



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

CASE NO: 210/2024

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



01 OCTOBER 2025

SIGNATURE

DATE

In the matter between:

NENE PAMO FEZILE NONGCEBO

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 01 October 2025 at 12:00.

JUDGMENT

Mangena AJ

[1] Ms Nongcebo Fezile Nene (the plaintiff) instituted a civil claim against the Road Accident Fund (the fund/ the RAF) for payment of a sum of R1 200 000.00. The claim was for the injuries she sustained when the motor vehicle she was driving collided with another motor vehicle at Mayflower on 1 November 2020. The fund is defending the claim and denies liability for the damages she suffered as a result of the injuries arising out of the accident.

[2] At the outset, I must say that had the RAF been diligent in the performance of its statutory obligations, this matter could have been resolved without involving the court. I say so because the fund came to court without a version regarding how the accident happened and whether there was any contributory negligence to attribute to the plaintiff. It was only after hearing the evidence of the plaintiff (the only witness to testify) that counsel for the defendant proposed in the written submissions that negligence be apportioned 80/20 in the plaintiff's favour. This is not a proper way of conducting litigation, more especially when the judicial resources are so scarce to adequately give proper service to the needs of society. Had the RAF performed its obligations and investigated this matter as it is in law obliged to, the time expended on this matter could have been used on other deserving cases.

[3] The facts which gave rise to the claim are as follows: the plaintiff was driving on her designated lane when another motor vehicle from the opposite direction came onto her lane. The approaching vehicle's bonnet was open, and the driver was not able to see where he was going as it was moving in a zig-zag motion. She saw the car at a close distance. She reduced the speed and moved towards the left-hand side of the road. The oncoming motor vehicle collided with her while she was stationary and outside the road.

[4] She was cross-examined on the steps she took to avoid the collision, to which she replied that she reduced the speed, applied the brakes and moved outside of the road. She further stated that there was nothing more she could have done. There was no re-examination.

[5] Both counsel requested to submit written closing arguments, to which I reluctantly agreed. Mr Tshavhungwe submitted on behalf of the plaintiff that the evidence shows that the insured driver is solely to blame for the accident. Ms Ndubani, on behalf of the defendant, contends otherwise and urges me to find contributory negligence on the part of the plaintiff. It is so that a court, in assessing the evidence tendered during trial, should consider it holistically, including the answers given in cross-examination. Evidence is not only evidence when given in chief. The answers given to questions put during cross-examination form part of the witness's evidence.

[6] Considering the evidence tendered by the plaintiff in its totality, I am unable to find any contributory negligence on her part. Her evidence was clear, logical, and in my view, she answered all questions put to her frankly, honestly and without hesitation. She was able to describe the road and the circumstances under which the accident happened. From her evidence, it is clear that she took all the necessary steps a reasonable driver is expected to take when faced with a potential accident.

[7] The statement that a driver has a duty towards other road users and an obligation to avoid an accident does not mean that a driver must do something extraordinary. A careful and reasonable driver is required to take reasonable steps to avoid the collision. She owes that duty first to herself in line with the law of self-preservation, and should not be expected to put herself in danger in order to avoid a collision with a vehicle which is being driven recklessly or negligently in the incorrect lane. In the evaluation of evidence regarding negligence, I do not think it is appropriate to expect a driver to perform miracles in an attempt to avoid negligence. A reasonable driver should be expected to do what a reasonable driver could do when faced with a similar situation, nothing more and nothing less.

[8] The plaintiff took all the reasonable steps required to avoid the collision, and I find no contributory negligence on her part.

[9] In the result, the following order is made:

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

2 The defendant is ordered to pay the costs on a party and party scale B of the High Court.



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

Appearances

For the plaintiff: Adv Tshavhungwe
Plaintiff Attorneys: Nkgadima and Associates attorneys

For the Defendant: Adv Ndubani
Defendant attorneys: State Attorney
Mbombela

Date Heard: 28 AUGUST 2025
Judgment Delivered: 01 OCTOBER 2025