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**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
(LIMPOPO DIVISION, POLOKWANE)**

CASE NUMBER: 4492/2024

(1) REPORTABLE: YES/NO

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

(3) REVISED.

DATE: 04/06/2026

SIGNATURE:

In the matter between:

MAPELANE VINCENT

PLAINTIFF

AND

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

CHAUKE AJ

INTRODUCTION

[1] The Plaintiff's is Mr Mapelane Vincent an adult male who is suing the Defendant in his Personal Capacity for damages, in terms of the Road Accident Fund Act 56 of

1996 (RAF Act) as a result of motor vehicle accident which occurred on the 31st of May 2022.

[2] The Plaintiff was the driver of motor vehicle with registration numbers and letters C[...] which collided with motor vehicle with registration numbers and letter F[...] which was there and then driven by Mr Victor Modlela (hereinafter referred to as the First insured driver).

[3] The accident occurred along Deerpark road, Tzaneen, Limpopo Province.

[4] The Plaintiff's Claim against the Defendant is as follows:

- a) Payment of 100% of all proven damages to the Plaintiff,
- b) The aspect of General Damages was postponed sine die,
- c) Payment of R2 900 000-00(Two Million, Nine Hundred Thousand Rand) in respect of Past and Future Loss of Earnings,
- d) And also Section 17 (4) (a) Undertaking in respect of Future Medical Expenses.

[5] The matter was before Court on Merits and Quantum and on the Subhead of damages as indicated above.

[6] The Plaintiff issued summons against the Defendant and were served on the Defendant on the 24th of June 2024.

[7] The Defendant failed to file Notice of Intention to Defend.

[8] The Plaintiff brought an Application for Default Judgment in terms of Rule 31 (2) of the Uniform Rules of this Court on Both Merits and Quantum.

[9] The Plaintiff served and filed Notice of Set Down on the Defendant on the 10th of September 2025 and later served and filed Notice of Removal and Re-instatement on the 07th of October 2025.

[10] Mr T.M Malatji (hereinafter referred to as Plaintiff Counsel) called the matter and indicated that he was ready to proceed with trial on a Default Judgment basis in terms of Rule 31 (2) as the Defendant failed to file its Notice of Appearance to Defend.

[11] The issues before Court were that of liability, Past and Future Loss of Earnings as well as Future Medical Expenses. (Section 17 (4) (a) Undertaking) and General Damages was to be postponed sine die.

[12] He informed the Court that the Plaintiff has subpoenaed two witnesses, Mr. Victor Mondlela (hereinafter referred to as the First insured driver) and Mr. Refilwe Selowa in respect of Merits. Mr. Selowa is employed at Tzaneen SAPS and drew sketch plans regarding to how the accident occurred.

[13] Plaintiff's Counsel also brought an Application in terms of Rule 38 (2) in order to lead evidence by way of Affidavits without calling Experts witnesses to come and give oral evidence at Court. The Plaintiffs Application in this regard was therefore granted.

[14] This justified the Court in hearing the matter by way of Affidavits in respect of Quantum. All the Plaintiffs Experts reports remained unchallenged as the Defendant failed to appoint Experts on the aspect of Quantum.

THE MERITS

[15] Plaintiff's Counsel called the Plaintiff himself to testify how the accident occurred.

- a) His testimony was that on or about the 31st of May 2022, he was the driver of a motor vehicle with registration numbers C[...] and was travelling from Tzaneen to Kheshokholo Village along Deerpark road.
- b) The accident occurred at 07:30 in the morning. The road was divided by one lane of travel.
- c) He indicated that he was travelling behind the First insured vehicle on the same lane.
- d) He testified that the distance between his motor vehicle and the First insured vehicle was about 10 meters.
- e) He testified that the First insured motor vehicle did not reduce speed before the accident but only stopped suddenly in the middle of the road.
- f) He indicated that brake lights of the First insured vehicle were not on and the hazards were also not on.
- g) He indicated that the First insured vehicle suddenly stopped in the middle of the road without warning as a result he collided it from behind on the rear right-hand side.
- h) He indicated that he tried to avoid collision by applying brakes.

[17] The Plaintiff was asked under Examination in Chief, why-he did not swerve to the right in order to avoid the accident, he testified that there were on-coming motor vehicles. He was further asked by Mr. Malatji whether it was possible for him to take other evasive actions in order to avoid the accident, and said it was not possible.

[18] Plaintiff's Counsel called the First insured driver to assist the Court how the accident happened.

[19] The Court requested him to explain how the accident occurred.

- a) He indicated that on the 31st of May 2022, in the morning, he was traveling along the Deerpark road and the Plaintiff was driving behind him.
- b) He was traveling at 60 km/h. His motor vehicle was roadworthy.

- c) He reduced speed and indicated to the right into the gravel road.
- d) He was stationary on the road, waiting for the on-coming motor vehicles to proceed first, before turning right when the Plaintiff's motor vehicle collided his motor vehicle from behind at the back center.

[20] Mr. Malatji called Constable Selowa, he testified that he attended the scene of the accident on the 31st of May 2022, along the Deerpark road but did not witness the accident. He was accompanied by his colleague also from Tzaneen Police Station.

[21] His testimony was that they found two motor vehicles at the accident scene.

[22] He indicated that he was assisted by the Plaintiff and the First insured driver in order to draw the sketch plan. His evidence was corroborated by the sketch plan which was contained in the Accident Report.

[23] He further testified that three motor vehicles were involved in a collision in this matter. He indicated that another sketch plan was drawn by him and this sketch plan is contained in the Police Docket.

[24] Mr Malatji referred the Court to the Police Docket. It is evidence before Court that three motor vehicles were involved in a collision.

[25] The Court requested him to explain why only two motor vehicles were mentioned in the Accident report and three motor vehicles were indicated in the Police Docket, he failed to give an explanation.

[26] Plaintiff's Counsel made submissions and referred Court to the following reported Judgments: ***Butt and Another v Van Den Camp; AA mutual insurance Associated Limited v Nomeka and Bata Shoe CO. Limited (South Africa V Moss)***.

[27] In *AA Mutual Insurance Associated Limited V Nomeka*¹, the Court emphasized that:

such a manoeuvre is inherently dangerous, placing a stringent duty on the driver to ensure it is sure before proceeding.

[28] The Requirements for a Safe Turn. The Judgment in *Bata Shoe CO. Limited (South) v Moss*² provides a comprehensive exposition of his duty. A driver wishing to turn must:

- a) signal his intention clearly and in good time.
- b) refrain from turning until an opportune time-defined as a time when the turn can be made without endangering or materially impeding other lawful road users.
- c) the driver bears the duty to satisfy himself by full and carefully personal observation that such an opportune time exists. A mere signal does not absolve this duty of observation.

[29] Mr. Malatji made submissions that the issue of liability should be finalized with an apportionment of 70/30% in favour of the Plaintiff.

[30] The Plaintiff's testimony that the First insured driver made a sudden stop in the middle of the road without any signal, that the First insured driver did not reduce speed before stopping, is improbable. It is not possible for a motor vehicle to stop suddenly without first reducing speed.

[31] The accident occurred in the morning, during daylight, visibility was good and the road surface was dry.

¹ 1976 (3) SA 45 AD

² 1977 (4) SA 16 (W)

[32] The Plaintiff conceded that he collided the First insured vehicle from behind, after applying brakes but his motor vehicle skidded.

[33] In his testimony, the Plaintiff failed to assist the Court how the third motor vehicle was involved in the collision. This testimony was corroborated by the sketch plan which was contained in the Accident Report.

[34] The First insured driver in his testimony also did not indicate how the third motor vehicle was involved in the collision. It is not clear before Court whether the third motor vehicle was involved in a collision only after the Plaintiffs motor vehicle and the First insured motor vehicle's collision

[35] The First insured driver indicated that he was collided by be Plaintiffs vehicle as he was stationary on the road, indicating to turn right into the gravel side of the road. The insured driver is a credible witness and his testimony is more probable.

[36] The Plaintiff failed to keep a proper following distance, he also failed to keep proper lookout. Had he kept a proper lookout, he could have seen the First insured vehicle that was waiting to turn right into the gravel side of the road and the accident would have been avoided.

[37] From the evidence before Court, the Plaintiffs Claim against the Defendant is only based on the First insured driver's negligence, which was not proven on the balance of probabilities and not negligence on the part of the driver of the third motor vehicle.

[38] I am of the view that the Plaintiff failed to produce a prima facie case against the Defendant on the aspect of liability in order for this Court to grant Judgment in favour of the Plaintiff.

[39] In ***Fourier v Ronald Bobroff & Partners Inc***³ the Court state that:

"Duty of on Attorney to Client: breach of mandate in respect of claim for damages for loss of earnings capacity: damages not provided: absolution from the instance should have been ordered: appeal dismissed".

[40] Key Aspects of Absolution from the Instance:

- a) When it Applies: It is granted when the Plaintiff has failed to provided sufficient evidence on which a reasonable Court might find for them.
- b) The Test: Courts apply the test set out in ***Claude Neon Lights (SA) Ltd v Daniel***⁴ 1976, asking if there is evidence upon which a reasonable court could (not should) find for the Plaintiff.
- c) Effect: It is not a final Judgment on the Merits (*not res Judicata*), meaning a Plaintiff could, in theory, bring the case again. However, this is constrained by prescription rules.
- d) Procedure: Generally, it is requested after the Plaintiff closes their case, but before the Defendant presents their evidence.
- e) Application: While frequently used in high courts and magistrate courts, it is also increasingly relevant in specialized forums like the CCMA for dealing with vexatious claims.
- f) Requirements: It is applied sparingly, typically reserved for instances where the Plaintiff's case is fundamentally weak or the witnesses have completely broken down.

[41] The Plaintiff's evidence against the First insured driver, on the balance of probabilities does not indicate any form of negligence on the party of the First insured driver and also fail to assist this Court how the third motor vehicle was involved in this collision, whether the third motor vehicle was involved in a collision after the Plaintiff's

³ (653/2026) [2017] ZASCA 91 (7 June 2017)

⁴ 1976 (4) SA 403 (A)

motor vehicle and the First insured motor vehicle's collision. Constable Selowa did not witness the accident but only drew two sketch plans. His testimony also did not shed some lights on how the third motor vehicle was involved.

[42] In the circumstances, this Court will only make a ruling on the issue of liability and not on the aspect of Quantum. I am of the view that the Plaintiff failed to produce a prima facie case against the Defendant in order for this Court to grant Judgment in favour of the Plaintiff in respect of Merits.

[43] **Wherefore, the Court makes the following Order:**

43.1. Absolution from the Instance.

43.2. The Plaintiff to pay the Defendant's party and party costs on scale B.

CHAUKE
ACTING JUDGE OF THE HIGH COURT,
POLOKWANE; LIMPOPO DIVISION

APPEARANCES

FOR THE PLAINTIFF : ADVT.M. MALATJI
INSTRUCTED BY : NGOBENI CNW ATTORNEYS, POLOKWANE

FOR THE DEFENDANT : NO APPEARANCES

DATES OF HEARING : 12 & 15 JANUARY 2026

DATE OF JUDGMENT : 04 JUNE 2026

This judgement was handed down electronically by circulation to the parties' representatives by email. The date and time for hand-down of the judgement is deemed to be 04 JUNE 2026 at 10h00