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

Case Number: **24117/20**

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

DATE 25/02/26

SIGNATURE

In the matter between:

DUMZANE MATHIMOTJANE MAMOGOBO

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties' legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date and time for hand-down is deemed to be 10:00 on **25 February 2025**.

JUDGMENT

MAUBANE AJ:

Introduction

[1] The plaintiff instituted an action for damages against the defendant, arising out of a motor vehicle accident which occurred at Mogaladi Road, Limpopo Province, on 27 June 2015.

[2] The plaintiff was a pedestrian at the time of the accident.

[3] Both merits and quantum remained unsettled at the time of the hearing on 21 January 2026.

[4] The trial proceeded on the merits and loss of earning capacity, while general damages were to be heard at a later stage.

[5] The plaintiff made an application in terms of rule 38(2) and it was granted by the court.

[6] Since the merits were in dispute, the plaintiff, who was a single witness, was called to give evidence in support of his claim.

Merits

[7] The plaintiff testified that on 27 June 2015, and at about 17h00, he was hit by a motor vehicle.

[8] The weather was clear when the plaintiff was hit by the motor vehicle.

[9] The plaintiff was walking with his friends but was lagging behind. His friends crossed the road from left to right, and he crossed thereafter.

[10] He further testified that, after crossing the road from left to right and while facing his friends, he was hit by the motor vehicle. He stated that he was hit from behind and that, at the time of the collision, he was on the shoulder of

the road. He stated that he only saw the motor vehicle after he had crossed the road. He initially testified that he had crossed the road without checking both sides. However, after the court sought clarity, he testified that he had in fact checked both sides of the road and observed nothing that would have hindered him from crossing the road.

[11] He further told the court that he could not see the motor vehicle because the road had a curve.

[12] He testified that, at the time of the accident, his friends were in front of him and further than where he was when the motor vehicle hit him. He further testified that, after being struck by the motor vehicle, he fell to the ground, whereupon his friends and bystanders approached him and asked what happened. He sustained three leg fractures.

[13] He further testified that the motor vehicle hit him from the back as he and the vehicle were travelling in the same direction.

[14] He testified that he first saw the motor vehicle, before the collision, when it was about 15 paces from him. He stated that there were no vehicles in sight when he crossed the road. He explained that he did not notice the vehicle which hit him earlier because the road was curved and not straight. He stated that he looked back and saw the vehicle, which was about 15 paces from him before it struck him. He further testified that there was no pedestrian crossing sign where he crossed.

[15] He was then taken to the hospital by an ambulance. He further testified that he did not report the case, but later, he and his attorney went to inspect and took photos of the scene of the accident.

[16] On 2 September 2025, he served the defendant with a notice in terms of rule 35(9) which stated that the plaintiff intends proving the following document at the trial of the matter "official accident report". The court cannot ignore the accident report even though the plaintiff alluded that it should not be considered. The accident report was also discovered by the plaintiff on 23 August 2025.

[17] In his discovery affidavit, the plaintiff stated that,' in the event that the defendant failed to admit, within 10 days, that the accident report was properly executed, the plaintiff would be entitled to produce it at the trial without proof, save for proof that it is the document referred to in the notice and that such a notice was duly given.

[18] The plaintiff's counsel submitted that the official accident report should not be considered, because no evidence was led on it. Barring the accident report, his evidence could not be blemish-free.

[19] The plaintiff was a single witness, and his testimony was not corroborated by any other witness regarding the circumstances of the accident. He testified that he did not report the accident. He further testified that he and his attorney visited the scene of accident and conducted an inspection in loco. In addition to the inspection in loco, the plaintiff discovered the photos as well as the accident report.

Legal principle

Duties of a pedestrian

[20] The duties of a pedestrian are prescribed in National Road Traffic Act 93 of 1996 and is regulated in regulation 316¹ which provides that:

¹ National Road Traffic Regulations. GN R225 GG 20963, 17 March 2000.

(1) whenever a sidewalk or footpath abuts on the roadway of a public road, a pedestrian shall not walk on such roadway except for purpose of crossing from one side of such roadway to the other or some other sufficient reason.

(2) A pedestrian on a public road which has no sidewalk or footpath abutting on the roadway, shall walk as near as is practicable to the edge of the roadway on his or her right-hand side so as to face oncoming traffic on such roadway, except where the presence of a pedestrian on the roadway is prohibited by a prescribed road sign.

(3) No pedestrian shall cross a public road without satisfying himself or herself that the roadway is sufficiently free from oncoming traffic to permit him or her to cross the road in safety.

(4) A pedestrian, when crossing a public road by means of a pedestrian crossing or in any other manner, shall not linger on such road but shall proceed with due dispatch.

(5) No pedestrian on a public road shall conduct himself or herself in such a manner as to or as is likely to constitute a source of danger to himself or herself or to other traffic which is or may be on such road.

(6) A pedestrian may cross a public road only at pedestrian crossing or an intersection or at a distance further than 50 metres from such pedestrian crossing or intersection.

[21] In **Kruger v Coetzee**,² the court held that for the purpose of liability 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 against such occurrence; and

(b) the defendant failed to take such steps.

² 1966 (2) SA 428 (A) at 430E-G.

(b) the defendant failed to take reasonable steps.

[22] The court has to evaluate the plaintiff 's evidence, being a single witness cautiously. In **S v Carolus**³ the court summarised the current interpretation of the cautionary rule relating to evaluating the evidence of a single witness and held:

"there is no formula to apply when it comes to the consideration of the credibility of a single witness. The trial court should weigh the evidence of the single witness and consider its merits and demerits and, having done so, should decide whether it is satisfied that the truth has been told despite the shortcomings or defects or contradictions in the evidence. "

His demeanour, during evidence, was not satisfactory. He looked uncertain when he was led and asked questions by his counsel. His evidence was unclear and not satisfactorily at times he was inaudible and was, in numerous occasions, asked by the court to raise his voice.

[23] Given the testimony presented by the plaintiff and documentary evidence before court, I am convinced that the plaintiff contributed to the accident and there should be apportionment of damages against him.

Section 1(1)(a) of the Apportionment of Damages Act 34 of 1956 gives a discretion to the trial court to reduce a 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 court is obliged to consider the evidence as a whole in its assessment of the degree of negligence of the parties. The plaintiff was a single witness. Like in the Carolus case referred above, the evidence of the plaintiff present challenges regarding credibility and the burden of proof. Our legal systems

³ [2008] ZASCA 14; (2) 207 (SCA)

traditionally treat such evidence with caution due to potential issues of reliability and credibility.

[24] In *Maitland of Kensington Bus Co (Pty) Ltd v Jennings*,⁴ the court emphasised that for judgment to be given to the plaintiff, the court must be satisfied that sufficient reliance can be placed on the plaintiffs version, for there exists a strong probability that his version is the true one.

[25] **Section 16 of the Civil Proceedings Act 25 of 1965** provides that judgment may be given in any civil proceedings on the evidence of any competent and credible witness.

[26] In this instance the plaintiff is not corroborated by any witness, bar the discovered accident report. If for a moment the court disregards his testimony about the occurrence of accident, then one must look at the accident report discovered. Generally, a court may admit the discovered documentary evidence without evidence led on it as long it could be established that it is in the interest of justice to do so. The accident report was discovered by the plaintiff, who told the court that it should not be considered because, on the face of it, it adversely affects his credibility. The court is of the view that the accident occurred, but the plaintiff is untruthful as to how it occurred. Taking into consideration the accident report, the only inference the court may draw is that the plaintiff was hit on the road and not as per his testimony. The plaintiff did not keep a proper lookout before and during the crossing of the road. He did not exercise caution when crossing the road. The court does not belief that he was hit by the motor vehicle whist walking on the side of the road. His testimony contradicts the occurrence of the accident as stated in the accident report, the court heavily relies on the accident report. At the outset, I need to highlight that the insured driver contributed to the cause of collision. In general, there is a duty on all road users to regard other road users and keep a proper lookout, and they are expected

⁴ 1940 CPD 489 at 492. Also see: *Selamolela v Makhado* 1988 (2) SA 372 (V) at 375A-B.

to exercise reasonable care and vigilance towards one another, and the pedestrian ought to reasonably take reasonable care towards other road users. Both parties should have reasonably foreseen and anticipated the presence of each other. It is common cause that the plaintiff crossed at a place not designated for pedestrian crossing. In the same breath, the insured driver should have been cautious and anticipated the presence of other road users, particularly the plaintiff. Considering the testimony of the plaintiff to the exclusion of the accident report, the court would draw a negative inference to his testimony. For instance, he told the court that he crossed the road without checking whether it was safe to do so, but when he was asked by the court, he said that he checked and there was no motor vehicle approaching. He further told the court that he noticed the vehicle after crossing, and he could not have noticed the vehicle as the road was not straight and had a curve.

[27] He failed to keep a proper lookout and thereby contributed to the cause of the accident. It is common cause that, as per the plaintiffs testimony and the accident report, the accident occurred at about 17h00.

[28] Considering the plaintiffs evidence and the accident report, both the insured driver and the plaintiff contributed to the cause of the accident. He crossed the road when it was inopportune to do so, and he further failed to keep a proper lookout. He disregarded other road users particularly the insured driver. The court is of the view that the plaintiff contributed 40% of the cause of the accident.

[29] The plaintiff consulted with various legal experts, and he is confirmed to have sustained injuries.

In the present case, the defendant pleaded contributory negligence. The facts placed before the court by the plaintiff and the discovered accident report suggest that both the plaintiff and the insured driver contributed to the accident

Contingencies

[30] The plaintiff was 26 years of age at the time of the accident, and he is currently 36 years of age. His highest level of education is Grade 8. He was a self-employed builder and did piece jobs at the time of the accident. The industrial Psychologist stated that the plaintiff 's pre-morbid earnings amounted to R8 000.00 through self-employment(building), supplemented by an additional R3 000.00 from general construction piece jobs which accumulated to R11 000.00(per month, 2015 terms) The court was not placed with any proof or source of income made from the alleged building endeavours and/or piece jobs. It further appears from the expert reports that the plaintiff would not be able to continue doing what he did prior to the accident. In **AA Mutual Insurance Association v Maqula**⁵ the courts held that a contingency deduction of up to 50% may be applied where there is no proof of income

[31] Contingencies are generally calculated as a percentage of the total amount, based on professional assessment of the risks involved.

[32] In **Phalane v Road Accident Fund**,⁶ the court held that:

Contingencies are the hazards of life that normally beset the lives and circumstances of ordinary people (**AA Mutual Ins Co v Van Jaarsveld** reported in Corbett & Buchanan, The Quantum of Damages, Vol II 360 at 367) and should therefore, by its very nature, be a process of subjective impression or estimation rather than objective calculation (**Shield Ins Co Ltd v Booysen 1979 (3) SA 953 (A) at 965G-H**). Contingencies for which allowance should be made, would usually include the following:

- (a) the possibility of illness which would have occurred in any event;
- (b) inflation or deflation of the value of money in future; and

⁵ 1978 (1) SA 805 (A), and see *RAF v Kerridge* [2018] ZASCA 151 and *Mbokazi v Minister of Police and Another* [2020] 1 JOL 47640 (GP)

⁶ [2017] ZAGPPHC759.

(c) other risks of life such as accidents or even death, which would have become a reality, sooner or later, in any event (Corbett, The Quantum of Damages, Vol I, p 51).

[33] In the case of ***Road Accident Fund v Guedes***,⁷ the court referred with approval to the Quantum Yearbook, by R Koch under the heading "General contingencies" where it states that when "in assessing damages for loss of earnings or support, it is usual for a deduction to be made for general contingencies for which no explicit allowance has been made in the actuarial calculation. The deduction is the prerogative of the Court."

[34] In ***Goodall v President Insurance Co Ltd***,⁸ the court held that over time, our courts have accepted that the extent of the period over which a plaintiff's income has to be established has a direct influence on the extent to which contingencies have to be accounted for. Put differently, the longer period over which unforeseen contingencies can influence the accuracy of the amount adjudged to be the probable income of the plaintiff, the higher the contingencies that have to be applied.

[35] The percentage of contingency deduction depends upon several factors and ranges from 5% and 50% depending upon the facts of the case.

[36] Having regard to all expert reports, the base values used by the actuary and lack of proof for loss would be most appropriate. So calculated, the plaintiff's total loss of earnings amount to a sum of R3 190 325.25

Wherefore the following order is made:

⁷ 2006 (5) SA 583 (SCA) at para 9.

⁸ 1978 (1) SA 389 (W) 392H-393G. Also see: *AA Mutual Association Ltd v Maqula* 1978(1) SA 805 (A) 812, *De Jongh v Gunther* 1975 (4) SA 78 (W) 81, 83 and 84D, and *Van der Plaats v SA Mutual Fire & General Insurance Co Ltd* 1980(3) SA 105 (A) 114-115D.

1. The medico-legal reports and affidavits as referred to in the Rule 38(2) application are adduced into evidence,
2. Defendant is liable for 60% of the proven and/or agreed damages suffered by the injured in relation to the accident,
3. The issues of general damages are hereby postponed sine die,
4. The defendant is to pay the Plaintiff a total amount of **three million one hundred and ninety thousand, three hundred and twenty five rand and twenty five cents(R 3 190 325.25)** in respect of the past and future loss of earnings suffered by the Plaintiff in relation to the accident , which amount shall be paid into the trust account of Messrs Ramaesele Mphahlele Attorneys with the following bank account details:

Account Name: Ramaesele Mphahlele Attorneys

Bank: First National Bank(FNB)

Branch Code: 2[...]

Account No: 6[...]

Reference: RMA/00329/RAF

5. The defendant shall provide the plaintiff with an Undertaking in terms of the provisions of **Section 17(4) of the Road Accident Fund Act 56 of 1996** (as amended) limited to 60% in relation to the motor vehicle accident , which certificate shall includes all the injured 's future medical, future assistive, future surgical, future hospitalization and future care, which will include but not limited to any and all traumatic brain injury treatment, physiotherapy, massage therapy, biokinetic treatments and rehabilitation related treatments and expense as recommended in the below mentioned medico-legal experts' opinions.
6. The Undertaking in terms of Section 17(4)(a) of the Road Accident Fund shall be delivered to the **offices of Ramaesele Mphahlele Attorneys at address**

No. 1[...] P[...] K[...] Street, [...]nd Floor Regus, Pretoria, Pretoria Central
within 180 days from date of this order.

7. The capital amount shall be paid into the above-mentioned account of Ramaesele Mphahlele Attorneys within 180 (One hundred and eighty days from the date of the order. Should the Defendant fail to make such payment within 180 (One hundred and Eighty) days from the date hereof, the Defendant will be liable for interest on the amount due to the Plaintiff at the current rate per annum, from 1st (First) day of this order, to the date of final payment, which will include the interest due and payable.
8. The Defendant is ordered to pay all the Plaintiff 's attorneys' costs, in respect of the quantum, on the High Court scale up to date hereof including the trial date of 21 January 2026, which costs include (but not limited to):
 - 8.1. The costs of travelling, accommodation and attending to medico-legal examinations and the costs incurred in obtaining all the addendum medico-legal and addendum actuarial reports, validity letters, RAF4 form reports and any joint minutes/reports, as well as the qualifying, reservation and attendance fees of all the medical experts for trial on the 05 November 2025, specifically (but not limited to) the following experts, inclusive of all addendum reports:
 - 7.2. Any and all radiological reports requested by the below mentioned experts;
 - 7.2.1 Dr MJ Tladi, Orthopaedic Surgeon;
 - 7.2.2. Dr TD sadiki, Neurosurgeon;
 - 7.2.3. Mr Mhlanga, Clinical Psychologist;
 - 7.2.4. Dr Ngele, Neurologist;
 - 7.2.5. Dr Medapati, Plastic Surgeon,
 - 7.2.6. Mrs Boikhutso Molwana,

Occupational therapist;

7.2.7. Mrs Danuska Jenkins, Industrial Psychologist,

7.2.8. Mr Namir Waisberg, Actuary

8. The costs of preparing of the 6 trial bundles as per the Practice Directive of the High Court and as agreed upon and between the parties and the Pre-trial Minutes

9. The costs of Counsel taxed on scale B- Adv L Haskins for trial of the 21 January 2026, which includes but not limited to, full preparation for trial in respect of all the trial dates as mentioned above, consultation with Plaintiff, Attorney and Medical Experts for trial, perusal of documentations, research, preparation and drafting of heads of arguments, advice on evidence, preparation for trial and her full day fee, The reasonable costs for preparation for trial of the attorney,

9.1 The costs of attendance for trial of the attorney

9.2The travelling expenses and accommodation for Plaintiff,

9.3The costs which include the travelling costs in respect of inspection in loco,

8.2The is no order as to costs in respect of preparation and drafting of Rule 38(2) application

9.Should the Defendant fail to pay the Plaintiff 's party and party costs as taxed or agreed within 180(One hundred and Eighty days from the date of taxation, alternatively date of settlement of such costs, the Defendant shall be liable to pay interest at the current rate per annum, such costs as from and including

the date of taxation, alternatively the date of settlement of such costs up to and including the date of final payment thereof

M.C MAUBANE
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

DATE HEARD: 21 January 2026

DATE DELIVERED: 25 February 2026

APPEARANCES

Counsel for the plaintiff: Adv L Haskins

Instructed by: Ramaesele Mphahlele Attorneys

Counsel for the defendant: None