

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

CASE NO: 56128/2020

(1) REPORTABLE: ~~YES~~/NO

(2) OF INTEREST TO THE JUDGES: ~~YES~~/NO

(3) REVISED.

DATE: 25/02/2026

SIGNATURE:

In the matter between:-

ZWELISHA EUGENE SIBIYA

PLAINTIFF

And

THE ROAD ACCIDENT FUND

DEFENDANT

JUDGEMENT

MATIKA AJ

1. This is an action for damages brought by the plaintiff Zwelisha Eugene Sibiya against the Road Accident Fund in terms of the provisions of the Road Accident Fund Act (No.56 of 1996), as amended.

2. The plaintiff sues for personal injury sustained in a motor vehicle accident which occurred on 26 February 2019.

3. It was common cause that the plaintiff was represented by Advocate Masango and the Defendant was not represented.

4. This matter came before me in respect of merits only and on default basis in terms of Rule 31(2) (a)¹ of the uniform Rules of Court.

5. The plaintiff was involved in a motor vehicle accident on 26 February 2019, the claim was lodged with the defendant on 31 January 2020, the combined summons was served on the defendant on 27 October 2020, notice of set-down was served on the defendant on 15 January 2026 and the defendant failed to defend the action and The *dies* has expired.

6. The matter was set-down for merits only, and therefore the issue of liability is separated from the issue of quantum in terms of Rule 33(4) of the Uniform Rules of the court.

7. The allegations in the plaintiff's particulars of claim is that the claim arose from a motor vehicle collision that occurred on 26 February 2019 at approximately 16H30 at or near Mlonde High School, Mvutshini Location, Kwazulu -Natal, the Plaintiff was knocked by a motor vehicle with registration letters and numbers N[...] ("the Insured Vehicle") there and then driven by Nduduzo Selby Buthelezi .The plaintiff was at all material times a pedestrian at the time of the said accident.

8. In broad terms, the plaintiff's alleges and pleaded that: "The collision was caused by the sole negligence of the insured vehicle, He having been negligent in one or more or all of the following respects: He failed to keep a proper lookout, He failed to keep the vehicle he was driving under proper or effective control, He drove at an exercise speed in the circumstances, He failed to apply the brakes of the vehicle either timeously, adequately or at all, He failed to take any or adequate steps to avoid the accident when by the exercise of reasonable care and diligence he

¹ Rule 31(2)(a) reads: "Whenever in an action the claim or, if there is more than one claim, any of the claims is not for a debt for liquidated demand and the defendant is in default of delivering of notice of intention to defend or of a plea, the plaintiff may set the action down as provided in sub-rule (4) for default judgment and the court may, after hearing evidence, grant judgment against the defendant or make such an order as it deems fit."

could and should have done so, as a result of the aforesaid accident the plaintiff has suffered bodily injuries including left tibia and fibula fracture".

9. The plaintiff deposed to section 19(F) affidavit in terms of the Act² under oath describing how the accident happened, According to the said affidavit it is stated as follows:

"On or about the 26 February 2019 at approximately 16:30 at or near Mlonde High school, Mvutshini location, Margate, Kwazulu -natal province, I was a pedestrian standing on the side of the road, at a T-Junction , waiting to cross the road, when a motor vehicle bearing registration letter and numbers N[...], there and then driven by Bhuthelezi Ndududzo Selby, came driving at excessive speed and swerved to my direction in order to avoid hitting a motor vehicle in front of him and hit , I attempted to run from the said motor vehicle but it was too late".

10. The accident was reported at the South African Police Service in Margate, KwaZulu-Natal under CAS No: 1160022019 and constable J Khuzwayo of the Accident Unit completed accident report and a sketch plan, from constable Nxumalo description of the accident, it is confirmed that the plaintiff was knocked down by a motor vehicle as a pedestrian.

11. The Police Accident report, the plan and key to the plan were properly discovered and no objection to their use were lodged. No evidence gainsaying the Plaintiffs version of the how the accident happened.

12. Application to present evidence of the plaintiff and his expert witnesses, and any other relevant witness by way of affidavit in terms of Rule 38(2) of the Uniform Rules was sought and granted. Application was served on the defendant and it was not opposed by the defendant.

² Act 56 of 1996, as amended.

13. The claim in this instance falls under section 17(1) (b) of the Act³. Section 17(1)(b) of the Act stipulates the following:

"17 Liability of Fund and agents - (1) The Fund or an agent shall

(a) ...

(b) subject to any regulations 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 (third party) for any loss or damage which the third party has suffered as a result of any bodily injury to himself or herself ... caused by or arising from the driving of a motor vehicle by any person ... , if the injury ... is due to the negligence or other wrongful act of the driver or owner of the motor vehicle ... " (own emphasis)

14. It is common cause, in this instance, that the plaintiff, Mr Sibiya has suffered bodily injuries. The Fund's liability to compensate Mr Sibiya accordingly turns on the question of whether the driver of the insured vehicle was negligent and whether such negligence, if proven, caused the damage suffered by Mr Sibiya. If so, the Fund is statutorily liable to compensate Mr Sibiya for his proven or agreed damages. The slightest degree of negligence on the: part of the insured driver is sufficient to satisfy the requirements of section 17 (1) of the Act.⁴

15. Section 24 (5) of the Act⁵ provides that: *"If the fund or the agent does not, within 60 days from the date on which a claim was sent by registered post or delivered by hand to the fund or such agent as contemplated in subsection (1), object to the validity thereof, the claim shall be deemed to be valid in law in all respects."*

16. There is no evidence before the court that the defendant has objected to the validity of the plaintiff's claim.

³ Act 56 of 1996, as amended

⁴ Act 56 of 1996, as amended

⁵ Act 56 of 1996, as amended

17. It is trite law that the *onus* rests with the plaintiff to prove negligence on the part of the defendant. There is no *onus* on the defendant to show that he had not been negligent, but, once the plaintiff has proved an occurrence giving rise to an inference of negligence on the part of the defendant, the latter has to give an explanation which is sufficient to dispel the *prima facie* proof of negligence, otherwise he runs the risk of judgment being given against him. See: ***Ntsala and Others v Mutual & Federal Insurance Co Ltd* 1996 2 SA 184 (T)**.

18. It is trite that every driver has a duty to scan the road ahead of him at all times, and to avoid a collision from happening. In the matter of ***Road Accident Fund v Grobler***⁶ the Supreme Court of Appeal held that in a situation similar as *in casu*, the proper approach is not to confine the inquiry into the negligence to the conduct of the driver from the moment they became embroiled in an emergency. The inquiry must extend to cover what steps a driver took to avoid the impending emergency. If he/she had an opportunity to take measures ahead of the emergency to avoid the accident, and he/she failed to do what a reasonable person in similar circumstances would have done, then he/or she would have been negligent.

19. The Plaintiff's counsel, submitted that the plaintiff's evidence on how the accident occurred is unchallenged, the plaintiff's pleaded case is that the "The collision was caused by the sole negligence of the insured vehicle, he having been negligent in one or more or all of the following respects :He failed to keep a proper lookout, He failed to keep the vehicle he was driving under proper or effective control, He drove at an exercise speed in the circumstances, He failed to apply the brakes of the vehicle either timeously, adequately or at all, He failed to take any or adequate steps to avoid the accident when by the exercise of reasonable care and diligence he could and should have done so, as a result of the aforesaid accident the plaintiff has suffered bodily injuries including Left Tibia and fibula fracture.

20. It was submitted that the defendant is 100% liable to the plaintiff and no apportionment as the defendant did not defend the matter nor file plea.

⁶ (96/06) ZASCA 78; [2007] SCA 78 (RSA); 2007 (6) SA 230 (SCA) (31 May 2007)

21. The plaintiff's case before the court is that, the insured driver collided with the plaintiff who was on the side of the road. this evidence is uncontested.

22. There is no evidence placed before the court as to what steps the insured driver took to avoid the imminent sudden emergency he found himself in, the insured driver is the person who could have told the court what steps he took to avoid the collision as he was duty bound to, but was not called to do so.

23. The plaintiff's evidence calls for an answer from the defendant and in the absence of any version contrary to the plaintiff's version, I find on the evidence before me, that there is nothing to suggest that the plaintiff was negligent.

24. There is no plea from the defendant, and the issue of contributory negligence is simply not raised.

25. In **Maseko v Road Accident Fund**⁷ In this case plaintiffs particulars of claim stated that on 12 March 2016, he was a pedestrian who was walking alongside the road when collision occurred along the R557 between willa's farm and Thulamtwana, Gauteng Province. The court found that, accordingly the driver of the vehicle was negligent in one or more of the respects pleaded in paragraph 5 in the plaintiff's particulars of claim. As a result, the defendant was found to be 100% liable for the plaintiffs proven damages arising as a result of the collision.

26. In **Fabrinso v Road Accident Fund**⁸, the plaintiff's evidence was that the collision occurred on a pavement (sidewalk). This portion of his evidence is uncontrasted as the defendant presented no evidence in rebuttal. A sidewalk is part of the street specifically allotted to pedestrians. A pedestrian is not obliged to anticipate that a motor vehicle will either directly or indirectly intrude on his or her way. That would conflict with the whole purpose of a sidewalk. [1] In normal circumstances a reasonable pedestrian on a sidewalk would not foresee that a vehicle would without warning come from behind mount the pavement and struck

⁷ (379994/17) (2019) ZAGPPHC 45 (6 February 2019)

⁸ (3676/11) [2016] ZAGPJHC 242 (9 September 2016)

him. The defendant was ordered to pay the plaintiff 100% of the plaintiff's agreed or proven damages.

27. In the matter of **Allan Rae v Road Accident Fund**⁹ the full bench held that if no contributory negligence is pleaded, no apportionment should be made. The court a quo initially found contributory negligence on the part of the plaintiff (appellant, Allan Rae) and apportioned liability at 75/25%, in the plaintiff's favour. The full court set aside the 75/25 apportionment, holding the RAF 100% liable based thereon that: the appellant's version of the accident was the only version before the court, and was supported by the accident report; the RAF did not file a defence or submit any plea of contributory negligence; there was no basis for the lower court to infer negligence on the part of the plaintiff.

28. In **Fox v RAF**¹⁰ the Full Bench of this Honourable Court stated:-

" Defendant would have to adduce evidence to establish negligence on the part of the Plaintiff on a balance of probabilities."

29. In **Moloi v RAF**¹¹ the court held: "The defendant called no witnesses to prove such contributory negligence. It follows therefore that the Plaintiff's version on the cause of the accident remained unchallenged and therefore no contributory negligence could be established by the Defendant."

30. In **Kabini v Road Accident Fund**¹² the court held: *"It is trite that a plaintiff only has to prove 1% negligence on the part of an insured driver for a claim to be established. It is then for the defendant to prove contributory negligence on the side of the plaintiff."*

31. The defendant bears both the onus and duty to begin to prove contributory negligence on the part of the Plaintiff. In **Laurens v Road Accident Fund**¹³ this

⁹ 2025 (A114/2022) (21 May 2025)

¹⁰ (A548/16) [2018] ZAGPPHC (26 April 2018)

¹¹ (84024/2016) [2020] ZAGPPHC 87 (26 March 2020)

¹² 26209/2018) [2020] ZAGPPHC 100 (19 February 2020)

¹³ 31816/2017) [2018] ZAGPPHC 621 (23 August 2018),

court considered the judgments of *Ntsala v Mutual & Federal Ins Co Ltd 1996 (2) SA 184 (T) 190*, *Alberts v Engelbrecht 1961 (2) SA 644 (T)* and *Motor Insurers Association of South Africa v Boshoff 1970 (1) SA 489 (A) 502* in reaching the conclusion that the onus rests upon the Defendant to begin.

32. In *Ndaba v Purchase*¹⁴ the court stated, where contributory negligence is not pleaded by the defendant, "[t]hat being so, it seems to me that the case resolved itself into a so-called one percenter and that no question of contributing negligence or apportionment of damages could arise'.

33. In *Blignaut v RAF (24248/2015)[2017] ZAGPPHC 940(15 December 2017)* it was confirmed that: *"It is trite law that the defendant must prove the contributory negligence of the plaintiff's. The defendant failed to discharge its onus in proving plaintiff s contributory negligence. I therefore find no contributory negligent on the part of the plaintiff".*

34. In light of the fact that no contributory negligence pleaded by the defendant and no evidence adduced by the defendant to prove contributory negligence on the part of the plaintiff, I am of the view that contributory negligence is not applicable in this matter.

35. In the premises ,I make the following order:

(a) The Draft Order marked "X" is made an order of Court

F MATIKA
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

HEARD: 13 FEBRUARY 2026

¹⁴ [1991] 2 All SA 63 (E) 63

DELIVERED: 25 FEBRUARY 2026

APPERANCES:

For the Plaintiff

Adv Masango

081 417 2481

Instructed by:

Komane Attorneys Inc

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For the Defendant: No Appearances

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

CASE NO: 56128/20

BEFORE THE HONOURABLE, JUSTICE MATIKA AJ

ON THIS THE 13TH OF FEBRUARY 2026.

MS TEAM

In the matter between:

ZWELISHA EUGENE SIBIYA

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

LINK NO: 4944776

This order is made an Order of Court by the Judge whose name is reflected herein, duly stamped by the Registrar of the Court and is submitted electronically to the Parties/their legal representatives by email. The order is further uploaded to the electronic file of this matter on Case lines by the Judge his/her secretary. The date of this order is deemed to be 13th of February 2026.

COURT ORDER

BY AGREEMENT BETWEEN THE PARTIES

IT IS ORDERED THAT:

1. Defendant is liable for **100%** of the Plaintiffs proven damages.
2. Application in terms of rule 33 (4) is granted.

3. Application in terms of rule 38 (2) Is granted.
4. The issue of Quantum is postponed *sinedie*.
5. The Defendant is ordered to pay the Plaintiffs taxed or agreed party and party costs on High Court Scale, which costs will include, but will not be limited to the following:

4.2. The costs of Plaintiff's Counsel for perusal, preparation, drafting of Heads of Arguments and to attend Court for Trial on 13th of February 2026.
(SCALE A)

4.3. The costs of Plaintiff attorney to attend Court for Trial on 13th of February 2026.

5. The Defendant is ordered to pay the Plaintiff's taxed and/or agreed party and party costs within 14 days from the date upon which the accounts are taxed by the Taxing master and/or agreed between the parties.
6. Should payment of taxed costs not be effected timeously, Plaintiff will be entitled to recover interest at the rate of 10.25% on the taxed or agreed costs from date of allocator to date of payment.
7. The amount referred to above will be paid to the plaintiff's attorneys, A.M Komane & Associates trust account, details of which are the following:

ACCOUNT HOLDER	KOMANE & ASSOCIATES
NAME OF ACCOUNT	FIRST NATIONAL BANK
ACCOUNT NUMBER	6[...]
BRANCH NAME	CENTURION
TYPE OF ACCOUNT	TRUST ACCOUNT

**BY ORDER
THE REGISTRAR**

**REGISTRAR OF THE HIGH
COURT PRETORIA**

FOR THE PLAINTIFF: ADV. MASANGO
CELL: 081 417 2481

PLAINTIFF'S ADVOCATE

FOR THE DEFENDANT: