

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

Case no: 2572/2023

In the matter between:

**K[...] M[...] T[...]
on behalf of L[...] T[...]**

PLAINTIFF

and

**ROAD ACCIDENT FUND
[ML-1027 2022 15504]**

DEFENDANT

Neutral citation: *KM T[...] on behalf of L T[...] v Road Accident Fund (2572/2023)*
[2025] ZAFSHC 283 (5 September 2025)

Coram: Van Zyl J

Heard: 4 and 5 March 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by e-mail and released to SAFLII. The date and time for hand down is deemed to be 5 September 2025 at 12h50.

Summary: Motor vehicle accident with pedestrian – driver of the motor vehicle 100% negligent in the causation of the accident – ordered to pay proven or agreed damages.

ORDER

1 The defendant is ordered to pay 100% of the plaintiff's proven or agreed damages.

2 The defendant is ordered to pay the costs of the action to date, counsel's fees to be paid on scale A.

JUDGMENT

Van Zyl J

[1] The plaintiff issued summons on behalf of L[...] T[...] ('the minor') for damages which the minor suffered as a result of injuries she sustained during an

accident when the minor, as a pedestrian, was struck by the mirror of the insured motor vehicle on 23 April 2022 at Koffiefontein, Free State Province.

[2] During the pre-trial, dated 7 May 2025, the parties agreed that in terms of rule 33(4) the special plea and merits are to be separated from the issue of quantum.

[3] On 4 March 2025 I adjudicated the special plea and made the following order:

- ‘1. The special plea is dismissed.
2. The defendant shall pay the costs of the said dismissal.
3. The matter stands down to 5 March 2025.’

[4] The trial thereupon continued on 5 March 2025.

[5] Mrs Gouws, who appeared on behalf of the defendant, indicated that she holds no instructions from the defendant regarding the merits of the action. Although she remained present during the further proceedings, the trial technically continued by default.

[6] The evidence of the minor was presented with the assistance of an interpreter. She testified that she was born on 10 June 2011 and was attending Grade 8 at school.

[7] On the day of the accident the minor and her cousin, O[...], were at the minor's aunt's home and they were sent to fetch pots from her grandmother's house. When they reached one T[...]'s house and were about to cross the street, a white vehicle appeared. O[...] crossed the road but the minor waited for the white vehicle. She testified that she was standing on the grass. Whilst the minor was waiting for the white vehicle to pass, a dark blue Polo vehicle appeared from out of the blue. The mirror of the blue vehicle struck the minor, she fell to the ground and then the rear wheel of the blue vehicle drove over her ankle. The blue vehicle stopped on the other side of the road and the driver alighted with his son. The driver and his son were unknown to the minor.

[8] The minor called out to her cousin and requested her to call the minor's mother since the accident happened just opposite the street from her house. O[...] called the minor's mother and her aunts also came to the scene. When the minor's mother arrived, they got into the blue vehicle and the driver drove them to the doctor. However, the doctor was not present and the nurse who was present, told them that she cannot assist in any way. She did however call an ambulance.

[9] The minor's mother told the driver to go to the police station to report the accident. At the police station the minor's mother and the driver of the blue vehicle made statements. The minor's mother told her that the name of the driver was Thabiso Maselaine Thereafter the driver of the blue vehicle took the minor home where they waited for the ambulance. When the ambulance arrived, the minor was taken to Lenmed Hospital in Kimberley.

[10] The minor testified that due to the accident she broke her ankle. Her ankle was on operated and two screws were inserted into her ankle. At a later stage she underwent a second operation during which the two screws were removed.

[11] During the minor's further evidence, two exhibits were handed in. Exhibit A was a sketch which the minor made portraying the direction and turns in the roads relevant to the accident. Exhibit B is a photo of the scene where the accident occurred. From the exhibits it is evident that three roads join together to form a type of T-junction. The minor testified that she does not know whether there were any stop signs, but no stop signs are visible on the photo Exhibit B. She made marks on both exhibits A and B as to where she was standing, the direction from which she thinks the blue vehicle approached and from which direction the white vehicle approached. The minor was standing almost at the rounded corner of one part of the T-junction. It is evident that it is a tarred road which goes right up to the pavement on its sides. The pavement, as testified by the minor, was covered with grass, which seems almost to be part of a lawn. According to the minor she was standing on the grass next to the road when the mirror of the blue vehicle struck her. She did not stand on the road surface itself. After the mirror struck her, she fell forward onto the road surface, which is when the rear wheel of the blue vehicle drove over her ankle.

[12] According to the minor she unable to estimate how fast the blue vehicle was driving, as it appeared out of the blue from her left hand side towards her backside and she saw it for the first time when it struck her. The white vehicle, which was traveling in the opposite direction, was driving very fast, that being the reason why the minor waited on the grass for the white vehicle to pass.

[13] What is evident from the evidence of the minor, considered in conjunction with Exhibits A and B, is that whilst the blue vehicle was supposed to have been traveling in the left lane, the exact spot where the vehicle's mirror struck the minor, is on the side of the right lane of the road in which the blue vehicle was traveling; hence, the incorrect side.

[14] The minor also testified that she did not see where the white vehicle went after she was struck by the mirror of the blue vehicle. The blue vehicle parked opposite the street which she was due to cross before she was struck by the mirror. Although there was a pedestrian who saw the accident happen the minor does not have any knowledge of her identity. Her cousin, O[...], did also not see how the accident occurred, since she was busy crossing the street with her back turned towards the side of minor.

Consideration of the evidence:

[15] Ms Feza, who appeared on behalf of the plaintiff, submitted that despite the fact that the minor is still youthful and that the accident occurred almost three years ago, the minor gave a proper and chronological version of the events. I agree with her submission.

[16] On face value it appears to be strange that the blue vehicle would have struck the minor if she was standing on the grass next to the road, on the pavement, like she testified, but considering that at the point of impact, the blue vehicle was traveling on the incorrect side of the road, it is, in my view, evident that the driver did not have proper control over his vehicle at that time. He was either driving right next to the pavement on the incorrect side of the road or his vehicle might even have bumped into the said pavement and onto the pavement (grass part) itself. Whichever way it happened, it is clear that the minor was not

negligent in any manner and was standing in a position where she should have been standing considering that she was awaiting to cross the road after the white vehicle passed her. There is also nothing which she could have done to prevent the accident.

[17] In the circumstances I find that the plaintiff proved on a balance of probabilities that the driver of the insured vehicle acted 100% negligent in the causation of the accident.

Order:

1 The defendant is ordered to pay 100% of the plaintiff's proven or agreed damages.

2 The defendant is ordered to pay the costs of the action to date, counsel's fees to be paid on scale A.

C VAN ZYL
JUDGE OF THE HIGH COURT

Appearances:

For the plaintiff:	N A Feza
Instructed by:	Nangamso Mentjies Inc. C/o Thebe Attorneys BLOEMFONTEIN Ref: MA/MVA018 e-mail: mentjiesnangamso06@gmail.com

For the defendant:	J Gouws
Instructed by:	Office of the State Attorney BLOEMFONTEIN Ref: ML-1027 2022 15504 e-mail: johandig@raf.co.za