



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

JUDGMENT

Not Reportable

Case no: 11438/2018

In the matter between:

JODY JOHN KRUGER

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

Neutral citation: *Kruger v Road Accident Fund* (Case no 11438/2018) [2025]

ZAWCHC ... (DDMMYY)

Coram: NUKU J

Heard: 8 and 23 September 2025

Delivered: 27 October 2025

Summary: Delictual claim – Plaintiff driving his motorcycle into the back of a vehicle that ran a red light at an intersection – plaintiff unable to provide evidence of events immediately before the collision – both drivers were negligent, and their negligence contributed equally to the collision.

ORDER

(a) The defendant is liable to compensate the plaintiff for 50% of the damages the plaintiff can prove in due course.

(b) The defendant shall pay the plaintiff's costs of suit on a party-and-party scale, including costs of counsel on scale B.

JUDGMENT

Nuku J:

[1] The plaintiff was involved in a motor vehicle collision early in the morning of 24 October 2015 at the intersection of Spine Road and Park Avenue in Mitchells Plain while riding his motorcycle ("the collision"). He rear-ended a green Nissan Sentra ("the insured vehicle") that had entered the intersection from Park Avenue and turned right onto Spine Road when the traffic lights for vehicles approaching from Park Avenue were red.

[2] As a result of the collision, the plaintiff sustained various orthopaedic and head injuries. He submitted his claim with the defendant under the Road Accident Fund Act 56 of 1996, as amended ("the Act"), and instituted these proceedings after the defendant failed to compensate him.

[3] The parties agreed that the matter would proceed on a separate issue, namely, the determination of the defendant's liability to compensate the plaintiff, with the amount of the plaintiff's claim to be decided later.

[4] In his particulars of claim, the plaintiff pleaded that the collision was caused by the negligence of the insured driver, who was negligent in one or more of the following respects:

- (a) he failed to keep a proper lookout;
- (b) he failed to keep the insured vehicle under any or proper control;
- (c) he drove at an excessive speed in the circumstances;
- (d) he failed to apply the brakes adequately, timeously, or at all;
- (e) he failed to avoid the collision when, by exercise of due and proper care, he could and should have done so; and
- (f) he failed to pay due regard to the prevailing traffic conditions and in particular to the plaintiff.

[5] The defendant denied that the collision was caused by the negligence of the insured driver and pleaded that it was the plaintiff's negligence which was the cause of the collision. The defendant pleaded that the plaintiff was negligent in one or more or all of the following respects:

- (a) he failed to keep a proper lookout;

- (b) he failed to keep the motorcycle under proper and/or adequate control;
- (c) he drove at a speed which was excessive and/or unsafe under the prevailing circumstances;
- (d) he failed to apply the brakes adequately, timeously, or at all;
- (e) he failed to avoid the collision when, by exercise of due and proper care, he could and should have done so;
- (f) he failed to pay adequate or proper or any regard to the presence of other road users upon the said road, in particular the insured vehicle;
- (g) he failed to give adequate or proper warning of his approach;
- (h) he drove his motorcycle whilst under the influence of intoxicating liquor;
and
- (i) he failed to wear the proper motorcycle attire, inclusive of the required motorcycle/crash helmet.

[6] In the alternative, the defendant pleaded that if the insured driver was negligent, his negligence was not the cause of the collision. In the alternative, the defendant pleaded that the combined negligence of the plaintiff and the insured driver caused the collision.

[7] The plaintiff testified at trial and called one witness, Mr. Fabian Appolis (“Mr. Appolis”). He confirmed being involved in the collision on the day in question, but had no recollection of how the collision happened. He testified that

they had spent the night at a friend's house, where they had a braai and drank a few beers. At the time of the collision, he had not obtained a driver's licence.

[8] During the night, they decided to visit another friend's house, where they played some games. At some point, he decided to leave and go home. On his way home, he rode his motorcycle with his brother, Mr. Appolis, and one of his friends who he could only identify as JP, also on their motorcycles.

[9] At one of the intersections along the way, he took a wrong turn and separated from his group. At some point, he found his way back to Spine Road, where he drove at approximately 90 km/h even though the speed limit is 80 km/h. Spine Road is a dual carriageway with two lanes in each direction. An elevated grassy island separates the carriageways, and he was driving in the inner lane.

[10] All he remembers is that the traffic lights were green for cars on Spine Road when he reached the intersection with Park Avenue. He then went through the intersection and cannot recall what happened afterward. His memory only returned when he was in the hospital.

[11] When asked about the statement he made describing how the collision happened, he claimed that his previous legal representative helped him draft it because he had no recollection.

[12] Mr. Appolis testified that they spent the first part of the night at their friend's house, Mr. Ziegers, where they had a braai and a few beers. Later, they decided to

go to the plaintiff's house, but one of their friends' motorcycles had a tyre problem. They decided to first escort this friend home before going to the plaintiff's house.

[13] When this friend got home, he dropped his motorcycle, got into a bakkie, and they continued with their original plan to go to the plaintiff's place. On their way, they all drove along Park Avenue, which had working street lights.

[14] When they reached the intersection with Spine Road, they stopped because the traffic light was red for traffic on Park Avenue. That is when they realized that the plaintiff was no longer driving with them.

[15] While waiting at the intersection, he saw the insured vehicle, with its lights off, approach from the other side of Park Avenue. It ran a red light and made a right turn onto Spine Road without signalling. Shortly after making the turn, the plaintiff collided with the right rear of the insured vehicle. He believed that the plaintiff might have been exceeding the 60 km/h speed limit. That concluded the plaintiff's evidence, and the defendant ended its case without calling any witnesses.

[16] It was argued on the plaintiff's behalf that the collision was caused solely by the negligence of the driver of the insured vehicle, who (a) entered the intersection in complete disobedience of the red traffic light, (b) drove the insured vehicle without putting its headlights on, and (c) did not signal his intention to turn right at the intersection.

[17] Plaintiff's counsel began his argument by acknowledging the general rule that the presence of a traffic light at an intersection, and the fact that the light favours a driver, does not exempt that driver from the duty to recognize the reasonable possibility of, and to keep a proper lookout for, traffic that has entered the intersection legally but may still be present within it.

[18] Plaintiff's counsel, however, argued that this is not the case we are dealing with here, as the uncontroverted evidence shows the insured vehicle entered the intersection while completely disobeying the red traffic light. In respect of motor vehicles entering intersections in complete disregard of the red traffic light, he submitted, on the authority of *Santam Insurance Co. Ltd*¹, that the general rule does not apply.

[19] Plaintiff's counsel referred this Court to a passage in the Law of Collisions in South Africa, where the author describes a driver who crosses against a red traffic light at an intersection as virtually a trespasser.²

[20] Counsel, however, acknowledged that the author does not suggest that the obedient driver has a right to proceed heedlessly because, if he becomes aware of the danger and is able, by the use of ordinary care, to avoid the collision, a failure to do so would be considered negligent.³

¹ *Santam Insurance Co. Limited v Gouws* 1985 (2) SA 629 (A).

² I. Isaac, G. Leveson and H.B. Klopper *The Law of Collisions in South Africa*, 7th Ed at p. 49.

³ *Ibid.*

[21] Arguing that there is no negligence attributable to the plaintiff, the plaintiff's counsel contended that there is no objective evidence indicating the plaintiff was intoxicated to the degree that he could not safely operate his motorcycle. He also argued that there is no objective evidence suggesting that the plaintiff's lack of experience in driving and the fact that he did not have a valid driver's license contributed to the collision.

[22] Plaintiff's counsel suggested that the overall evidence indicates the plaintiff was likely very close to or already in the intersection when the insured driver started his right turn. Consequently, the plaintiff would not have been able to avoid the collision when considering the principle of standard perception reaction time.⁴

[23] The defendant argued that the combined impact of the following factors demonstrates the plaintiff's negligence: (a) the plaintiff did not have a valid license or a learner's permit, (b) the plaintiff's testimony that he might have been driving at approximately 90 km/h, as well as Mr. Appolis' evidence that the plaintiff was speeding excessively, and (c) the fact that the plaintiff consumed alcohol during the night.

[24] The evidence that the insured vehicle entered the intersection against a red light was not contested, and the fact that the collision occurred close to the intersection, in my view, demonstrates that the insured driver was negligent and that his negligence caused the collision.

⁴ *De Kock v Road Accident Fund* (17211/2018) [2024] ZAWCHC 86 (20 March 2014) para 16.

[25] The real question is whether the collision was caused solely by the insured driver's negligence or by the combined negligence of the insured driver and the plaintiff.

[26] Aside from claiming that the traffic light was green for him, the plaintiff did not provide any evidence of what happened immediately before the collision. The plaintiff also testified that at one point he took a wrong turn, which caused him to become separated from his group. Additionally, there is no evidence from the plaintiff that he saw the insured vehicle before the collision, even though he drove into its rear.

[27] The factors mentioned above indicate that the plaintiff was unaware of his immediate surroundings before the collision. The plaintiff could not even recall whether the street had lights, and whether they were on, even though Mr. Appolis' evidence clearly demonstrated that the street lights were functioning at the intersection, allowing him to see the approaching insured vehicle before it entered the intersection.

[28] Regardless of what caused the plaintiff not to see the insured vehicle before the collision, it is evident that he failed to maintain a proper lookout because, had he done so, he would have seen the insured vehicle even if it was at the time when it was directly in front of him.

[29] Since the insured vehicle was not observed before the collision, it is clear that the plaintiff took no evasive action to avoid it. The arguments made by the plaintiff's counsel, claiming that the plaintiff could not have done anything to

prevent the collision based on general principles related to standard perception reaction time, are not supported by any evidence presented in this Court. The case the plaintiff relies on is different because expert evidence was presented, unlike this case, where it was not.

[30] The intersection was described by Mr. Appolis as wide, with Spine Road being a dual-carriageway with two lanes in each direction, and Park Avenue being a dual-carriageway with one lane in each direction. From this, it is safe to infer that the insured vehicle, before turning right, would have travelled over the two lanes in the opposite direction to the plaintiff's travel. And this would have happened before the collision, because Mr. Appolis testified that the insured vehicle had completed the turn when the plaintiff drove into its rear.

[31] The plaintiff's failure to observe the insured vehicle under the circumstances described above was negligent, and in my opinion, that negligence causally contributed to the collision.

[32] Determining how much each driver's negligence contributed to the collision is difficult because it seems both were extremely negligent. The insured driver disobeyed a traffic light, while the plaintiff was paying no attention to what was happening around him.

[33] In my opinion, both parties were equally responsible for the collision because either could have avoided it. The insured driver could have avoided the collision simply by obeying the traffic light. The plaintiff would have seen the insured vehicle at the intersection. The point where the collision happened has two

lanes going in the same direction. The evidence showed that the impact occurred in the inner lane, closer to the island separating the lanes. In my view, if the plaintiff had kept a proper lookout, he could have swerved into the other lane to avoid the collision.

[34] Having considered all the above, I conclude that the plaintiff's claim must succeed, and that the defendant is liable to compensate the plaintiff for 50% of the damages he can prove in due course.

[35] Both parties agreed that the plaintiff is entitled to High Court costs with costs of counsel on scale B. An order to that effect will accordingly be made.

Order

[36] As a result, the following order shall issue:

- (a) The defendant is liable to compensate the plaintiff for 50% of the damages the plaintiff can prove in due course.
- (b) The defendant shall pay the plaintiff's costs of suit on a party-and-party scale, including costs of counsel on scale B.

LG NUKU

JUDGE OF THE HIGH COURT

Appearances

For plaintiff: C Bischoff

Instructed by: Lowe & Petersen, Cape Town

For defendant: C Hindley

Instructed by: State Attorney, Cape Town.