



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: **79211/2019**

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: NO	
(2) OF INTEREST TO OTHER JUDGES: NO	
(3) REVISED	
15 October 2025	
DATE	SIGNATURE

the matter between

SEMA LESIBANA PETER

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

LUKHAIMANE AJ:

Introduction

1. This is an action for damages stemming from a motor vehicle collision, where the plaintiff, 30 years of age at the time of the accident and unemployed, was

the driver of a motor vehicle that collided with another vehicle driven by an identified insured driver (hereinafter referred to as the “insured driver”) on Schoeman Street in Hatfield, Pretoria, Gauteng, somewhere in the vicinity of Leyds and Francis Baard Streets, on 10 December 2016. He sustained injuries as a result of the accident.

2. The court granted the application for the evidence to be adduced by way of affidavits in terms of rule 38(2) of the Uniform Rules of Court. Rule 38(2) provides as follows:

“The witnesses at the trial of any action shall be orally examined, but a court may at any time, for sufficient reason, order that all or any of the evidence to be adduced at any trial be given on affidavit or that the affidavit of any witness to be read at the hearing, on such terms and conditions as to it may seem meet: Provided that where it appears to the court that any other party reasonably requires the attendance of a witness for cross-examination, and such witness can be produced, the evidence of such witness shall not be given on affidavit.”

3. The plaintiff was also present to give oral evidence if required, however this was not necessary.

Issues

4. This matter turns on the issue of merits as well as whether the plaintiff was guilty of contributory negligence.

Legal Framework

5. Section 17(1) of the Road Accident Fund Act¹ (the RAF Act) reads:

“The fund or an agent shall-

(a) Subject to this Act, in the case of a claim for compensation under this

¹ Act 56 of 1996

section arising from the driving of a motor vehicle where the identity of the driver thereof has been established;

(b) Subject to any regulation made under section 26, in the case of a claim for compensation under this section arising from the driving of a motor vehicle where the identity of neither the owner nor the driver thereof has been established, be obliged to compensate any person (the third party) for any loss or damage which the third party has suffered as a result of any bodily injury to himself or herself or the death of or any bodily injury to any other person, caused by or arising from the driving of a motor vehicle by any person at any place within the Republic if the injury or death is due to the negligence or other wrongful act of the driver or of the owner of the motor vehicle or of his or her employee in the performance of the employee's duties as employee."

6. The defendant's liability is conditional upon the injury having resulted from the negligence or wrongful act of the insured driver². The onus rests on the plaintiff to prove such negligence.
7. Contributory negligence on the part of the plaintiff can reduce such loss or damage in terms of the Apportionment of Damages Act³ ('the Apportionment Act'), which reads as follows:

"(1)(a) Where any person suffers damage which is caused partly by his own fault and partly by the fault of any other person, a claim in respect of that damage shall not be defeated by reason of the fault of the claimant, but the damages recoverable in respect thereof shall be reduced by the court to such extent as the court may deem just and equitable having regard to the degree in which the claimant was at fault in relation to the damage.

(b) Damage shall for the reason of paragraph (a) be regarded as having been caused by a person's fault notwithstanding the fact that another person had an opportunity of avoiding the consequences thereof and negligently failed to do so."

² MP Olivier, Social Security: Core Elements, LAWSA

³ Act 34 of 1956

Liability

Evidence

8. The content of the plaintiff's particulars reads as follows at paragraph 5:

5.1 *The collision was caused entirely by the negligence of the driver of the insured vehicle, who was negligent in all, a number or one of the following respects:*

5.1.1 *He failed to keep a proper lookout;*

5.1.2 *He failed to take any, alternatively sufficient, cognizance of the presence, the actions and the visibly intended and / alternatively probable further actions of the Plaintiff;*

5.1.3 *He travelled at a speed which was excessive in the circumstances;*

5.1.4 *He failed to apply the brakes of the insured vehicle at all alternatively, timeously and/or one or more of the tyres thereof was/were in a defective and unroadworthy condition, the fact of which he was aware alternatively both could and should, by taking reasonable care, have made himself aware of and have avoided;*

5.1.5 *He failed to avoid the collision when, by taking reasonable and proper care (including, but not limited to, travelling more slowly, swerving) he both could and should have done so;*

5.1.6 *He failed to maintain any, alternatively sufficient, control over the insured vehicle;*

5.1.7 *He failed to avoid collision with the plaintiff's motor vehicle when he both could and should have done so;*

5.1.8 *He changed lanes at a dangerous and inopportune moment."*

9. The plaintiff filed a supplementary affidavit to produce further details of the accident, paragraph 6 of which provides as follows⁴:

"6.1 *Shortly before reaching a BP garage on my right-hand side, along Schoeman Street, and while I was travelling in Lane 1, my vehicle was suddenly hit on its left-hand side by a black Renault Clio. The impact*

⁴ CaseLines 003-27

occurred against my vehicles left hand side mirror and fender, causing me to lose control of my vehicle and collide with a tree on the side of the road.

- 6.2 *I did not see the Renault Clio before impact. I first became aware of it when I heard the bang on my car.*
- 6.3 *At the time of the accident, the Renault Clio was crossing into my lane from the adjacent lane (lane 2), apparently attempting to enter the garage.*
- 6.4 *The driver of the Renault Clio did not indicate his intention to enter or cross into the garage entrance or make any signal to alert me to his intention to cross my lane of travel and to enter into the BP garage that was ahead of us on the right side of the road"*

- 10. The accident report, sketch plan and photographs were handed in as evidence.

Discussion

- 11. The defendant denied liability, in the alternative sought to reduce its liability.
- 12. What remains to be determined is whether, on his version, the plaintiff did not make himself guilty of contributory negligence.
- 13. It is uncontroverted that the insured driver's motor vehicle suddenly left its lane and veered towards the plaintiff's lane of travel. The insured driver's statement about the accident was not presented before the court. The defendant did not adduce any evidence to support its allegations that the plaintiff exhibited contributory negligence.
- 14. To answer whether the plaintiff was negligent depends on whether his conduct in the circumstances fell short of that of a reasonable person. The test for negligence was set out in *Kruger v Coetzee*⁵, where it was stated:

⁵ [2021] ZASCA 125, 1996 (2) SA 428 (A) at 430

“For the purposes of liability, culpa arises if –

(a) a diligens paterfamilias in the position of the defendant –

(i) would foresee the reasonable possibility of his conduct injuring another in his person or property and causing him patrimonial loss; and

(ii) would take reasonable steps to guard such occurrence, and

(b) the defendant failed to take such steps.”

15. In his supplementary affidavit, the plaintiff stated that he first became aware of the insured driver when he heard a bang on the left-hand side of his vehicle; meaning that he did not see the insured driver’s vehicle. Further that the impact happened against his vehicle’s left hand side mirror and fender. Then he said, the insured driver did not indicate his intention to enter or cross into the garage. These statements cannot exist together, on his own version. Moreover, he does not explain what prevented him from attempting to avoid the collision, in the second scenario as presumably he saw the insured driver’s vehicle, it is just that it failed to indicate before suddenly changing lanes; as there was space for him to maneuver his motor vehicle to the outside of the road.
16. The matter was undefended, therefore it fell to the court to determine the merits.
17. Although there were other cars, there were no witnesses. The police report completed on 12 March 2017 was attached to the record, however, does not advance the matter any further⁶, except that therein, the insured driver is recorded to have stated that he indicated his intention to turn into the BP Garage. The plaintiff is recorded to have stated that he was travelling straight before the entrance of the BP garage, heard a bang and bumped the tree.
18. The pictures of plaintiff’s damaged vehicle do not depict the side of the vehicle where according to one of the plaintiff’s explanations, the initial impact occurred⁷. The damage depicted is that of the front of the vehicle. The police report also details the damage to the insured driver’s vehicle and with respect

⁶ CaseLines 003-9

⁷ CaseLines 003-11 to 003-16

to the plaintiff, only states that the vehicle was a write off.

19. The plaintiff insists that these two versions are possible. The one where he first becomes aware of the insured driver on impact to the left-hand side of his vehicle, would surely leave the insured driver as being 100% negligent. However, as indicated, there are no pictures depicting this impact on the vehicle, nor are there pictures of the insured driver's vehicle. If this version is to hold, then there cannot be any reference to the insured driver having failed to signal his intention to change lanes because even if he had done so, the plaintiff would not have been aware of this. The pictures attached mostly depict the impact to the front of the vehicle, after the plaintiff had lost control of his vehicle.
20. On the version where the insured driver failed to indicate his intention to enter or cross into the garage, the plaintiff did not explain what prevented him from driving further to the outside of the road to avoid the impact, as there was space for him to manoeuvre his vehicle.
21. Considering the evidence adduced by the plaintiff, the accident report, sketch plan and photographs placed before me and the circumstances of the collision, it is my belief that the plaintiff has two different versions of the accident and the photographs of the vehicle support the second version, in which case the plaintiff should have attempted to avoid the collision. No evidence was presented that the plaintiff tried to avoid the collision or that the road was too busy in terms of traffic, which caused him not to attempt to avoid the collision. By failing to apply brakes or veer to the right seeing that danger was about to occur, there can be no doubt that he acted negligently, as his actions were not those of a reasonable driver.
22. Section 1(1)(a) of the Apportionment Act, gives the court discretion to reduce the plaintiff's claim for damages suffered on a just and equitable basis and to apportion the degree of liability. Where apportionment is to be determined, the courts consider the evidence as a whole in assessing the degrees of negligence of the parties.

23. There is sufficient evidence from the plaintiff's version, the accident report and the sketch plan displacing the inference that the only cause of the accident was the insured driver's negligent act. The extent of the plaintiff's contributory negligence calls for determination, which is not a mathematical calculation. The approach is that of carefully considering all the facts and exercising discretion. Given these considerations, the plaintiff's conduct fell 20% short of what would have been expected of a reasonable person in his position. As a result, the defendant is liable to pay 80% of the plaintiff's proven damages.

ORDER

24. Consequently, the following order is granted:

- 23.1 The defendant is ordered to pay 80% of plaintiff's proven damages.
- 23.2 The issues for loss of earnings and general damages are postponed *sine die*.
- 23.3 In relation to costs, the plaintiff has been successful on the merits, and is therefore entitled thereto.


MA LUKHAIMANE
ACTING JUDGE OF THE HIGH COURT

Date of hearing: 8 September 2025

Date of judgment: 15 October 2025

Appearances:

Applicant's Attorney: Adams & Adams Attorneys

Applicant's Counsel: Adv Lizelle Haskins

Respondent's Attorney: State Attorney