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**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NUMBER APPEAL: A309/24

CASE NUMBER A QUO: 52438/2018

Reportable: NO

Circulate to Judges: NO

Circulate to Magistrates: NO

Circulate to Regional Magistrates NO

In the matter between:-

RISINGA THOMAS MABUNDA

Appellant

and

ROAD ACCIDENT FUND

Respondent

Link Number: 4[...] Claim Reference Number:

5[...] 1[...]

This judgment is handed down by way of electronic mail to the parties via the e-mail address indicated in the respective practice notes. The date of the judgment is deemed to be 18 September 2025

ORDER

Potteril J, Reid J et Leso AJ

The following order is granted:

- (i) The appeal is upheld.
- (ii) The order of the court *a quo* is replaced with the following order:
 - “1. The defendant is ordered to pay to the plaintiff 100% of its proven damages.
 - 2. The quantum of the damages is postponed *sine dies*.
 - 3. The defendant is ordered to pay the costs of the plaintiff.”
- (iii) The cost of this appeal is to be paid by the respondent.

JUDGMENT

Reid J

Introduction

- [1] This appeal relates to damages and apportionment of damages resultant from a motor vehicle collision that occurred on 24 September 2016. The appellant instituted a delictual claim against the Road Accident Fund (RAF) in terms of the **Road Accident Fund Act** 56 of 1996, ("the Act") for damages suffered as a result of the collision.

- [2] The appeal is against the judgment and order granted by a single judge (Mbongwe, J) dated 31 July 2023 and supplemented by reasons delivered on the 20 June 2024. The appeal is against the issues of merits and the apportionment of liability.
- [3] This appeal is with leave from the court *a quo*.

Factual background

- [4] After the plaintiff instituted the claim for damages, the RAF filed a notice to defend the action and subsequently filed a plea to the plaintiff's claim. The RAF did not react to the plaintiff's numerous requests to attend a pre-trial meeting.
- [5] The plaintiff filed a discovery affidavit and expert reports in support of his claim, but the defendant failed to file any discovery affidavit or expert reports.
- [6] Due to the RAF's material failure to comply with its obligations in terms of the Rules of Court (in failing to attend a pre-trial hearing, failing to discover and the possible filing of expert reports), an order to compel compliance was granted on 16 September 2021 in the Trial Interlocutory Court. The RAF did not react to the order to comply with the Rules.
- [7] The RAF's defence was consequently struck on 22 February 2022 in the Trial Interlocutory Court and the Registrar was authorised to allocate a date for the trial to proceed on a default basis.
- [8] The trial was set down for hearing in the Trial Default Judgment Court on the 31 of July 2023. The default judgment as granted is the subject matter of this appeal.

Judgment under appeal

[9] The court *a quo* granted a partly favourable judgment to the plaintiff on 31 July 2023. The RAF was held liable to compensate the plaintiff for 50% of his proven or agreed damages.

[10] In the court *a quo* the plaintiff testified *viva voce*. In addition to the oral evidence of the plaintiff, the following was before the court *a quo*: a sketch plan of the scene of the collision, photographs of the scene of the collision, and photographs of the damaged vehicles.

[11] The appellant's undisputed evidence (as plaintiff *a quo*) can be summarised as follows:

11.1. On 24 September 2016 he was driving from Lanseria to Randburg in Malibongwe Drive, Randburg in the extreme left-hand lane.

11.2. He entered a robot-controlled intersection whilst the traffic lights indicated green and thus in his favour.

11.3. A motor vehicle (the insured vehicle) approached from his lefthand side, from the N1 off-ramp and did not stop at the robot which indicated red for the insured vehicle. The appellant attempted to apply the brakes, however the insured driver was too close, and he collided with the insured vehicle.

11.4. The appellant's vehicle collided with the right-hand side of the insured vehicle, next to the passenger door.

11.5. The appellant was travelling at approximately 40 kilometres per

hour.

11.6. The appellant could not swerve to avoid the collision because there were other vehicles next to him in the right-hand lane and a curb to his left-hand side. He applied brakes, but he could not avoid the collision. The appellant testified that *"There was no other plan, nothing else except applying my brakes."*

11.7. The appellant did not have any other options available, to avoid the collision.

[12] The court *a quo* found the appellant 50% liable for his damages, on the basis that the appellant could have avoided the collision. The court *a quo* reasons:

"[7] The plaintiff's evidence in court was that he was travelling at 40km per hour approaching the intersection, when he noticed the insured vehicle entering the intersection from his left-hand side, despite the robot being red for it. There were other motor vehicles driving in the same direction as him on the lane to his right hand side. The plaintiff testified that he could not apply his brakes or swerve and the front of his vehicle collided with the insured vehicle on the rear passenger door backwards; meaning that the front portion of the insured vehicle from the driver's door had passed the plaintiff's vehicle when the collision occurred.

[8] I found, on the plaintiff's version, considering the portion of the insured vehicle his (vehicle) collided with, that the plaintiff could not be found to have been without blame, particularly it being in an intersection. The front half of the insured vehicle had passed his before the occurrence of the collision. The plaintiff could have avoided the collision, in my view."

(own emphasis)

[13] The court *a quo* thus finds the appellant contributory negligent in that the appellant could have avoided the collision.

[14] The court *a quo* also finds that the plaintiff did not apply the brakes of his vehicle in an attempt to avoid the collision.

Legal principles

[15] It is trite law that the onus rests with the appellant (plaintiff) to prove negligence on the part of the defendant. See: *Ntsala and Others v Mutual & Federal Insurance Co Ltd* 1996 2 SA 184 (T).

[16] *In Rondalia Assurance Corporation of SA LTD v Mtkombeni* 1979 (3) SA 967 (AD) at 972A-D, the Appellate Division (as it was known then) per Galgut AJA said:

“However, each case in which it is said that a motorist is negligent must be decided on its own facts. Negligence can only be attributed by examining the facts of each case. Moreover, one does not draw inferences of negligence on a piecemeal approach. One must consider the totality of the facts and then decide whether the driver has exercised the standard of conduct which the law requires. The standard of care so required is that which a reasonable man would exercise in the circumstances and that degree of care will vary according to the circumstances. In all cases the question is whether the driver should reasonably in all the circumstances have foreseen the possibility of a collision.”

[17] What is of importance is that the facts before the court should be evaluated *in toto* before the court can come to a conclusion. An

inference of negligence can only be established if supported by the facts of the case.

Analysis

[18] The court *a quo* finds the appellant contributory negligent on the basis that “*The front half of the insured vehicle had passed his before the occurrence of the collision.*”

[19] This is factually incorrect, as the evidence before the court *a quo* as supported by the *viva voce* evidence and the photographs of the damaged vehicles, indicate that the damage was on the right hand passenger side of the insured vehicle.

[20] The evidence before the court *a quo* was that the appellant applied his brakes. He testified that there was no other action that he could take to avoid the collision. The facts indicated that there was traffic traveling in the same direction to the appellant’s right side, and an off-ramp to the left side. The facts indicate that the appellant attempted to avoid the collision by applying the brakes of his vehicle.

Finding

[21] The court *a quo* based its findings on incorrect facts. The court *a quo* incorrectly finds that the appellant did not apply his brakes. He also incorrectly finds that the appellant collided with the right hand back door of the insured vehicle, where the evidence was that it was the right hand passenger door of the insured vehicle.

[22] The *viva voce* evidence of the appellant, as well as the documentary evidence presented to the court *a quo*, are facts that were proven in the court *a quo*. These facts do not support an inference of negligence

from the appellant.

[23] The only inference made from the facts before the court *a quo* would have been that the insured driver was 100% negligent and caused the collision. It follows that the respondent should be 100% liable for the damages incurred by the appellant as a result of the collision.

[24] For the reasons set out above, the appeal is to be upheld.

Costs

[25] The general principle is that the successful party is entitled to its costs. I find no reason to deviate from this principle.

[26] The defendant *a quo* should be ordered to pay the costs of the trial *a quo*. Equally, the respondent should be ordered to pay the costs of this appeal.

Order

In the premise, I make the following order:

- (i) The appeal is upheld.
- (ii) The order of the court *a quo* is replaced with the following order:
 - “1. The defendant is ordered to pay to the plaintiff 100% of its proven damages.
 - 2. The quantum of the damages is postponed *sine dies*.
 - 3. The defendant is ordered to pay the costs of the plaintiff.”
- (iii) The cost of this appeal is to be paid by the respondent.

**JUDGE OF THE HIGH COURT
GAUTENG DIVISION JOHANNESBURG**

I agree

**S. POTTERILL
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA**

I agree

**J.T. LESO
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA**

DATE ARGUED: 3 SEPTEMBER 2025

DATE OF JUDGMENT: 18 SEPTEMBER 2025

APPEARANCES:

FOR APPELLANT:

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FOR RESPONDENT: NO APPEARANCE