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**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

Case Number: 2021/52359

(1) REPORTABLE: YES / **NO**
(2) OF INTEREST TO OTHER JUDGES: YES / **NO**
(3) REVISED: YES / **NO**

26 MAY 2025

In the matter between:

PHASHA HEMILTON BOROKO

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

MAKGATE AJ:

INTRODUCTION

1. The present action came before this Court as an application for default judgment against the Road Accident Fund (RAF). The plaintiff, Mr Phasha Hemilton Boroko, proceeded only with the merits aspect of the claim. He testified on his own without calling any witnesses.

PERTINENT BACKGROUND FACTS TO THE DEFAULT ACTION.

2. During 01 July 2019 at approximately 04H00, the plaintiff testified that he was a driver of a Kia LDV motor vehicle, bearing registration number F[...], driving on the N1 North freeway at and/ or near the Rivonia road off-ramp, when his motor vehicle collided with a stationary motor vehicle, which according to the accident report, is described as a black Land Rover, with registration number D[...].

3. According to his evidence, he testified that he was on his way to work, travelling on the centre lane. The freeway that he was travelling on consists of five lanes. The road was clear with no other motor vehicles, when suddenly, on the far-right lane, a black Land Rover appeared from the rear, at a high speed. As it got closer to him, it changed the lane and moved towards his lane of travel, forcing him to swerve into the emergency yellow lane. Strangely, the said Land Rover did not stop but proceeded, still at a high speed.

4. He then continued with his trip, gradually moving from the yellow lane onto the centre lane, reason being that the two left lanes of the freeway, off ramps onto the N1 North, to Pretoria.

5. He further testified that few moments later, he then came across a group of bystanders on the yellow lane, waiving at him to stop. He however refused to stop. It is at that stage that, when he refocused on the road, he then collided with a black Land Rover, which was stationary on the centre lane and slightly encroaching the second left lane. According to him, he collided into the rear of the said motor vehicle, resulting in him, being trapped in his motor vehicle.

6. At this stage, the said bystanders suddenly appeared and approached his motor vehicle. They tried to open his doors but were unsuccessful. They then fled the scene with the same Land Rover with which he had collided. While trapped in his motor vehicle, he was contacted by his motor vehicle tracking company, which enquired about the notification that they have received. He advised them that he was involved in a motor vehicle accident. Moments later, an ambulance arrived at the

scene, followed by the members of the Johannesburg Metropolitan Police Department. He was freed from his motor vehicle and taken by an ambulance to Life Carstenhof Hospital.

7. He further testified that while enroute to the hospital, he saw two motor vehicles parked on the side of the road, a black Land Rover and a Volkswagen Polo motor vehicle. He immediately identified the Land Rover as the vehicle with which he had collided.

8. The plaintiff's contention is that the sole cause of the accident was due to the negligent driving of the insured driver who failed to obey the rules and signs of the road by failing to take sufficient and adequate warning sign(s), for instance, applying hazards lights, amongst others, to warn other motorists.

9. In the circumstances, counsel for the plaintiff submitted that the RAF be found 100% negligent and if there is any apportionment to be made, it should be very minimal, at least 10% against the plaintiff.

10. The plaintiff was however cross-examined, and he maintained his version, save to testify that the freeway was lit by the street's lights.

ANALYSIS

11. The plaintiff on his own version, testified that he did not take any evasive steps to avoid the collision. According to him, even if he had wanted to, it was not possible in that, the moment he refocused on the road after having briefly observed the bystanders who were waiving at him, the stationary black Land Rover was already there, leaving him with no chances to act. There was nothing that he could have done to avoid the collision. As a result, for him to avoid the collision, there ought to have been some prior warnings signs, and this was not the case. In the circumstances, he testified that he was faced with a sudden emergency that he could not avoid.

12. In **Bhalangile v Road Accident Fund [2023] ZAGPPHC 564; 33595/2021 (19 July 2023)**, where a plaintiff collided with a stationary truck parked on the freeway at night, the court found no fault on the plaintiff and succeeded to prove 100% negligence against the insured driver. In that case, the stationary vehicle was deemed to be the sole cause of the accident, especially since the plaintiff had virtually no chance to avoid it due to poor visibility and no warning signs.

13. In **Dlangwana v Road Accident Fund (18983/2021) [2024] ZAGPPHC 403 (17 April 2024)**, in a case involving a collision that could have been avoided by a swerving manoeuvre, an apportionment of 10% against the plaintiff was made. In the said case, the court's reasoning was that the plaintiff's slight delay or failure in evading the collision was considered a contributing factor.

14. Having regard to the above, the question to be considered by this court is whether the plaintiff has succeeded 100% in proving the negligence of the insured driver on the preponderance of probabilities.

15. On careful consideration of all the facts and exercising discretion, failure by the plaintiff to attempt to try a manoeuvre to avoid the collision, which was expected of any reasonable driver in his position, contributed to the collision. In his own testimony, he made no attempts whatsoever to avoid the collision, thereby slightly contributing to the negligence, which should therefore attract an apportionment.

16. In the circumstances, the defendant is liable to pay 90% of the plaintiff's proven damages.

17. In the result, the following order is made:

Order

[1] The Defendant is liable for 90% of such loss as agreed or as proven by the Plaintiff.

[2] The Defendant is ordered to pay the Plaintiff's costs on High Court Scale B.

T J MAKGATE
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG

For the Plaintiff: Adv H Kriel instructed by Levin Tatanis Inc.

For the Respondent: Mr Sendlani, Road Accident Fund unit in the Office of the State Attorney, Johannesburg

Date of Hearing: 21 May 2025.

Date of Judgment: 26 May 2025.