



**IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MBOMBELA**

CASE NO: 3100/2022

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

SIGNATURE

03 /09/2025

DATE

In the matter between:

DELISILE PRUDENCE KUBAYI

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

This judgment was handed down electronically by circulation to the parties and/or parties' representatives by email. The date and time for hand-down is deemed to be 03 September 2025 at 10:00.

JUDGMENT

Tshetlo AJ

[1] On 21 November 2021 (at approximately 18h15), Ms Delisile Prudence Kubayi ("the plaintiff") was involved in a motor vehicle collision. It is common cause between the parties that the accident occurred.

[2] The issue before this court is the determination of merits only, including whether or not there was contributory negligence on the part of the plaintiff. The question of quantum does not arise for determination.

[3] In summary, the plaintiff testified that:

3.1 On 21 November 2021, at or around 18h15, together with her two children, she was driving (at approximately 55km/h) along Mahushu road (a tarred single carriage way).

3.2 The road conditions were good. It was dusk, but it was still fairly visible.

3.3 Suddenly, a vehicle that was travelling extremely fast overtook the vehicle she was driving on the left-hand side of the road (i.e. emergency lane).

3.4 The speeding vehicle then abruptly swerved right and collided with the left front of her vehicle, as a result of which she lost control and fell into a ditch on the other side of the road.

3.5 She did not see the vehicle approaching, and the accident occurred extremely fast. She also did not take any evasive measures. She was simply not in a position to do so.

3.6 She has been driving regularly for 20 years and has never been involved in a car accident.

[4] There was limited cross-examination (out of which nothing of consequence arose) and no re-examination. The plaintiff closed its case, and the defendant elected not to lead any evidence.

[5] The plaintiff's counsel argued that the plaintiff could not have taken any evasive measures and was not at fault, and she did not see the speeding vehicle. Further, the

RAF had not led any evidence to the contrary. As a result, it was argued that the merits should be determined 100% in favour of the plaintiff.

[6] The defendant argued that the plaintiff could have done something to avoid the accident (given that it was a clear evening) and that the plaintiff's version was not plausible. Accordingly, the RAF argued that there should be an apportionment of 80/20 because the plaintiff was, according to it, contributorily negligent.

[7] The defendant has proved no fault on the part of the plaintiff. I therefore disagree that the plaintiff was contributorily negligent or that there is any basis laid for any apportionment.

[8] Accordingly, the following order is made:

- 1 The defendant is 100% liable for the plaintiff's proven damages.
- 2 The defendant is liable for the plaintiff's costs on Scale B.



TSHETLO AJ
ACTING JUDGE OF THE HIGH COURT
MPUMALANGA DIVISION, MBOMBELA

Appearances

For the plaintiff:

Adv. Mabaso
QQ Mkhathshwa Inc.
Mbombela

For the respondent:

Ms T Malope
Office of the State Attorney
Mbombela

Date heard:

18 March 2025

Judgement Delivered:

3 September 2025