

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

CASE NO:2019/9007

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

In the matter between:

CAINE NOKUZDA ESMIE

Plaintiff

And

ROAD ACCIDENT FUND

Defendant

JUDGMENT

MABESELE J:

[1] This is a claim for damages, arising from the motor vehicle accident. The accident occurred between the motor vehicle with registration number B[...] and the motor vehicle V[...]. At the time of the collision the plaintiff was a passenger in a motor vehicle with registration number V[...]. The trial proceeded on the merits, only. There was no appearance on behalf of the defendant despite notice of set down being served on the office of the state attorney. Accordingly, no evidence was presented on behalf of the defendant.

[2] The plaintiff was a single witness. She is a pensioner. She resides at Seeiso Street, in Atteridgeville. On 25th July 2015 she was travelling to town, in Pretoria and was using a public transport, commonly known as a “taxi”. She was in the company of the other passengers. It was during the day. As the taxi reached the Church and Zeiler streets she suddenly heard a loud noise which she described as a ‘big bang’. Suddenly she found herself on her knees and her body facing the back window of the taxi. She was unable to move her body. The passengers were trapped inside the taxi. Minutes later, people rescued them. They were taken out of the taxi and put on the ground. It was at that stage that she noticed a stationery taxi close by. She did not know why the taxi was there. When she was asked to explain as to how the accident occurred she first said that another vehicle smashed the right sliding passenger door of their taxi. On the same breath she said that she did not see how the accident occurred because she was busy with her cellphone.

[3] The injured passengers, herself included, were transported from the accident scene by an ambulance to the hospital. She was admitted to the Steve Biko Hospital and discharged after 25 days. She sustained injuries on the chest, ribs, left hip and the back. She is currently receiving treatment from the hospital.

[4] Although the burden of proof lies on the plaintiff, regard is had that the plaintiff, in casu, was a passenger. Old as she is and while she was concentrating on the cell phone when the collision occurred, she spoke about damage on the sliding passenger door of the taxi that she was travelling in, and, another stationary taxi close by. Her counsel, who is not experienced, did not pursue the issue of damage to the sliding passenger door, if regard is had that the collision occurred in Church and Zeiler streets which, to my understanding, meets at the T-junction or robots. This, in my view, explains the evidence of the plaintiff that the sliding door was smashed by another vehicle. It is for this reason, also, that the passengers were trapped inside the taxi. For these reasons, judgment should be granted in favour of the plaintiff.

[5] Therefore, the following order is made:

5.1 Judgment is granted in favour of the plaintiff against the defendant.

5.2 The defendant is 100% liable to the plaintiff's damages which remain to be proven.

5.2 The defendant should pay the plaintiff's costs on scale C, including costs of counsel.

M.M MABESELE

(Judge of the High Court Gauteng Local Division)

Date of hearing: 4 June 2025

Date of judgment: 9 June 2025

Appearances

On behalf of the plaintiff: Adv. Masemola-Seageng

Instructed by: Dengo Incorporated

On behalf of the defendant: No appearance

Instructed by: State Attorneys