



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

Not reportable

Case no: 6182/2022

In the matter between:

MOLOKO MONGALO

PLAINTIFF

and

THE ROAD ACCIDENT FUND

DEFENDANT

Neutral citation: *Mongalo v Road Accident Fund* (6182/2022) [2026] ZAFSHC 10 (15 January 2026)

Coram: Daffue J

Heard: 14 October 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 12h00 on 15 January 2026.

Summary: Head-on collision between two vehicles on a straight suburban road in the middle of the night – collision occurred close to the centre of the road, but in the plaintiff's lane of travel – contributory negligence – plaintiff did not keep a proper lookout, did not see the approaching insured vehicle and failed to take steps to avoid the collision – 70/30% apportionment of damages in favour of the plaintiff.

ORDER

- 1 The defendant is liable to pay 70% of the plaintiff's proven or agreed damages.
 - 2 The defendant shall pay the plaintiff's agreed or taxed costs of the merits trial, inclusive of counsel's fees on scale B.
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JUDGMENT

Daffue J

Introduction

[1] This is yet again one of those numerous cases on the High Court rolls throughout the country where trials proceed effectively unopposed and default judgment is sought. The following dictum of the Supreme Court of Appeal in *MMK obo MK v RAF* is apposite:¹ 'When the RAF does not participate in the process of adjudicating matters to finality, the courts seized with the case are placed in an invidious position. They are required to bring special care to bear, lest an order is made which compels the RAF to pay damages not proved. It is simply not in the interests of justice that this should occur. It is to be hoped that the RAF, as an organ of state managing public funds, will take reasonable steps to avoid recurrences of what occurred here.'

The parties

[2] The plaintiff is Ms Moloko Mongalo, an adult female Bloemfontein resident. The defendant is the Road Accident Fund (RAF), a juristic person established in terms of s 2 of the Road Accident Fund Act 56 of 1996 (the RAF Act).

¹ *MMK obo MK v RAF* [2025] ZASCA 136 para 34.

The pleadings

[3] The plaintiff claims damages from the RAF arising out of a motor vehicle collision that occurred on Milner Road in Bloemfontein on 1 November 2020 between 02h00 and 03h00. Several grounds of negligence are alleged, the most relevant being that the driver of the insured vehicle failed to keep it under proper control and failed to avoid a collision when by the exercise of reasonable care, he could and should have done so. It is alleged that the insured driver's sole negligence caused the collision. It is not the plaintiff's case, on the pleadings, that the insured driver swerved and/or deviated from his lane of travel into the plaintiff's lane of travel. As a result of the collision the plaintiff allegedly sustained injuries and suffered damages.

[4] The RAF initially relied upon special pleas, alleging that the plaintiff had not complied with the provisions of s 24 of RAF Act, read with the requirements of Board Notice 271/2022. The special pleas were eventually withdrawn. In its plea, the RAF firstly denies the collision, alternatively and if it is found that the collision has occurred, the usual defences pertaining to contributory negligence are pleaded. In an alternative plea, it also relies on sudden emergency in order to escape liability.

The RAF's failure to defend the matter on trial

[5] On the day of the hearing, I was approached in chambers by Ms N van der Sandt on behalf of the plaintiff and Ms J Gouws on behalf of the RAF. Ms Gouws confirmed that the special pleas had been withdrawn but mentioned that she had not received any instructions whatsoever from the RAF to continue with the trial on a defended basis. Therefore, she requested leave to be excused from the proceedings insofar as she had to attend to five other RAF matters which had also been set down for trial the same week. I accepted her explanation and excused her from further attendance.

Separation of issues

[6] The parties agreed, during their pre-trial conference, that the quantum of the claim should stand over for later adjudication. Therefore, and as requested by Ms Van der Sandt, I ordered a separation of issues on the basis that all outstanding disputes pertaining to paragraphs 1, 3, 4, 5, 6 and 10 of the particulars of claim, read with the relevant paragraphs of the plea, be adjudicated at the hearing and that the disputes pertaining to quantum should stand over for later adjudication if required.

A brief factual exposition

[7] The plaintiff and her former boyfriend testified in support of the plaintiff's claim on the merits. Insofar as I was in essence called upon to adjudicate an undefended claim, it would suffice to provide a brief factual exposition of the facts presented by and on behalf of the plaintiff.

[8] The plaintiff was the driver of her brand-new 2020 Volkswagen Polo motor vehicle when a collision occurred in Milner Road, Bloemfontein between 02h00 and 03h00 on 1 November 2020. She was on her way home in Bayswater, one of the northern suburbs, after having attended a baby shower held in General De Wet, one of the southern suburbs of Bloemfontein. She was driving from south to north in Milner Road. This road consists of two lanes in a northern direction and two lanes in a southern direction. The lanes are divided by broken white lines whilst there is a solid white line in the centre of the road, separating the lanes in opposite directions.

[9] The plaintiff was unsure exactly where in Milner Road the collision occurred although she mentioned that it was near the Land of Joy guesthouse just after she had passed the robot-controlled intersection of Whites and Milner Roads. She was driving in the right-hand lane on a straight section of Milner Road as depicted in the sketch to be referred to in a moment. It was drizzling somewhat at the time. The lights of her vehicle were switched on bright. She could not say whether the streetlights in Milner Road were switched on at the time. It was quiet at that time of the early morning. She did not observe any vehicles driving in the same direction as her vehicle or approaching from ahead in Milner Road. Suddenly, she saw bright lights and immediately (she was clapping her hands to show the suddenness of the situation), it was in her own words 'lights out' for her. She initially said that she was travelling at 80 km/h but immediately retracted that, stating that she was driving at 60 km/h, the maximum speed in urban areas.

[10] According to the plaintiff, she was looking straight ahead in the direction that she was travelling before the collision and was able to see 50 to 70 metres in front of her in the lights of her vehicle. She could not explain why she did not see the insured vehicle that collided with her, save for seeing the lights immediately before impact. She testified that she tried to take evasive action and/or to apply her brakes but did not succeed. She was called upon to indicate the point or area of impact and the position of the two vehicles

after the collision on a rough sketch provided by Ms Van der Sandt. She did so and this document was handed in as exhibit A. She indicated that the collision occurred in the right-hand lane of vehicles travelling in a northern direction and consequently, in her correct lane of travel. A straight road is depicted in the area where the collision occurred. The plaintiff positioned her vehicle after the collision in the opposite lane of travel and the insured vehicle on the solid white centre line. In all fairness to her, I shall accept that she was confused after the collision insofar as the position of her vehicle depicted on the sketch differs from that shown by her witness mentioned hereunder.

[11] After the impact the plaintiff fell unconscious for a short while. When she regained consciousness, she phoned her partner at the time who had also attended the same baby shower. He was driving home in his own vehicle. He arrived within minutes and attended to her who was seriously injured.

[12] Mr Gomotsegang Malotle (Mr Malotle), the plaintiff's former partner, was the plaintiff's second witness. He confirmed her version as to the events prior to the collision. Upon approaching the two vehicles involved in the collision, he noticed the vehicles whose lights were switched off at the time, when he was about 80 metres from them. He tried to communicate with the six adults that were standing outside the insured vehicle at the time, but they were aggressive and arrogant. He smelled liquor and decided not to communicate any further with them. The police arrived at the scene whereafter he took the plaintiff to hospital for medical attention. He also depicted the point of impact and position of the vehicles on a new rough sketch, drafted in similar fashion as exhibit A, presented to him. This sketch was handed in as exhibit B. On his version, the collision occurred close to the centre line but in the right-hand lane travelled by the plaintiff. The plaintiff's vehicle was depicted in her correct lane whilst the right side of the insured vehicle was placed on the centre line in proximity of the plaintiff's vehicle. Only the right front portion of the insured vehicle protruded into the plaintiff's lane of travel. The witness observed glass debris in front of both vehicles, indicating that they probably came to a stand-still at the area of impact.

[13] During their testimony, the plaintiff and her witness were referred to photographs of her blue Volkswagen Polo motor vehicle, which photographs form part of a bundle of photographs of which notice was given in terms of rule 36(10) of the Uniforms Rules of

Court. It is apparent that the front portion of the plaintiff's vehicle was severely damaged, indicative of a head-on collision. Her witness, Mr Malotle testified that the insured vehicle was only damaged on the right front portion thereof.

[14] Ms Van der Sandt closed the plaintiff's case hereafter and as recorded, no evidence was presented on behalf of the defendant who was not even represented at that stage of the proceedings.

Evaluation of the evidence and the plaintiff's submissions

[15] Ms Van der Sandt submitted that the plaintiff and her witness were reliable witnesses, although she conceded that the plaintiff had memory lapses and was not able to present a proper picture to the court pertaining to what transpired immediately prior to impact. She submitted that the facts *in casu* are on par with those in *Moitsi v Road Accident Fund*² (*Moitsi*) in which case the defendant was held liable for 100% of the plaintiff's damages. In that case it was proven that a head-on collision occurred in the plaintiff's right lane of travel. I do not agree that *Moitsi* is of any assistance to the plaintiff as I shall explain later.

[16] Ms Van der Sandt also submitted that, insofar as the plaintiff's version of the collision was the only version before court, it should be accepted in accordance with the provisions of s 16 of the Civil Proceedings Evidence Act 25 of 1965. No doubt, judgment may be given in any civil proceedings on the evidence of any single, competent and credible witness. However, the witness' version must still be considered, bearing in mind probabilities and reliability. It is trite that a litigant who fails to adduce evidence about a fact in issue, whether by not giving evidence or by failing to call witnesses, runs the risk of the opponent's version being believed.³ However, the fact that the one party fails to adduce evidence to contradict the other party's version does not necessarily mean that that version should be accepted. It will always depend on the probative strength of such version, *ie* whether it was strong enough to cast an evidential burden on the party failing to present evidence.

² *Moitsi v Road Accident Fund* [2016] ZAGPPHC 1143.

³ *Brand v Minister of Justice* 1959 (4) SA 712 (A) at 715D-716H and the authorities referred to by Schmidt and Rademeyer, *The Law of Evidence* para 3.2.4.1 issue 23.

[17] In *Ocean Accident and Guarantee Corporation Ltd J v Koch*,⁴ it was held that the evidence presented by the burdened party must be such that the court can say that it is more probable than not, for the burden to be discharged. Against the factual background presented by the plaintiff I shall weigh the probabilities as they arise from the evidence and the evidential material as well as the circumstances of the case.

[18] Although the plaintiff was uncertain during her testimony, I am not prepared to find that her evidence should be rejected *in toto*. Her version was indeed creditworthy. I accept that she was in her correct lane of travel when the collision occurred. Although a driver on their correct side of the road, like the plaintiff *in casu*, is entitled to assume that approaching traffic will do likewise, such driver is not relieved of the duty to exercise reasonable care. On the plaintiff's own version, she did not see any vehicles approaching her from the opposite side although she was looking straight ahead. It is highly improbable that she did not see the approaching insured vehicle if she had kept a proper lookout. I accept that she did not consume alcohol at the baby shower, but she was probably tired and even exhausted, causing her to lose concentration at a crucial stage. This is the only reasonable explanation for not observing the insured vehicle on the straight road to take evasive action when that was needed. It shall be recorded that the plaintiff not only arranged the baby shower, but the festivities lasted more than nine hours, from 17h00 the previous afternoon till about 02h00 the next morning. I reject her version that she was looking straight ahead and thus maintained a proper lookout before the collision.

[19] I referred above to Ms Van der Sandt's reliance on *Moitsi*.⁵ In that case the court found, based on the accepted evidence of the plaintiff, that the insured driver had swerved into the plaintiff's lane of travel and although the plaintiff swerved to his left to avoid a collision, it was all in vain. *In casu*, the plaintiff did not observe the approaching vehicle and could not testify about its movements at any moment prior to the collision. Consequently, she could not say whether the insured vehicle was travelling in her lane of travel for some time, or whether the vehicle suddenly swerved into her lane of travel. She should have been able to explain the movement of the insured vehicle before the collision if she maintained a proper lookout. That might have provided her with an opportunity to take appropriate action to avoid a collision. There was ample space to swerve to her left,

⁴ *Ocean Accident and Guarantee Corporation Ltd v Koch* 1963 (4) SA 147 (A) at 157D.

⁵ Footnote 2 above.

bearing in mind the vacant left lane. On the plaintiff's version she saw the lights of the approaching vehicle for a split second only. This is improbable, bearing in mind the straight road ahead of her.

[20] In *AA Onderlinge Assuransie Assosiasie Bpk v Sodoms*⁶ the former Appeal Court accepted the trial court's apportionment of 75/25% apportionment in favour of the plaintiff in a situation where the collision occurred approximately in the middle of the road. The plaintiff's negligence was attributed to the fact that he was driving too close to the middle of the road and that he did not swerve to his left in the short time available since becoming aware of the danger caused by the other driver who swerved into the plaintiff's lane of travel.

[21] I am satisfied, based on the uncontradicted version of the plaintiff, supported by her witness to a certain extent, that the insured driver caused his vehicle to cross the centre line on the road and that the collision occurred in the plaintiff's lane of travel, although relatively close to the centre line. The insured driver's negligence has been proven but the plaintiff must take some blame for the collision for the reasons advanced herein. Therefore, a 70/30% apportionment in favour of the plaintiff should be made.

Order

- 1 The defendant is liable to pay 70% of the plaintiff's proven or agreed damages.
- 2 The defendant shall pay the plaintiff's agreed or taxed costs of the merits trial, inclusive of counsel's fees on scale B.

1  J P DAFFUE
JUDGE OF THE HIGH COURT

⁶ *AA Onderlinge Assuransie Assosiasie Bpk v Sodoms* 1980 (3) SA 134 (A) at 139F-H.

Appearances

For the plaintiff:	N van der Sandt
Instructed by:	A Wolmarans Inc, Bloemfontein
For the defendant:	No appearance