

**SAFLII Note:** Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

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

**CASE NO: 2023-049615**

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

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

(3) REVISED.

DATE: 22-05-2026

SIGNATURE:

In the matter between:

**M[...] N[...]  
OBO CHILDREN**

**Plaintiff/Applicant**

and

**THE ROAD ACCIDENT FUND**

**Defendant/Respondent**

*This Judgment was prepared and authored by the Judge whose name is reflected and is electronically circulated to the parties/their legal representatives by e-mail and by uploading it to the electronic file of this matter on Caselines. The date for hand-down is deemed to be **22 May 2026**.*

---

**JUDGMENT**

---

**MASHAMBA AJ**

## INTRODUCTION

[1] The plaintiff is **M[...] N[...]**, an adult female born on **25 December 1960**, who acts in a representative capacity on behalf of her grandchildren, namely **P[...] N[...]**, **R[...] S[...] A[...]**, **A[...] N[...] P[...] N[...]**, **N[...] P[...] N[...]**, and **N[...] N[...] N[...]**. The plaintiff instituted an action against the Road Accident Fund ("the defendant") for damages arising from a motor vehicle collision that occurred on **10 July 2022**. As a result of the collision, **S[...] N[...]** ("the deceased"), the biological father of the aforementioned children, tragically passed away at the scene.

[2] The plaintiff issued summons on **25 May 2023**, which was duly served on the defendant on **29 May 2023**. The defendant delivered a notice of intention to defend on **8 June 2023**, but failed to deliver its plea within the twenty (20) days prescribed by Rule 22(1) of the Uniform Rules of Court. On **28 September 2023**, the plaintiff served a notice of bar on the defendant, calling upon it to deliver its plea within five (5) days, failing which it would be automatically barred. The defendant did not deliver its plea within the stipulated period and accordingly became automatically barred from doing so.

[3] On 11 August 2025, the plaintiff instituted an application for default judgment. The application was unopposed. The matter was set down for hearing on 1 April 2026, and the notice of set-down was properly served on the defendant. The defendant failed to appear when the matter was heard.

## ISSUE BEFORE THIS COURT

[4] The Court was required to determine both the **merits** of the plaintiffs claim and the **quantum** of the damages arising therefrom.

## MERITS

[5] According to the plaintiff, a head-on collision took place on 10 July 2022 involving a white truck with registration number K[...], driven by Mr Hlophe, and a gold Volkswagen Polo TSI with registration number H[...], driven by the deceased.

## EVIDENCE

[6] The plaintiff brought an application in terms of Rule 38(2) of the Uniform Rules of Court, seeking leave that the evidence of the expert witnesses be adduced on affidavit.

[7] The plaintiff appointed various medical and related experts to compile reports in support of the children's claim for loss of support. In advancing her case, the plaintiff relied on the following expert reports;

- 7.1 Molomafo Assessors report
- 7.2 Hlunga Industrial Psychologist
- 7.6 Tsebo Actuaries

[8] The plaintiff's evidence on the merits consists of the section **19(f) affidavit**, the **Accident Report**, and the **police docket**.

## THE LAW

[9] In terms of section 17 of the Road Accident Fund Act, 56 of 1996 (the Act), as amended,

- (1) *"The Fund or an agent shall-*
  - (a) *subject to this Act, in the case of a claim for compensation under this section arising from the driving of a motor vehicle where the identity of the owner or the driver thereof has been established;*
  - (b) .....

*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 himself or herself or the death of or any bodily injury to any other person, 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 of the owner of the motor vehicle or of his or her employee in the performance of the employee's duties as employee; ..."*

## **SUBMISSIONS**

[10] The plaintiff submitted that the collision in question was a head-on impact, and that on the available evidence she ought to succeed 100% on the merits. It was accordingly contended that the defendant is liable to compensate the plaintiff for 100% of her proven damages. The plaintiff's further submissions were advanced in accordance with her heads of argument<sup>1</sup>.

[11] The plaintiff referred the Court to the assessor's report, the industrial psychologist's report, and the actuarial report, and submitted that, on the basis of these expert opinions, the appropriate award for loss of support amounts to **R4 749 089.00**. The actuarial calculation was premised on a dependency period extending until the age of 24.5 years.

## **COURT'S DISCUSSION AND FINDINGS**

[12] The Court will first consider the merits, as the plaintiff must establish negligence on the part of the insured driver. Should the plaintiff fail to prove such negligence, the claim on quantum cannot succeed.

---

<sup>1</sup> Caseline 09-64

[13] It is noteworthy that neither the founding affidavit, the particulars of claim, nor the section 19(f) affidavit allege negligence on the part of the insured driver, which is a necessary averment for liability under section 17 of the RAF Act<sup>2</sup>.

[14] The Court considered the manner in which the collision occurred, as reflected in the **Accident Report**, the **sketch plan**, and the version of the insured driver, **Mr Hlophe**. According to these sources, the deceased's motor vehicle, a Volkswagen Polo TSI, **lost control**, veered into the lane of oncoming traffic, and collided with the insured vehicle, a truck, which was travelling within its correct lane of travel.

[15] The version of the insured driver was corroborated by Mr Mokoena, the police officer who attended the scene of the collision. In his statement, Mr Mokoena confirmed that the owner of the truck had shown him a video clip depicting the incident. From the footage, he observed that the deceased, who was driving the Volkswagen Polo, lost control of his vehicle and veered into the path of the oncoming truck.

[16] On the evidence before me, the plaintiff has not discharged the onus of proving negligence on the part of the insured driver. The probabilities instead support the conclusion that the deceased's vehicle was solely responsible for causing the collision. In the circumstances, the Court finds that the plaintiff's case cannot succeed. The evidence establishes that the deceased was solely responsible for the collision, and the plaintiff has accordingly failed to prove negligence on the part of the insured driver. The plaintiff's claim is therefore incapable of being sustained.

## **ORDER**

[17] In the circumstances, the court makes the following order;

1. The plaintiff's claim against the defendant is dismissed.

---

<sup>2</sup> Caseline, amended particulars of claim 12-26-27 and Section 19 F affidavit 01-23-25

---

**E MASHAMBA  
ACTING JUDGE OF THE HIGH COURT,  
PRETORIA; GAUTENG DIVISION**

APPEARANCES

FOR THE PLAINTIFF : ADV RR MAISELA  
INSTRUCTED BY : KOTANA BABALWA ATTORNEYS INC

FOR THE DEFENDANT : NO APPEARANCE  
INSTRUCTED BY : THE STATE ATTORNEYS

DATE OF HEARING : 01<sup>st</sup> April 2026

DATE OF JUDGEMENT : 22<sup>nd</sup> May 2026