

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

JUDGMENT

Reportable/Not Reportable

Case No: 3237/2023

In the matter between:

SIYABULELA MBASA

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

Coram: **MPHEGO AJ**

Heard: 3 September 2025 (Written submissions filed on 15 and 18 September 2025 respectively by the plaintiff and defendant)

Delivered: 07 April 2026

Summary: The plaintiff has claimed for damages arising from a motor vehicle collision which occurred on 26 August 2019. The plaintiff was driving a vehicle when the insured driver, travelling in the opposite direction, crossed into the plaintiff's lane and collided with the vehicle driven by the plaintiff, head-on.

ORDER

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- [1] The defendant is liable for the plaintiff's proven damages as a result of the collision which occurred on 26 August 2019.
 - [2] The defendant is to pay the plaintiff's costs, as taxed or agreed, which shall include the costs of counsel to be taxed on scale B as between party-and-party.
 - [3] The action is placed on the roll for the determination of the quantum of the plaintiff's claim.
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JUDGMENT

MPHEGO AJ:

Introduction

- [1] The plaintiff, Mr Siyabulela Mbasu, has claimed damages against the defendant, the Road Accident Fund, arising from a motor vehicle collision that occurred on 26 August 2019 on Old Faure Road. The plaintiff was driving a motor vehicle when the motor vehicle driven by the insured driver collided with the motor vehicle driven by the plaintiff.

The postponement application

- [2] At the commencement of the trial, Ms Thomas representing the defendant, indicated that she was instructed to apply for a postponement. No formal written application or supporting affidavit was filed, instead the application for a postponement was made by Ms Thomas, orally from the bar.
- [3] The main reason advanced by Ms Thomas was that the defendant needed to locate the insured driver and obtain a statement from him. Ms Thomas explained that the only document in the defendant's possession relating to the merits of the claim was the police accident report, which recorded that the insured driver was driving vehicle A and that the plaintiff had collided into him.

- [4] Ms Thomas submitted that, on the face of that report, the matter appeared to warrant a repudiation of the claim, and therefore the defendant required the insured driver's version before it could properly assess and respond to the merits. When pressed by the Court, Ms Thomas acknowledged that the defendant had attempted to contact the insured driver but had been unable to do so.
- [5] The other reason the defendant sought a postponement was that the defendant was not ready to deal with the issue of quantum. Ms Thomas indicated that the defendant had not had a sufficient opportunity to consider the expert reports on quantum, including reports from an industrial psychologist, an occupational therapist, a neurosurgeon, and an actuary, in order to formulate a settlement offer. This Court made an observation that the expert reports had been on file since approximately October 2024, nearly a year before the trial date.
- [6] Ms Thomas also raised, in passing, the issue of outstanding documentation required to formally register the plaintiff's claim with the defendant. However, Ms Thomas later acknowledged that non-compliance had not been raised in the defendant's plea.
- [7] In opposing the postponement application, Mr Claassens representing the plaintiff, submitted that there was no substantive application before the Court for a postponement and that there is no affidavit from the claims handler or the defendant explaining the circumstances which necessitated a postponement.
- [8] Mr Claassens took the Court through the history of the matter, highlighting that:
- a) The plaintiff lodged a substantially compliant claim on 11 February 2022, and when the claim was lodged, a cover letter with the completed RAF1, an affidavit by the claimant, and an affidavit by a witness were sent to the defendant.
 - b) Justice Mangcu-Lockwood issued a directive for the defendant to register the claim, which the defendant failed to comply with.
 - c) The defendant knew about the alleged problem with the accident report and the versions provided in the statements since at least February 2022, and did nothing.
 - d) The matter was certified trial ready on 22 October 2024.

- e) Mr Claassens cited the case of *Myburgh Transport v Botha t/a SA Truck Bodies* 1991 (3) SA 310 (NmSC), regarding the principles applicable to postponement applications, submitting that an application should be made timeously and that a court should be slow to refuse a postponement only where the applicant's unreadiness is not due to delaying tactics. He argued that the application was brought about by the defendant's own ineffectiveness.
- f) If the Court was inclined to grant a postponement, Mr Claassens submitted it should be with strict directives and costs on an attorney/client scale.
- g) Mr Claassens explained that, (1) the plaintiff's legal team was funding the litigation on contingency and (2) taxation dates in the division were at the end of 2026, and only six months after a taxation order is granted would, the plaintiff see any payment.

[9] This Court refused the postponement stating that:

- a) The matter had already been certified trial-ready by two judges, Justice Mangcu-Lockwood and Justice Erasmus, both of whom had certified the matter as trial ready and allocated the trial date. The Court found it deeply inconsistent that, against that backdrop, the defendant was now appearing on the morning of trial and seeking a postponement.
- b) The defendant had known about the trial date since at least November the previous year. When this Court questioned what steps the defendant had actually taken in preparation for trial, no satisfactory response was forthcoming.
- c) The defendant appeared to have done nothing to prepare leading up to trial. This Court observed that everything appeared to have been left untouched and that, only on the morning of trial, the defendant had arrived to declare that it was not ready.
- d) The defendant had been in possession of the quantum reports for nearly a year with Ms Thomas having confirmed that the reports had been filed as far back as 14 October 2024.
- e) This Court found it unacceptable that, in September 2025, approximately a year later, the defendant was seeking a postponement in order to look at documents it had held for almost twelve months.
- f) This Court noted that the issue of non-compliance with claim registration requirements had never been pleaded.

- g) The Court took into account that Justice Erasmus had already considered the non-compliance issue and, in the absence of a special plea, had proceeded to allocate the matter for trial.
- h) This Court recounted in detail the history of the proceedings, noting that Justice Mangcu-Lockwood had issued a specific directive on 16 May 2024 requiring the defendant to register the plaintiff's claim, and that the defendant had failed to comply with that directive on multiple occasions. This Court noted that directives had been issued repeatedly and that the defendant had consistently failed to act.
- i) This Court stated plainly that it could not accept the explanations that had been given, particularly in the absence of a comprehensive affidavit from the claims handler with proper timelines and a full explanation around the postponement.

[10] After the postponement was refused, the plaintiff's counsel moved for an order separating liability and quantum in terms of Uniform Rule 33(4).

[11] The plaintiff was present to give evidence. This Court granted the separation order unopposed, with the trial proceeding on the aspect of liability.

[12] The defendant's experts had not been lined up to testify on quantum. The Rule 38(2) application for the admission of expert evidence became unnecessary.

The pleadings

[13] The plaintiff averred that the collision was occasioned by the sole negligence of the insured driver of the insured motor vehicle, who was negligent in one or more of the following respects, in that he:

- a) failed to keep a proper lookout;
- b) failed to keep the insured motor vehicle under proper control;
- c) failed to apply the brakes of the insured motor vehicle timeously, adequately or at all;
- d) failed to avoid the collision, when by exercise of reasonable care, he/she could have and should have done so;
- e) drove the insured motor vehicle at a speed that was excessive in the prevailing circumstances; and
- f) drove the insured motor vehicle without due regard for the other road users, in particular the plaintiff.

[14] The plaintiff asserted that as a result of the collision, the plaintiff sustained the following injuries:

- a) traumatic brain injury;
- b) hemo and pneumothoraces;
- c) cervical, thoracic and lumbar spine fractures; and
- d) soft tissue injury to the spine.

[15] The plaintiff further asserted that as a result of the injuries, he sustained *inter alia* the following *sequelae*:

- a) he was hospitalized and had to receive both medication and medical treatment for his injuries, for which costs were incurred;
- b) he suffered from shock, pain, discomfort and a loss of amenities of life;
- c) he will receive medication and medical treatment in the future, for which medical costs will incur; and
- d) he experienced pain and suffering, shock, discomfort and loss of amenities of life and will in the future experience pain and suffering, discomfort and loss of amenities of life.

[16] The plaintiff contended that his injuries constitute serious injuries as envisaged by section 17(1A) of the Road Accident Fund Act 56 of 1996 ("the Act") in terms of the serious injury report compiled by Dr Domingo. The defendant did not object to the plaintiff's serious injury assessment within 120 days of receiving the assessment report.

[17] The plaintiff stated that as a result of the injuries and *sequelae* thereof, he suffered damages in the amount of R2 400 000 calculated as follows:

- a) Past medical expenses - R200 000.
- b) Estimated future medical expenses - R300 000.
- c) Past loss of income - R100 000.
- d) Estimated future loss of income/earning capacity - R1 000 000.
- e) General damages - R800 000.

- [18] The plaintiff claims payment in the sum of R2 400 000, with interest calculated at the prevailing interest rate per annum from fourteen (14) days after date of judgment to date of final payment and cost of suit.
- [19] The defendant denied that the collision occurred as alleged and put the plaintiff to the proof thereof. The defendant further denied all allegations of negligence on the part of the insured driver. In the alternative, the defendant stated that even if the Court finds that the collision occurred and the insured driver was negligent, it denies that such negligence caused the collision.
- [20] The defendant contended that, should the Court find the insured driver was causally negligent, the defendant claimed that the collision was caused partly through the negligence of the insured driver and partly as a result of the plaintiff's own negligence.
- [21] In relation to negligence, the defendant alleged that the plaintiff was negligent in the following respects:
- a) He failed to keep any, alternatively any proper lookout.
 - b) He failed to take any, alternatively adequate steps to avoid the collision when by the exercise of reasonable skill and care he could and ought to have done so.
 - c) He failed to take due care and consideration for the rights of other road users, in particular the insured driver.
 - d) He drove his motor vehicle at an excessive speed in the prevailing circumstances.
 - e) He failed to apply the brakes of his motor vehicle timeously, adequately or at all.
 - f) He failed to keep his motor vehicle under proper and/or adequate control.
- [22] In relation to the plaintiff's injuries and damages, the defendant stated that it bears no knowledge of the nature and extent of injuries allegedly suffered by the plaintiff and put the plaintiff to proof thereof.
- [23] In respect of the serious injury assessment, the defendant specifically stated that the plaintiff is not entitled to non-pecuniary loss (general damages) at this stage, as the

defendant has not had an opportunity to correctly assess the claim and cannot admit or reject that it is a 'serious injury' claim as contemplated by the Act. The defendant stated that it requires the plaintiff to submit himself to a further assessment by a medical practitioner designated by the defendant to ascertain whether the plaintiff's injuries are serious, and contended that the matter should be stayed pending this further assessment.

[24] In respect to past medical expenses, the defendant pleaded that it is not liable for past medical expenses if they were paid by a medical scheme to which the plaintiff is affiliated, as the plaintiff did not in fact and in law actually become liable for such expenses.

[25] The defendant prays that the plaintiff's claim be dismissed with costs. Alternatively, if the Court finds the collision was occasioned partly through the negligence of the insured driver and partly through the plaintiff's fault, the defendant seeks an order that damages be reduced in accordance with the Apportionment of Damages Act 34 of 1956, proportionate to the respective degrees of negligence.

The trial and written submissions

The plaintiff

[26] At the trial the plaintiff, testified that:

- a) He was born on 27 January 1985 in the Eastern Cape.
- b) He passed Grade 11 in 2003 at Aludale Tech and Senior Secondary School.
- c) He came to Cape Town in 2008 to look for work and was employed by a security company until 2009, he was later employed at Bidvest in 2018 as a driver.
- d) He resigned from Bidvest to drive an Uber for a person named Dumisani, and was receiving weekly wages.
- e) In August 2019, he was working as an Uber driver and resided in Driftsands, Khayelitsha.
- f) On 26 August 2019, at approximately past 5 o'clock in the afternoon, he was driving a silver-grey Honda Brio (registration C[...]), which is an Uber vehicle belonging to Dumisani. He was travelling from Mitchells Plain to his house in Driftsands along Old Faure Road.

- g) He described Old Faure Road as having two lanes, one lane going in each direction, with faded road markings. The road is on a bridge over the N2 freeway, which is very high.

[27] The plaintiff testified regarding the conditions at the time of the collision, he stated that it was a very busy time because there were a lot of cars and pedestrians walking on the sidewalks. He stated that the sun was shining that day and there was no car directly in front of him, in his lane.

[28] In relation to how the collision occurred, he stated that:

- a) He saw a white Toyota Quantum with passengers coming into his lane from the opposite direction. He tried to slow down, flickered his lights to signal to the driver of the white Toyota Quantum that he was in the wrong lane, and hooted.
- b) The Toyota Quantum came straight towards him and did not stop.
- c) He could not swerve right because there were many cars in that lane (like a traffic jam or convoy).
- d) He could not swerve left because there were pedestrians walking there.
- e) The bridge is over the N2 freeway, so going off the road was not an option as he would end up- falling off the bridge to the vehicles below on the N2 freeway.
- f) He stopped the car and the white Toyota Quantum collided with the vehicle he was driving head-on. He also pointed out that he was driving at approximately 60 km/h at the time and that the yellow line area (pedestrian walkway) was less than a metre wide.

[29] The plaintiff testified that:

- a) He was unconscious after the collision and woke up in ICU two to three weeks later, with his mother present.
- b) His mother took him to the Eastern Cape to recover.
- c) During recovery, he could not walk for more than five to ten minutes without experiencing severe pain. He had to sit down every five to ten minutes of walking.
- d) After recovering sufficiently, he went to report the accident, first to Site B Police Station in Khayelitsha, and to Mfuleni Police Station, and finally to Blue Downs Police Station where he received assistance.
- e) He went with police officers to the scene where they made a sketch.

f) He has never had any interaction with the driver of the Toyota Quantum.

[30] In relation to liability, Mr Claassens submitted that this was 'a very simple case' with 'a very simple set of facts' and that the plaintiff's evidence was uncontradicted as to how the collision occurred. In relation to the defendant's pleadings, he highlighted the defendant's denial that the collision even occurred, which he described as holding no water given the evidence.

[31] Mr Claassens highlighted the inconsistency where the defendant denied the collision occurred but simultaneously pleaded contributory negligence in the alternative which he likened to the absurd example: 'I deny hitting you, but if I hit you, I acted in self-defence.' He submitted that the defendant had not produced a shred of evidence in support of their denials.

[32] In relation to the conduct of the insured driver, Mr Claassens submitted that the insured driver acted, not even negligently, but recklessly. He disregarded the rules of the road, and other users of the road. He put other people, including the plaintiff's life at danger and at risk, even his own. He stated that the insured driver failed to keep a proper lookout, failed to avoid a collision when, by the exercise of reasonable care he could have done so, and drove without due regard for other road users.

[33] In relation to the plaintiff's actions, Mr Claassens highlighted that the plaintiff's testimony about his actions when faced with the oncoming vehicle was:

- a) If he swerved to the right, he would collide with other cars and the head-on collision was going to happen in any event.
- b) He could not reverse as there were cars behind him.
- c) If he drove to the left, he would probably be charged with culpable homicide (due to pedestrians).
- d) The N2 freeway is below the bridge.

[34] Mr Claassens submitted that the plaintiff did all he could, and is to hit the brakes, flash his light and hoot.

[35] In relation to contributory negligence and the two beers consumed by the plaintiff, Mr Claassens submitted that:

- a) No evidence was led that the two Castle Lite beers impaired the plaintiff's driving.
- b) The plaintiff does not have to prove a negative, it is for the defendant to lead evidence and produce evidence to justify an apportionment claim.
- c) Even if the consumption of the two beers did impair the plaintiff's driving abilities, it would not have caused the collision because of the insured driver's actions, there was no way the plaintiff could have avoided it.
- d) The defendant did not plead that the consumption of two beers impaired the plaintiff's driving ability and therefore justified contributory negligence or an apportionment.

[36] In relation to the plaintiff's credibility, Mr Claassens submitted that:

- a) The credibility of the plaintiff stands, he was honest and gave forthright answers even regarding the consumption of the beers, he answered yes when asked whether he consumed beers.
- b) The plaintiff's version was consistent throughout and in support of his claim.
- c) The plaintiff did not waver, he did not fault, he did not act negligently.

[37] Mr Claassens submitted that the plaintiff had overcome his burden of proof on a preponderance of probabilities to show that the collision occurred in the manner pleaded and was successful in his claim. Mr Claassens implored the Court to make the finding that: (1) the accident did occur, and (2) the defendant, the insured driver as identified, was at fault for causing this collision.

[38] The plaintiff's counsel made the following arguments in the written submissions:

- a) In relation to the pleadings, he cited the case of *Minister of Safety and Security v Slabbert* [2010] 2 All SA 474 (SCA) to emphasise that pleadings define the issues in the matter and that it is impermissible for a party to plead one case and seek to establish a different case at trial.
- b) In relation to the test for negligence, he cited the well-established principles in *Kruger v Coetzee* 1966 (2) SA 426 (A), to support that *culpa* arises where a diligent *paterfamilias* in the position of the defendant would foresee the reasonable possibility of injury and would take reasonable steps to guard against it, and that the defendant failed to take such reasonable steps.

- c) On establishing *prima facie* negligence from the collision from the insured driver driving on the wrong side of the road, the cases of *Marais v Caledonian Insurance Co Ltd* 1967 (4) SA 199 (EC) and *Kearleys Transport (Pty) Ltd v Minister of Defence* [2006] ZAFSHC 111, are cited to argue that irrefutable proof of a collision which occurs on the incorrect side of the road constitutes *prima facie* negligence, and the burden then shifts to the defendant to explain its presence on the wrong side.
- d) The case of *Sardi v Standard & General Insurance Co Ltd* 1977 (3) SA 776 (A) is cited to contend that the facts speak for themselves where the proven facts are the only available evidence. The plaintiff's evidence being the only available evidence.
- e) In regard to apportionment of damages, the contention is that under the Apportionment of Damages Act, a plaintiff may only recover damages not caused by his own fault, and that a clear causal link between a plaintiff's negligent conduct and the damage must be established. The case of *Harrington NO v Transnet Ltd t/a Metrorail* 2010 (2) SA 479 (SCA) was cited to argue that apportionment is only accomplished once a plaintiff was aware of impending damage and was in a position to avoid it. It was argued that the onus of establishing contributory negligence rests with the defendant.
- f) The rule in *Browne v Dunn* (1893) 6 The Reports 67 (HL) cited in *President of the Republic of South Africa v SARFU* 2000 (1) SA 1 (CC), was highlighted that if a point is left unchallenged in cross-examination, the party calling the witness is entitled to assume the unchallenged testimony is accepted as correct.

[39] The plaintiff's evidence in chief was highlighted and the fact that the defendant called no witnesses and closed its case without presenting any evidence.

[40] The plaintiff's evidence pointing out that the collision did occur as pleaded by the plaintiff and that the collision occurred when the insured driver was driving on the wrong side of the road. The only suggestion of contributory negligence relates to the consumption of the two beers by the plaintiff, but the defendant did not present evidence on a balance of probabilities, of the link between the plaintiff's consumption of alcohol and the causation of the collision.

[41] The plaintiff's counsel also highlighted that the plaintiff presented as a credible witness, testified candidly, made concessions when required, and provided explanations when called upon.

[42] It was submitted that the plaintiff has satisfied his onus and proved on a preponderance of probabilities that the collision occurred as pleaded, and that the defendant has wholly failed to discharge its onus of establishing contributory negligence or to present any version or evidence.

The defendant

[43] The defendant had made no arrangements to call any witness in its defence. The defendant's case was accordingly closed without any evidence being placed before the Court in rebuttal of the plaintiff's evidence.

[44] Ms Thomas' cross-examination of the plaintiff focused on the following areas:

- a) She questioned the plaintiff about where he had been prior to the collision on 26 August 2019, establishing that he had been at his home in Driftsands and had travelled to Mitchell's Plain town centre to go shopping, and that he was off work that day.
- b) Ms Thomas put it to the plaintiff that the road was very busy, including with oncoming traffic, and queried whether the road (Old Faure Road) was wide or narrow. The plaintiff confirmed that the road was busy, that the road was long but not wide, and that there were people walking on the yellow line to his left and cars to his right.
- c) Ms Thomas asked the plaintiff about what speed he was driving. The plaintiff replied that he was travelling at 60 kilometres per hour. Ms Thomas also asked whether the plaintiff knew the speed of the Toyota Quantum, to which he could not provide a specific figure.
- d) Ms Thomas asked the plaintiff whether he could have avoided the collision by moving into the yellow lane. He responded that there were people walking along it, precluding him from doing so.
- e) Ms Thomas questioned the plaintiff about what happened after the collision, including the fact that he lost consciousness and did not know how he left the scene. He confirmed he woke up in hospital, two to three weeks later.

- f) Ms Thomas attempted to put the contents of the police accident report to the plaintiff in order to contradict his version. However, Mr Claassens objected on the basis that the report constituted hearsay evidence, it had been compiled by Sergeant Noeza the day after the accident, while the plaintiff was unconscious in hospital, and the officer was not called to give evidence.
- g) Ms Thomas questioned the defendant about whether he had consumed alcohol on the day of the accident. He initially indicated he had drunk one beer, but on re-examination by Mr Claassens, it emerged he had drunk two Castle Lites outside a shop at Mitchell's Plain. Ms Thomas did not pursue the issue of alcohol to any great depth in cross-examination.

[45] Ms Thomas advanced two principal arguments on behalf of the defendant:

- a) She submitted that the plaintiff's particulars of claim did not specifically allege that the insured driver had overtaken at a time that was unsafe to do so, and that the grounds of negligence pleaded did not explicitly capture that version of events. This Court rejected this argument, pointing out that the particulars of claim pleaded that the insured driver had failed to keep a proper lookout, failed to keep his vehicle under control, failed to apply brakes timeously, and had failed to avoid a collision, all of which encompassed the manner in which the collision had occurred as described in evidence.
- b) Ms Thomas submitted that there should be an apportionment of damages on account of the plaintiff having consumed two beers and then driven a motor vehicle. She argued that the fact of drinking and driving was itself indicative of negligence, and that there had been no evidence led from the plaintiff's side to demonstrate that his driving ability had not been impaired. She maintained that the defendant submitted there should be a reduction in any award on account of the plaintiff's contributory negligence.

[46] The plaintiff testified in re-examination that:

- a) He bought and drank two Castle Lite beers on the day of the accident at Mitchells Plain town centre, outside a shop.
- b) He was at Mitchells Plain before 4 o'clock and the accident happened after 5 o'clock.

- [47] Ms Thomas reserved the position on the pleadings regarding the absence of a specific reference to the overtaking manoeuvre in the particulars of claim, and indicated that the defendant would develop its arguments further in written submissions. The written submissions were filed by Ms Thomas on 18 September 2025.
- [48] The first substantive argument advanced in the written submissions is the issue of overtaking. The defendant submitted that the plaintiff's particulars of claim do not include any allegation that the insured driver was negligent in overtaking at a time that was not safe to do so, or that the overtaking was done negligently. The defendant then makes a somewhat unusual parallel argument that if this Court is prepared to read the insured driver's negligent overtaking into paragraph 4 of the plaintiff's particulars of claim, then so, the plaintiff's drinking of beer before driving must equally be read into paragraph 4.3 of the defendant's plea. This appears to be a proportionality argument designed to justify the contributory negligence contention.
- [49] The second substantive argument concerns the plaintiff's consumption of alcohol. The defendant drew attention to the fact that in cross-examination, the plaintiff said he had consumed one beer, but in re-examination he said he had consumed two beers. The defendant requested this Court to take cognisance of the fact that the plaintiff was not clear from the outset about the number of beers he had consumed, suggesting this reflects adversely on his credibility.
- [50] In conclusion, the defendant submitted that, due to the opposing version in the accident report and the plaintiff consuming alcohol before driving, the plaintiff's claim should be dismissed, or alternatively, that there should be a 50% apportionment of damages against the plaintiff.
- [51] On costs, the defendant submitted that this matter is not complicated, being a single witness trial on the merits only and that scale B of party and party costs would be appropriate.

Evaluation

- [52] In its plea, the defendant denied that the collision had occurred at all, whilst simultaneously pleading, in the alternative, that if the collision did occur, it was caused by the contributory negligence of the plaintiff. Given that the defendant's own position was that it was in possession of a police accident report confirming the collision took place, its blanket denial that the collision occurred is difficult to sustain.
- [53] The defendant also pleaded a series of alternative grounds of negligence against the plaintiff, including that he had failed to keep a proper lookout, failed to apply the brakes timeously, drove at an excessive speed, and failed to take due care for the rights of the insured driver. The defendant however, produced no evidence, called no witnesses, and was unable to contradict the plaintiff's account of the collision in any meaningful way.
- [54] The onus of establishing contributory negligence rests with the defendant. In order for an apportionment to be justified, a clear causal link must be established between the plaintiff's negligent conduct and the causation of the collision. It is not sufficient for the defendant to point to negligent conduct in the abstract.
- [55] On the issue of consumption of the two beers, there are strict laws prohibiting driving while having consumed alcoholic beverages. It is a practice that would never be condoned by this Court, even though it is true that the connection between the collision and the consumption of the beers was not established by the defendant.
- [56] The defendant's argument that the plaintiff had not proven that the alcohol did not impair him, and therefore an inference of impairment should be drawn, is not sustained by the law. The plaintiff's counsel correctly rejected this inversion of the burden of proof. It is for the defendant to lead evidence and produce evidence to justify the apportionment it seeks. The *AA Mutual Insurance Association Ltd v Nomeka* 1976 (3) SA 45 (A) judgment established a principle that once a defendant has pleaded contributory negligence, it must actually follow through with evidence establishing the plaintiff's fault. The defendant did not do so.

[57] The *Fox v Road Accident Fund* [2018] ZAGPPHC 285 judgment records that:

‘[12] It is trite that the onus then rests on the plaintiff to prove the defendant's negligence which caused the damages suffered on a balance of probabilities. In order to avoid liability the defendant must produce evidence to disprove the inference of negligence on his part, failing which he/she risks the possibility of being found to be liable for damages suffered by the plaintiff.

[13] Where the defendant had in the alternative pleaded contributory negligence and an apportionment, the defendant would have to adduce evidence to establish negligence on the part of the plaintiff on a balance of probabilities, *Johnson, Daniel James v Road Accident Fund* Case Number 13020/2014 GHC paragraph 17, confirming *Solomon and Another v Musset and Bright Ltd* 1926 AD 427 and 435.’

[58] This Court has not been presented with any evidence which establishes contributory negligence on the part of the plaintiff.

[59] It is worth pointing out that in the written submission the defendant appears to rely upon the accident report as constituting an opposing version to justify either dismissal or apportionment. However, at trial, Ms Thomas attempted to put the contents of the accident report to the plaintiff in cross-examination, and this was successfully objected to as constituting hearsay because Sergeant Noeza was not called. The reliance on accident report in the written submissions is inconsistent with what occurred at trial.

[60] On *prima facie* evidence of negligence on the part of the defendant, the uncontested evidence is that the insured driver was driving on the wrong side of the road and an inference of negligence can be drawn from this. The *Sardi and Others v Standard and General Insurance Co Ltd* 1977 (3) SA 776 (A), judgment addresses the procedural and evidential consequences of such an inference, confirming that the defendant bore a burden to provide a sufficient explanation, which is a burden the defendant evidently failed to discharge.

[61] This Court is satisfied the plaintiff has proven on a preponderance of probabilities that the collision did occur in the manner pleaded in the particulars of claim.

[62] The defendant failed to show that plaintiff's actions have contributed to the causation of the collision.

[63] This Court therefore finds the defendant to be liable for the plaintiff's proven damages as a result of the collision which occurred on 26 August 2019, and there is no reason why the costs should not follow the result.

[64] The defendant is to pay the plaintiff's costs, as taxed or agreed, which shall include the costs of counsel to be taxed on scale B as between party-and-party.

[65] The action is to be placed on the roll for the determination of the quantum of the plaintiff's claim.

ORDER

[66] The defendant is liable for the plaintiff's proven damages as a result of the collision which occurred on 26 August 2019.

[67] The defendant is to pay the plaintiff's costs, as taxed or agreed, which shall include the costs of counsel to be taxed on scale B as between party-and-party.

[68] The action is placed on the roll for the determination of the quantum of the plaintiff's claim.

TR MPHEGO

ACTING JUDGE OF THE HIGH COURT

Appearances:

Plaintiff: Mr Claassens
Instructed by Laubscher and Hattingh Attorneys

Defendant: Ms Thomas
Instructed by the Road Accident Fund