with a bakkie and the deceased's car flow to the right-hand side of the road. He did not see how, the accident happened to be established negligent.
- [27] RAF 1 form does not place Patel on the scene, there was no witness, the case pleaded by the plaintiff's does not support by any evidence of Patel played before the court.
- [28] Counsel for the plaintiff submitted on par 7 of the particulars of claims in that par (d) he failed the insured vehicle under proper control, (e) failed to control the vehicle driven by her adequately or at all and (f) failed to ensure that the insured vehicle was in a proper roadworthy condition. There was no evidence place by Patel to such preposition, he did not see how the accident happened let alone RAF1 do not place him to the scene. RFA1 form is documentary evidence discovered by the plaintiff.

Order

[29] I accordingly make the following order: -

1. absolution from instance is granted, with no order of costs.

Mathabathe AJ

Acting Judge of the High Court of South Africa

Limpopo Division

Polokwane

Appearances

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For the Defendant: K Phaswana

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Dates of Hearing: 17 September 2024

Date of Judgement: 15 May 2025

This judgment was handed down electronically with the consent of and by circulation to the abovementioned legal representatives by email. The date and time for hand-down is deemed to be 10h00 on 15 May 2025.