IN THE HIGH COURT OF SOUTH AFRICA,

MPUMALANGA DIVISION, (MIDDELBURG LOCAL SEAT)

CASE NUMBER: 2020-021901

DELETE WHICHEVER IS NOT APPLICABLE

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

[redacted]

04 MAY 2026
DATE

H.F. FOURIE
SIGNATURE

In the matter between:

MASANGO CHARMAIN JABULILE — PLAINTIFF

and

ROAD ACCIDENT FUND — DEFENDANT

# JUDGMENT

## FOURIE AJ

## INTRODUCTION:

[1] The Plaintiff claims damages from the Defendant resulting from a motor vehicle collision that occurred at a time when the Plaintiff was a pedestrian. Both merits and quantum remain in dispute, and the issue pertaining to general damages, at the request of both parties, stands over to be adjudicated at a later stage.

## BACKGROUND:

[2] It is common cause that the Plaintiff, a major female, was involved in a motor vehicle accident on 27 June 2024. At the time of the collision, it is largely accepted that the Plaintiff, walking on the right-hand side of the road, attempted to avoid a puddle of water directly in front of her and by doing so suddenly took a step further into the road at which time a vehicle traveling from behind the Plaintiff collided with the Plaintiff, causing the Plaintiff to sustain injuries, specifically to her left angle.

## EVIDENCE ON MERITS:

[3] At the commencement of the trial, the Plaintiff applied in terms of Rule 38(2) of the Uniform Rules of Court, to adduce the evidence of the Plaintiff's experts by way of affidavit. The application was not opposed, and the Court was satisfied, under the circumstances, that the experts' evidence could be led in that manner.

[4] The Plaintiff was, however, not excused from leading evidence, and was the only witness to lead *viva voce* evidence when the matter was called.

[5] The Plaintiff testified that on the day in question, she approached, as a pedestrian, the entrance to a park, the entrance of which at the gate thereof

was not accessible due to water coming out by the gate. The Plaintiff testified that she looked over her shoulder and ahead and saw no vehicles approaching immediately, and decided to step into the road to avoid the puddle she faced.

[6] At the place where the Plaintiff was walking, she testified that there are no yellow lanes and that, in an emergency, a pedestrian would need to shift onto the gravel portion next to the road.

[7] The Plaintiff testified that she took one large step into the road to her left, which she estimated at approximately 1 meter. The Plaintiff testified that, while looking over her left shoulder, she saw a vehicle approaching, but she believed it did not pose any immediate threat to her or the manoeuvre she was undertaking. The Plaintiff testified that the vehicle did not warn her of its approach or flash its lights.

[8] During cross-examination, although the Plaintiff's version remained largely aligned, certain crucial concessions were made.

[9] The Plaintiff conceded that she wanted to avoid the water in front of her and that such a manoeuvre caused her to enter into the road on which vehicles were travelling.

[10] The Plaintiff conceded that it was, upon her presence in the road, that the vehicle collided with her. The Plaintiff conceded that a pedestrian has a continuing responsibility to look out for oncoming traffic when entering a road and not to enter the road unless it is safe to do so.

[11] Crucially, the Plaintiff conceded that her move was quick and sudden and was made unexpectedly to avoid getting wet.

[12] The Plaintiff conceded that she gave no signal to oncoming or following vehicles prior to executing her manoeuvre by stepping onto the road.

[13] The Plaintiff further conceded that had it not been for her stepping into the road, she would not have been hit.

[14] When asked why the Plaintiff did not simply wait for traffic to pass before executing the manoeuvre by stepping into the road, the Plaintiff testified that she thought she could execute the manoeuvre by stepping into the road, then quickly out of the road again, prior to any danger coming into existence.

[15] The Plaintiff concluded her testimony by stating that the only way in which she could avoid the accident was by continuing to walk straight through the water.

[16] The Defendant led no evidence in respect of the merits, and as such, the Court has not been confronted with any conflicting or mutually destructive facts to consider.

[17] Interestingly, when the Plaintiff led evidence, the Plaintiff's evidence was curtailed to address the Plaintiff's actions. The Plaintiff's evidence did not address the alleged negligence of the insured driver. During argument, counsel appearing for the Plaintiff requested the Court to make certain inferences from the statements made by the Plaintiff during her examination.

[18] Although the Defendant did not lead any rebutting evidence, the evidence led by the Plaintiff herself, and specifically the concessions she made, places the Court in a suitable position to know exactly how the accident occurred and which party ought to be regarded as negligent.

[19] The fact that the Defendant elected not to lead evidence on the merits of the matter does not absolve the Plaintiff of the burden of proving its case on the

balance of probabilities, nor does it lead to an automatic finding of sole negligence on the part of the insured driver.

[20] It is reasonable for a Court to either dismiss a Plaintiff's claim if it is justified, or alternatively to apportion negligence towards a Plaintiff and a Defendant, even in the absence of a Defendant leading any evidence, if it is appropriate to do so on the evidence as presented by the Plaintiff.

## LEGAL PRINCIPLES - MERITS:

[21] The Defendant bore the onus to prove negligence on the part of the insured driver.

[22] Whilst it is true that the Defendant bears the onus to prove that the Plaintiff contributed to the causing of the collision, nothing precludes the Defendant from relying on the evidence of the Plaintiff in order to meet such an onus.

[23] Generally, pedestrians ought not to be present on road surfaces used by motorised traffic. It should be generally accepted that a pedestrian entering onto a road surface utilised by motorised traffic is placing themselves in an unnatural position where they ought not generally be. Road surfaces used for motorised traffic ought to be reserved for their intended purpose, and any pedestrian who, for whatever reason, enters the road surface should do so firstly with an understanding that the manoeuvre they are undertaking is one that is inherently dangerous, and secondly, should be one only executed when it is completely safe to do so.

[24] Pedestrians wanting to cross a road serviced by motorised traffic should do so when it is completely safe to do so, and further should execute such manoeuvres at designated places designed to facilitate the crossing of such roads.

[25] It is so that pedestrians form part of a large number of road traffic accidents in our country, in part because drivers of motor vehicles do not keep a proper lookout or act in the many ways negligently or even recklessly, but in part it is also because pedestrians do not apply caution and care when entering road surfaces, and crossing roads at inopportune times and places.

[26] A pedestrian who intends to cross a road should do so at an opportune moment, and he must exercise reasonable care. He must use his senses to ascertain whether any motor vehicles are approaching. He should keep a proper lookout; he should acquaint himself with the vicinity, and scan the road so as to ascertain whether any motor vehicle on the road may be an actual or potential risk to his safety. Usually, a pedestrian will look to the left and to the right before entering the road. Once he reaches the centre of the road, he should devote his attention to motor vehicles approaching from his left.**[1]**

[27] It is however not only the duty of a pedestrian to ensure his own safety when walking on or next to a road. A driver is required to exercise reasonable care and vigilance, not only towards a pedestrian he sees or ought reasonably to see on or near the road, he is obliged to exercise the same reasonable care and vigilance towards an unseen pedestrian whose presence he should reasonably foresee or anticipate, because, for example, of the proximity of a school or of a passenger bus.**[2]**

[28] A motorist who sees a pedestrian on the roadway or about to venture thereon should regulate his driving so as to avoid an accident. A pedestrian may by his conduct convey to the motorist the impression that he recognises and intends to respect the motorist's right of way. When such an impression is conveyed by the pedestrian, the motorist may proceed on his way accordingly. Whether the motorist is reasonably entitled to assume or infer from the conduct of the pedestrian that his right of way is being recognised and respected is a question of fact to be decided in each case. ....... when the assumption is not justified, the motorist must regulate his driving to allow for the possibility that his vehicle may not enjoy an unabstracted passage. Where

a pedestrian reacts appropriately to the presence of the approaching vehicle, the credit enquiry is whether a reasonable motorist would foresee the reasonable possibility that the pedestrian might nonetheless act irrationally by moving, perhaps suddenly into the vehicle or its path. That possibility exists for young children, for adults who are plainly drunk, and may arise in other cases. [3]

[29] In ***Manual*** *supra* the Court, confronted with a pedestrian who suddenly hopped into the road ordered the pedestrian to be 75% negligent and the motorist which ought to have kept a better look out and who ought to have foreseen certain possibilities, was held to be 25% negligent.

[30] The Plaintiff concedes that her actions were sudden, unforeseen, and that, if she did not take such actions, the accident in all likelihood would not have occurred.

[31] The only doubt that was raised, and which was not rebutted by the Defendant, was the place of the accident, which, on the uncontested evidence before the Court, would not have been in the insured driver's line of travel but seemingly somewhere on the opposite lane of travel. The Court can also not absolve a driver, in this instance the insured driver, who, on the evidence available to Court, would have no difficulty observing the Plaintiff as a pedestrian next to the road under circumstances where the Plaintiff could observe the insured vehicle. The driver of the insured vehicle has an obligation to keep a proper lookout and to account for the fact that, while driving and executing any manoeuvre, the insured driver might be taking steps that pedestrians next to the road might take.

[32] It can, however, never be stated that the insured driver was the sole cause of the collision, nor could it be stated that the insured driver was the primary cause of the collision. The concessions made by the Plaintiff simply do not support such an inference being made.

[33] The only inference that can be made is that the Plaintiff was negligent in entering the road service at an inopportune time and manner, which was the cause of the accident. The Plaintiff's negligence does, however, not absolve the insured driver from keeping a proper lookout.

[34] Under the circumstances, this Court finds that the Plaintiff, as the pedestrian, was 80% negligent in causing the incident at hand, and the insured driver was 20% negligent.

## EVIDENCE ON QUANTUM:

[35] The Plaintiff elected not to lead any personal evidence regarding the quantum she is claiming. The Plaintiff persisted with the evidence of the experts who filed reports on her behalf. As stated, the Defendant did not file any opposing expert reports.

[36] The Plaintiff did, however, testify, and it was ordered in the expert reports that she sustained a fractured left ankle in the accident.

[37] It has not been disputed that the Plaintiff has indeed been injured in a motor vehicle accident. It remains to be determined whether the injury sustained led to a diminishment in the earning capacity of the Plaintiff.

[38] At the time of the accident, the Plaintiff was approximately 26 years old.

[39] The Plaintiff, at that stage, was in the process of completing an ABET Level 4 qualification, which the Court is advised is equivalent to a Grade 9 education. It is important to note that the Plaintiff completed the ABET Level 4 qualification after the accident.

[40] Since the completion of the ABET Level 4 qualification, the Plaintiff has not enrolled or participated in any further studies. The educational psychologist's

report filed on the part of the Plaintiff indicates the reason for the aforesaid to be partially because of the motor vehicle accident, but also as a result of financial constraints.

[41] From the expert reports filed, it is evident that the accident had some impact on the Plaintiff, but that there were certain emotional and financial struggles prior to the accident.

[42] Prior to the accident, the Plaintiff was employed as a cook at Fat Cake City from 2021 until 2022, when the Plaintiff resigned. The Industrial Psychologist makes mention of the fact that certain collateral information was requested from the Plaintiff, which was not provided by the Plaintiff to the Industrial Psychologist.

[43] The Industrial Psychologist suggests that, had it not been for the accident, the Plaintiff would have completed her ABET Level 4, which is equivalent to Grade 9 in 2024. The Industrial Psychologist then suggests that the Plaintiff would have completed her NQF Level 6 qualification within her chosen field by 2026. In respect of the NQF Level 6 qualification, it is noteworthy that the Industrial Psychologist seemingly misapprehends that the Plaintiff needed, within that timeframe, to secure Grade 10, Grade 11, Grade 12, and a Higher Certificate before obtaining the NQF Level 6 qualification.

[44] The expert reports all indicate that the Plaintiff's ability to pursue her studies remains limited after the accident. The experts, however, do not provide sufficient reasons for this. The Plaintiff would have been the person who is in the best possible position to explain to the Court why she has not been able to proceed with her studies, to explain in what way the accident has affected her, and in what way the accident has affected her career path.

[45] This Court has already found that the ***Galante Principle*** ought to be extended to Road Accident Fund matters. **[4]**

[46] During the argument, counsel appearing for the Plaintiff conceded that a broken ankle sustained when the Plaintiff was 26 years old would not justify a total diminishment of earning capacity for the Plaintiff for the remainder of her life.

[47] All the expert reports filed indicate that the Plaintiff wished to pursue a career in business or in a corporate sphere. The Plaintiff failed to address both in their expert reports as well as in their election not to lead evidence to indicate why this would not still be possible after the accident.

[48] Although the Court accepts that a diminishment in the earning capacity of the Plaintiff has occurred due to the injury sustained in the accident, the current matter is one where significantly higher than normal contingencies ought to be applied.

[49] I am in agreement with the Defence Counsel that a higher contingency should be allowed than the normal contingency deductions, as was prayed for by the Plaintiff. I am not convinced that the Plaintiff's lack of progress in her career is solely a result of the accident. The fact that the Plaintiff at the time of the accident was already 26 years of age, and completing Grade 9, or its equivalent, is indicative of certain external effects that need to be taken into consideration by this Court on whether the Plaintiff would have ultimately succeeded in her journey as anticipated had the accident not occurred. Further to the aforesaid, the Plaintiff is young and, if the expert reports are to be believed, remains motivated and is in all likelihood capable of finding employment that would overcome any physical deficiencies she might retain after the accident. Nothing in the expert reports indicates that the Plaintiff is not capable of being employed and earning a proper living.

[50] The contingencies the Court applies are utilised to seek to find a balance between damages sustained, the possibility that, had the accident not occurred, certain income would have been generated, and the possibility that,

the accident having occurred, the Plaintiff nonetheless proceeds to excel and to reach their potential.

[51] The manner in which the Plaintiff elected to present her case in order to prove her quantum leaves much to be desired.

[52] The evidence presented is, to a great degree, vague and unsubstantiated. The Plaintiff has, however, even if it is by the slightest of margins, on a balance of probabilities, convinced the Court that a diminishment in her earning capacity has occurred. This Court is, however, not persuaded that the diminishment in her earning capacity is fairly reflected in the expert reports presented to the Court. The Court is similarly not persuaded that general contingencies ought to apply. Having regard to what this Court has already found *supra*, I am satisfied that this matter is indeed one where significantly higher than normal contingencies can be applied, and I believe, given the facts of the matter, that a contingency reduction of 50% would be justified under the circumstances.

## COSTS:

[53] Although there has been some success on the part of the Plaintiff, the Plaintiff remains the party that was, to a greater degree, the cause of the incident at hand. To order the Defendant to reimburse the Plaintiff for the Plaintiff's costs in totality under circumstances where it was evidently clear that the Defendant was justified in opposing the Plaintiff's claim would not be fair.

[54] I accordingly believe that the Defendant ought to be liable in respect of the Plaintiff's costs proportionally to the finding on the merits the Court previously made.

ORDER:

[55] For all the aforesaid reasons, the following Order is made:

[52.1] The Plaintiff's application in terms of Rule 38(2) of the Uniform Rules of Court is granted, and the expert evidence of the Plaintiff is received on affidavit.

[52.2] The Defendant is held 20% liable for the Plaintiff's proven or agreed damages.

[52.3] The Plaintiff's claim for general damages is postponed *sine die*.

[52.4] The Plaintiff's claim for loss of earnings is reduced by applying a 50% contingency, and after applying the 50% contingency as well as the 20% liability of the Defendant, the Defendant is liable towards the Plaintiff in the amount of R 816 165.40 in respect of her future loss of earnings.

[52.5] The Defendant shall pay 20% of the Plaintiff's costs on a party and party scale.

[redacted]

H F FOURIE AJ
ACTING JUDGE OF HIGH COURT, MIDDELBURG

Judgment reserved on: 29 APRIL 2026
Date of delivery: 04 MAY 2026

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[1] W.E. Cooper – Delictual Liability in Motor Law, 1996 Edition at 193 – 194

[2] Cooper *supra* at 195

[3] Manual v SA Eagle Insurance Company Ltd 1982 (4) SA 352 (C)

[4] Skosana v Road Accident Fund [2026] 1 All SA 588 (MM) (2 February 2026)