

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

Reportable / Not reportable

Case number: 2053/2022

In the matter between:

ANNELIE AGENBACH

PLAINTIFF

And

ROAD ACCIDENT FUND

DEFENDANT

Neutral citation: *Annelie Agenbach v Road Accident Fund* (2053/2022) [2025]
ZAFSHC 193 (25 June 2025)

Coram: Chesiwe J

Heard: 25, 26 and 28 February 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 13h00 on 25 June 2025.

Summary: Liability – negligence compensation for bodily injuries arising from a motor vehicle accident driven by Plaintiff which was allegedly caused by the insured driver

ORDER

1. Defendant is liable for damages that the Plaintiff has suffered as a consequence of the motor vehicle collision that occurred on 13 September 2018, with the degree of

fault in relation thereto, being apportioned in the percentage 90/10% of the Plaintiff's proven damages;

2. The Defendant is ordered to pay the costs of the trial, including costs of 25, 26 and 28 February 2025.

JUDGMENT

Chesiwe J

[1] This is an action in which the Plaintiff claims for bodily injuries arising out of a motor vehicle accident that happened on 13 September 2018. The matter was defended.

[2] At the commencement of the trial, an application was made in terms of Rule 38(2) of the Uniform Rules of Court to admit the expert evidence by way of affidavits and to admit evidence in terms of s 3(1)(c) of the Law of Evidence Amendment Act ¹, namely the Plaintiff's hospital and clinical records. The order was granted with no objection from the Defendant.

[3] Though the Defendant had defended the matter, no opposing papers nor any expert reports were filed. The matter therefore stands as a default judgment. The Court therefore need only deal with the issue of merits.

[4] For determination, it is whether the Plaintiff or the insured driver was negligent and if apportionment is applicable.

[5] It is common cause that a gold (brown) Mercedes Benz with registration number: FNY [...] driven by the Plaintiff and a white school bus with registration number: BWP

¹ Act 45 of 1988.

[...], driven by Gustav Adolf Potgieter at at the intersection of Albert Street and Beck Street in Henneman Free State are the subject of the collision.

[6] In terms of the successful Rule 38(2) application, the following exhibits were handed in: Exhibit "A", Exhibit "B" – Affidavit of P M Pomane, Exhibit "C" – merits bundle with photos and sketch plan of the accident scene, Exhibit "D" – Google map indicating the crash, Exhibit "E" – damage to Plaintiff's vehicle, Exhibit "F" – Plaintiff's affidavit, Exhibit "G" – merits investigation report by M J Prinsloo.

[7] Plaintiff testified as follows: That on 13 September 2018, she was on her way to collect her children from school. It was herself and her three daughters, and two of the daughter's friends in the vehicle. She was driving from Fritz Louw Street and was turning right into Albert Street. She could not recall which direction she was driving except that she was driving from Albert Street to cross over to Beck Street.

[8] At the crossing of Beck Street and Albert Street, she looked right and left to check if it was safe to cross. She saw a bus approaching from her right-hand side however, seemed a bit of a distance way from her. The bus drove nearer while she was in the middle of the intersection and collided with her vehicle. She said there was no stop sign nor markings on the road. She thought it safe to cross before the bus came as it seemed a distance. After the collision, she was semi-conscious. She had her safety-belt on and was removed from her vehicle by someone.

[9] Under cross-examination, Plaintiff explained that she has been residing in Henneman for about 10 months and was unfamiliar with the roads. On the day of the accident, it was for the first time that she used Beck and Albert Streets to drop off one of the daughters' friends whom she had giving a lift. Plaintiff said she was extra cautious as she did not know the roads very well nor knew that the road used had an intersection. Plaintiff slowed down, but did not come to a complete stop. Plaintiff pulled

away to cross over to Beck Street and that is when the collision happened. Plaintiff did not know from which direction the bus came from as she had observed the right and the left side of the intersection. Plaintiff did not have a proper lookout for other vehicles and as there was no stop sign, she did not stop. That was the Plaintiff's case. Defendant did not call any witnesses.

[10] The legal representatives were directed to file written heads of argument on 15 March 2025 and 20 March 2025 respectively and the matter was postponed to 24 March 2025 for closing arguments.

Submissions

[11] Counsel on behalf of the Plaintiff, Adv. Hendricks submitted in the written heads of argument that Plaintiff was involved in a motor vehicle accident and that this is undisputed. Further that, Plaintiff's memory of the sequence of events should be doubted as the accident happened six (6) years ago and that Plaintiff confirmed same in her evidence in chief. Moreover, Counsel submitted that Plaintiff's evidence was confirmed by the Police Officer who investigated the scene and gave the report.² Additionally, Plaintiff was not confused as to where the accident occurred and has thus proven her claim against the Defendant and that there was no doubt that Plaintiff sustained injuries as a result of the motor vehicle accident.

[12] Counsel on behalf of the Defendant, Ms. Gouws submitted in the written heads of argument that Plaintiff had several contradictions and improbabilities in her evidence during examination in chief and under cross-examination. Counsel further submitted that Plaintiff conceded to not seeing the approaching bus, but that her children are the ones that saw the bus approaching, screamed however, it was already too late by the time Plaintiff hit the brakes. Moreover, Counsel submitted that Plaintiff has several versions, namely that she saw the bus and entered the intersection, again that she first

² Exhibit bundle Exhibit 'G' at 4 to 55.

saw the bus when the bus was near to her vehicle and had it not been for the children screaming, she would not have realized that the bus was near. In summary, Counsel submitted that Plaintiff's claim ought to be dismissed or in the alternative, an apportionment at 80%-20% be applied.

[13] S 92(1) of the Road Traffic Act ³ (hereafter referred to as the Act), deals with the reckless or negligent driving in a manner that shows a lack of reasonable care, skill and potential endangering of other drivers. Moreover, the aim of s 90 (2) of the Act is to ensure safe driving practices and to prohibit reckless and negligent behavior on public roads.

[14] In *Kruger v Coetzee* ⁴, the issue of whether plaintiff should have foreseen the possibility of a collision and whether she would have been able to stop within the required range of the speed she was driving, the case settled the issue of negligence.

[15] It is trite that Plaintiff bears the onus to prove negligence on the part of the Defendant (insured driver). The moment when the collision occurred on the side of Plaintiff's lane or the point of impact in the lane or side the Plaintiff was travelling in, Plaintiff would have proved negligence.

[16] Plaintiff on the day of the accident testified that she travelled in an unfamiliar area and that there were no road markings, stop sign and neither was there any traffic controllers at the intersection of Beck and Albert Streets. Plaintiff had observed her right-hand and left-hand side before entering the intersection however, the school bus colliding with her vehicle.

³ Act 29 of 1989.

⁴ 1966 (2) SA 428 (A) at 430.

[17] Plaintiff was travelling with her daughters and two (2) of their friends. It is to be expected from a reasonable driver, traveling with children to be extra cautious. Plaintiff explained in her evidence that she thought the bus was still a distance further when she entered the intersection. Under cross-examination however, Plaintiff indicated that she never saw the bus, but only became aware of it when the children screamed.

[18] Furthermore, Plaintiff having been unfamiliar with the road, it would be expected that extra caution be taken, bearing in mind that she had children with her in the vehicle.

[19] Plaintiff's Merits Investigation Report ⁵, which was submitted as an exhibit and of which Plaintiff could not recall what she told the investigator, the following is noted:

"Before she crossed the road, she reduced her speed and she looked to her left for any oncoming traffic and she looked to her right and when she did not see any oncoming traffic at that moment, she continued to cross Beck Street and by the time she was already halfway across the road, only then did she notice a white bus with registration number: BWP[...] speeding towards her, by that time it was already too late for her to avoid the collision to happen."

[20] Plaintiff could not recall a lot of her evidence, but the Court cannot blame her as she is an elderly person and the accident occurred in 2018 and the trial commenced seven (7) later.

[21] Indeed, it is such that every driver or user of public roads must exercise caution. It is a duty expected of all drivers to keep a proper look when using the road. ⁶

⁵ Exhibit 'G' at 75.

⁶ H Klopper *The Law of Collision in South Africa* 8 ed (2012).

[22] In *Nogude v Union and South-West Africa Insurance Co. Ltd*⁷, it was held that:

“A proper look-out entails a continuous scanning of the road ahead, from side to side for obstructions or potential obstructions... Driving with virtually blinkers on, would be inconsistent with the standard of the reasonable driver in the circumstances of this case.”

[23] Plaintiff was at an intersection, which may have been busy as it was within a school area and Plaintiff not being familiar with this particular intersection. Kloppers *Supra* further states that:

“Intersection and unobstruction”

It is an established duty of a driver to keep a proper lookout when approaching an intersection. The duty of every driver when approaching an intersection is to have regard to traffic coming from a side street.”

[24] Plaintiff as the driver approaching the intersection had the duty to keep a proper lookout. In her evidence, Plaintiff states clearly that she did not have proper lookout and the following in her evidence is noted: “It was far away, I couldn’t see it and when it was approaching, actually the kids saw it, I didn’t look at that side I am honest.” (own emphasis) Plaintiff conceded that she never saw the bus by saying: “No I looked the first time, it was not in my eyesight. (evidence during cross-examination)

[25] Plaintiff did not exercise proper duty and care when entering an intersection. Plaintiff should have foreseen, by not exercising proper duty and care, a collision would occur.

⁷ 1975 (3) SA 685 (A).

Apportionment

[26] Counsel for the Plaintiff submitted that if apportionment of negligence of 90/10 is applicable and Counsel for the Defendant submitted that apportionment should be 80/20.

[27] In my view, Plaintiff's negligence should be apportioned at 80/20 due to her failure to exercise proper duty and care at an intersection and a road she was unfamiliar with.

[28] In the premise, the following order is made:

1 Defendant is liable for damages that the Plaintiff has suffered as a consequence of the motor vehicle collision that occurred on 13 September 2018, with the degree of fault in relation thereto, being apportioned in the percentage 80/20% of the Plaintiff's proven damages;

2 The Defendant is ordered to pay the costs of the trial, including costs of 25, 26 and 28 February 2025.

CHESIWE J

Appearances

On behalf of the Plaintiff:

C J Hendriks

Instructed by:

Kruger Venter Attorneys

On behalf of the Defendant:

Ms J Gouws

Instructed by:

State Attorneys

