



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

JUDGMENT

Not Reportable

Case no: 10706/2022

In the matter between:

SHARON CECILIA JULIUS

PLAINTIFF

and

THE ROAD ACCIDENT FUND

DEFENDANT

Neutral citation:

Coram: Mgengwana; AJ

Heard: 5 May 2026

Delivered: 18 May 2026

Summary: Delict – Liability – Section 17 of the Road Accident Fund Act 56 of 1996 – Meaning of “convey” – Section 1(iv) of the Road Accident Fund Act 56 of 1996 – Duty of bus driver to look after safety of his/her passengers - Onus of proof.

ORDER

[1] In the result, I grant the following order:

[1.1] The Defendant is liable for hundred percent of the Plaintiff's proven damages.

[1.2] The Defendant is to pay the party and party costs relating to the liability aspect of the Plaintiff's claim, such costs to include:

[1.2.1] The costs of the trial 5 May 2026.

[1.2.2] The costs of counsel on Scale B.

JUDGMENT

MGENGWANA, AJ

Judgment handed down: The judgment is handed down electronically by circulating to the parties or legal representatives by email. The date for the handing down of the judgment is deemed to be 18 May 2026.

Introduction

[1] The Plaintiff instituted an action against the Defendant for delictual damages arising from a motor vehicle accident that took place at or near Table View, Western Cape, on 1 August 2017.

[2] The Plaintiff alleges that she was involved in this motor vehicle accident (accident) as a passenger in a My City Bus bearing unknown registration letters and numbers, which was then driven by an unknown insured driver.

[3] The Plaintiff goes further to allege that this accident resulted from the sole and/or partial negligence of the insured driver, who was negligent in, *inter alia*, the following respects:

(a) He failed to keep a proper lookout;

(b) He failed to ensure that the bus and all its components were in good working order;

(c) He failed to ensure that the footbridge of the bus was working properly and was safe for disembarking; and

(d) He failed to take any adequate steps to avoid the collision, when by exercise of reasonable care and skill, he could have and should have done so.

[4] As a result of the accident, the Plaintiff sustained injuries that necessitated her hospitalization.

[5] The Defendant pleaded ignorance of the alleged accident, the date on which it allegedly occurred, the place at which it allegedly occurred and how it allegedly occurred.

[6] The Defendant denied that the accident was caused solely or partly by the unlawful and negligent driving of the said unknown insured driver.

[7] Then the Defendant proceeded to plead in the alternative that if this court finds that the accident resulted from the negligence of the insured driver, then such negligence did not causally contribute to the accident (causation).

[8] In the further alternative, the Defendant pleaded that if this court finds that the insured driver was causally negligent, then the Defendant avers that the collision was caused partly through the negligence of the unknown insured driver and partly as a result of the Plaintiff's negligence, who was negligent in, *inter alia*, the following respects:

(a) She failed to keep a proper lookout;

(b) She placed herself in the line of danger

(c) She failed to avoid the collision when, by exercise of reasonable care and skill she could and should have done so.

[9] The trial of this matter proceeded in respect of the issue of liability only following an order separating the merits from the quantum made in terms of Rule 33(4) of the Uniform Rules of Court.

The evidence presented at the hearing

[10] The Plaintiff testified as follows under oath in court:

(a) On 1 August 2017, she was travelling by bus from Melkbosstrand to Table View, where her four-year-old granddaughter was attending school. She boarded the bus at the My City Bus Station at Melkbosstrand with the intention of getting off at Table View. On arrival at Table View My City Bus Station just shortly before getting off, she waited for the bus to stop, the door to open and the electronic folding bus steps (footbridge) to straighten so that she can get off the bus. She said that as she alighted from the bus while carrying her granddaughter, she stepped onto the footbridge, which then gave way resulting in her falling and fracturing her right foot. She testified that her injuries were caused by the unstable footbridge, which gave way as soon as she stepped onto it. She also testified that after the incident, the insured driver drove off.

(b) She testified that when she went to My City Bus to report the incident, they rejected her version based on the allegation that they do

not have footage of the accident. After being unsuccessful with My City Bus, she then went to the Police Station of Table View to report the incident *albeit* only on 26 March 2018.

[11] The evidence of the Plaintiff was not corroborated by anyone. After giving evidence, the Plaintiff closed her case. The Defendant did not call any witness to testify on its behalf, Plaintiff's evidence was therefore not challenged.

Applicable legal principles

[12] Plaintiff's claim herein is based on section 17 of the Road Accident Fund Act 56 of 1996 ("the Act"), which states the following:

"The fund or an agent shall ... be obliged to compensate any person (the third party) for any loss or damage which the third party has suffered as a result of any bodily injury to herself.....caused by or arising from the driving of a motor vehicle by any person at any place within the Republic, if the injury or death is due to the negligence or other wrongful act of the driver or the owner of the vehicle.."¹

[13] Simply stated, in a claim instituted in terms of the Road Accident Fund Act, the Plaintiff must prove, on a balance of probabilities, that the damages she has sustained are a result of the negligent driving or other wrongful act of the bus driver. In this case, the Plaintiff only has to prove 1% negligence on the part of the insured driver as she is claiming that she got injured as a passenger in this accident.

¹ Section 17 of the Road Accident Fund Act 56 of 1996

[14] Section 1(iv) of the same Act defines to “convey” as follows:

“In relation to the conveyance of a person in or on a motor vehicle, includes-(a) alighting from the motor vehicle concerned after having been so conveyed.”²

In *Pillay v Krishna* 1946 AD 946 at 951-2, a three-legged approach was stated as follows with regard to the burden of proof:

“The first principle in regard to the burden of proof is that if one person claims something from another in a Court of law, then he has to satisfy the Court that he is entitled to it. But there is a second principle which must always be read with it, where the person against whom the claim is made is not content with a mere denial of that claim, but sets up a special defence, then he is regarded quoad that defence, as being the claimant: for his defence to be upheld he must satisfy the Court that he is entitled to succeed on it. But there is a third rule: “he who asserts, proves not he who denies, since a denial of fact cannot naturally be proved provided that it is a fact that is denied and that the denial is absolute.”³

[15] In *Kruger v Coetzee* 1966 (2) SA 428 (A), Holmes JA held as follows at page 430 E-F of the judgment:

“For the purposes of liability culpa arises 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;
- (b) and the defendant failed to take such steps.”⁴

[16] In the unreported but reportable case of the South Gauteng High Court, *Van Zyl v Metro Bus & Another*, Sawma AJ stated the following when

² Section 1 of the Road Accident Fund Act 56 of 1996

³ *Pillay v Krishna* 1946 AD 946

⁴ *Kruger v Coetzee* 1966 (2) SA 428 (A)

establishing whether there is any difference between the phraseology used in section 17(1) of the Act and the one used in the previous similar Acts.

"It would, however, appear that the factors enumerated in the matter of *Wells and Another v Shield Insurance Company Ltd*, are as applicable to interpreting section 17(1) of the Act, as was the case with the wording of the corresponding sections of the Motor Vehicle Insurance Act, Act 29 of 1942, and the Compulsory Motor Vehicle Insurance Act, 56 of 1972".⁵

[17] After discussing various judgments Sawma AJ found as follows:

"[28] Can it be said that the malfunction of the door of the bus *in casu* is a "risk of a type which differed in accordance with whether the bus was being driven or not"? In my view the answer to that question is dependent upon whether or not a malfunction of the nature in question could only occur if the engine of the bus was running at the time. From the agreed facts forming the subject matter of the stated case, it is clear that the bus was being "driven" at the time of the incident albeit that it happened to be stationary at the bus stop. Accordingly, if the malfunction was dependent upon the engine running, that, in my view, and in light of the manner in which the test for causality has been applied, would be sufficient in these circumstances to support the conclusion that the injury is one arising from the driving of the motor vehicle. If the malfunction is in fact one which would have occurred even, for example, if the engine of the bus was not running, then the driving of the vehicle would, in my view, not be causally connected with the injury that resulted from the malfunction."⁶

⁵ Van Zyl v Metro Bus & Another [2012] ZAGPJHC 220 at para 15

⁶ Ibid

Analysis of the evidence

[18] The uncontroverted evidence presented by the Plaintiff herself herein is that she sustained injuries that resulted in her hospitalization while alighting from a stationary My City Bus. Based on the definition of convey contained in paragraph 14 of this judgment, it is accepted that the Plaintiff was a passenger when she sustained her injuries and is therefore required to prove only 1% negligence on the part of the insured driver to succeed with hundred percent of her claim.

[19] Besides presenting no evidence to the Court to contradict the Plaintiff's version, the Defendant had also filed a Plea with bare denials to the issue of liability herein.

[20] It was submitted in argument on behalf of the Defendant that the footbridge gave way because of the additional weight of her granddaughter that the Plaintiff was carrying. This startling submission was made even though the Court was not furnished with the evidence of the weight of the Plaintiff, the evidence of the weight of her granddaughter and the evidence relating to the maximum weight which the footbridge can handle. It then goes without saying that this submission is susceptible to rejection and it is indeed so rejected.

[21] When asked about the implication of the application of section 1(iv) of the Act to this claim, the legal representative of the Defendant promptly referred this Court to the case of *Van Zyl v Metro Bus & Another*, already cited above. She argued that the *Van Zyl* case is authority for her submission that

Plaintiff's claim herein lies with the City of Cape Town and not with the Defendant.

[22] In the *Van Zyl* matter, Van Zyl, the appellant therein sustained fractures to her hand while boarding a stationary Metro Bus. While so boarding, the door mechanism of the bus malfunctioned and this resulted in her hand being caught in the door. Van Zyl then instituted a damages claim against Metro Bus but Metro Bus denied liability and pointed Van Zyl to the Road Accident Fund. However, the court in the *Van Zyl* matter found as follows:

" [30] The reliance by the first respondent upon the provisions of 'the Act' constitutes a special defence in the circumstances and accordingly the first respondent bore the onus of establishing that the plaintiff's injuries were "caused by", or "arose from", the driving of the bus. In the circumstances the failure of the parties to deal with this cardinal aspect in the stated case must lead to the conclusion that the first respondent has failed to discharge the onus resting upon it."⁷

[23] Therefore, the *Van Zyl* case does not come to the assistance of the Defendant as in that case, Metro Bus failed to deal with the cardinal aspect of whether Van Zyl's injuries were "caused by" or "arose from" the driving of the bus. The same cannot be said about Plaintiff's counsel in this matter, as he extensively dealt with this both in his heads of argument and his oral submissions to this Court whereas Defendant's legal representative did not present anything to dispute Plaintiff's evidence that the injuries sustained by herself in the accident in question were "caused by" or "arose from" the negligent driving of the My City Bus.

⁷ Ibid

[24] This having been said, this Court finds that Plaintiff has successfully discharged her onus, on a balance of probabilities, that the injuries sustained by her in the accident of 1 August 2017 while being a passenger were caused by or arose from the negligent driving of the My City Bus.

[25] In the result, I grant the following order:

[25.1] The Defendant is liable for one hundred percent of the Plaintiff's proven damages.

[25.2] The Defendant is to pay the party and party costs relating to the liability aspect of the Plaintiff's claim, such costs to include:

[26.2.1] The costs of the trial 5 May 2026.

[26.2.2] The costs of counsel on Scale B.




TJ MGENGWANA
Acting Judge of the High Court

APPEARANCES:

For the plaintiff: Mr. L.J. Smit

Instructed by: A. Batchelor & Associates

Mr. E. Louw

For the Defendant:

Instructed by: The State Attorney

Ms. M. Mothilal