

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Not Reportable

CASENO: 23424/20

In the matter between:

MSAYA MNDLULI

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

Neutral Citation: *Mdluli v Road Accident Fund* (23424/20)[2026]

ZAGPPHC (04 September 2026)

Coram: LESUFI AJ

Heard: 18 June 2026

Delivered: 04 September 2026

Summary: Delict – Claim for damages – Motor vehicle collision – Whether the Plaintiff established liability on the merits – contributory negligence – Apportionment of Damages Act 34 of 1956 – onus of proof – Road Accident Fund Act 56 of 1996 – s 17 – Uniform Rules of Court – Rule 33(4) – separation of merits and quantum – Uniform Rule 31(2) – default judgment

ORDER

1. The Defendant is ordered to pay 50% of the Plaintiff's proven damages
 2. The Defendant shall pay the Plaintiff's taxed party and party costs on the High court scale including Counsel's fees in the discretion of the Taxing Master.
 3. Quantum is postponed *sine die*
-

JUDGMENT

LESUFI AJ

Introduction

- [1] This is an action for damages arising from a motor vehicle collision that occurred on 15 July 2017. The Plaintiff, Mr Msaya Mdluli, instituted an action against the Defendant, the Road Accident Fund ("RAF"), seeking compensation in terms of section 17 of the Road Accident Fund Act 56 of 1996 for injuries sustained as a result of the negligent driving of the insured driver. As a consequence of the collision, the Plaintiff sustained

injuries and consequently claims damages in respect of past and future loss of earnings and past medical expenses.

- [2] The merits were separated from Quantum in terms of Rule 33(4) of the Uniform Rules of Court.
- [3] The matter came before this Court as an application for default judgment following the RAF's failure to comply with the Rules of Court by not filing its plea within the prescribed period the RAF failed to take the necessary steps to advance the matter and was not represented when the application for default judgment was heard.

Background Facts

- [4] The Plaintiff instituted the action against RAF by way of summons, which were duly issued and served on the RAF on 30 July 2020. The summons, in accordance with the applicable provisions of the Uniform Rules of Court, expressly notified the RAF of the prescribed periods within which it was required to take the necessary procedural steps, including the filing of its plea, and of the consequences of failing to comply with such time periods.
- [5] On 15 December 2020, the RAF served a notice of intention to defend. Notwithstanding its notice of intention to defend, the RAF failed to deliver its plea within the prescribed period. Consequently, upon the expiry of the applicable period for delivery of the plea, the RAF became ipso facto barred from delivering its plea.

- [6] Due to the lapse of time and RAF's failure to file its plea, the Plaintiff proceeded to apply for a default judgment in terms of Uniform rule 31(2) on the 18 June 2026 which the Notice of Set Down was served on RAF on the 31 March 2026 per hand the matter was enrolled for hearing and it was heard 3rd June 2026. The matter was heard on the 18 June 2026.
- [7] The Plaintiff in its notice of motion applied to proceed in terms of Rule 38(2), which application was not granted.

Merits

- [8] The court now turns to consider the merits of the Plaintiff's claim.
- [9] The Plaintiff testified under oath and his evidence can be summarized as follows: The Plaintiff was a driver of a taxi (motor vehicle) with registration letters and numbers D[...] 0[...] H[...] G[...] on the 15 July 2017. He was driving on a two-way lane along the corner of Ysterhout and Matumi Street which is a T-Junction, it required him to stop, and he had stopped at a stop sign. He was obstructed by a truck on his right-hand side which indicated it would turn to his left side.
- [10] According to Plaintiff the truck had the right of way. The truck indicated its intention to turn to his left-hand side. The truck suddenly turned to his right-hand side instead of his left-hand side, at that stage he was already entering the road and suddenly realized the truck was not turning. He then swerved to the side of the nearby railway line to avoid colliding with that truck. He does not remember what he collided with and he woke up in hospital with severe injuries.

Issues for Determination

- [11] The court now turns to the issues for determination, namely:
- 11.1 Whether the Plaintiff established liability on the merits;
 - 11.2 Whether the insured driver is solely responsible for the accident that occurred on the 15 July 2017; and
 - 11.3 Whether there is any contributory negligence.

The Law

- [12] In order to award 100% damages to the Plaintiff, the Plaintiff bears the onus to prove on a balance of probabilities that the accident occurred and that the insured driver is solely responsible for the accident. In *Ninteretse v RAF*¹ the court stated as follows:

“[T]he plaintiff bears the onus on a balance of probability that the insured driver was negligent and that negligence was the cause of the collision from which he sustained the bodily injuries. There is no onus on the defendant to prove anything. Even in instance where the defendant has not tendered evidence to rebut the evidentiary burden of the prima facie case presented by the plaintiff in this case, the plaintiff may not succeed with his claim depending on the nature and the weight of the evidence.”²

- [13] The principle of the mere absence of evidence from the defendant was reinforced on appeal when *Ninteretse v Road Accident Fund* (A170/2018) [2022] ZAGPPHC 187 (24 March 2022) was subsequently heard on

¹ [2018] ZAGPPHC 439.

² Id at para 28.

appeal and the court found that the Plaintiff was negligent and the appeal was dismissed with costs.

[14] The fact that the accident happened was proven by an Accident Report, alongside other documents. The Accident Report serves to prove that the accident occurred on the 15th of July 2017. The court notes that according to the evidence of the Plaintiff, he was not present when the accident report was completed. There is no description in the report as to how the accident occurred except that the driver was injured and could not speak.

[15] In general, there is a duty on all road users to keep proper look out on the road to avoid colliding with other road users. This is also applicable to drivers. In the case of *De Kock v Road Accident Fund*³, the court emphasized that 'a driver should look attentively and his duty is continuous.

[16] Moreover, in the case of *Nogude v Union and South – West Africa Insurance Co Ltd*⁴ Jansen JA said the following''

“A proper lookout entails a continuous scanning of the road ahead, from side to side, for obstructions or potential obstructions (sometimes called a 'general look-out': cf. *Rondalia Assurance Corporation of S.A. Ltd. v. Page and Others*, 1975 (1) S.A.

³ ZAWCHC 86 at para 32.

⁴ 1975(3) SA 685 A.

708 (A.), 718H-719B). It means—"more than looking straight ahead—it includes an awareness of what is happening in one's immediate vicinity"⁵

[17] The Plaintiff must therefore place before the court credible and sufficient evidence establishing the manner in which the collision occurred and demonstrating that the insured driver's negligence was the sole or predominant cause thereof. Furthermore, the authorities stated above recognise that a driver has a continuous duty to maintain a proper lookout and to take reasonable steps to avoid foreseeable collisions.

[18] Accordingly, where the evidence establishes that the Plaintiff was stationary at a stop sign and that the insured driver failed to maintain a proper lookout and collided with the Plaintiff, such evidence may support a finding of negligence, provided that it satisfies the required balance of probabilities.

Analysis

[19] Counsel for the Plaintiff argued in his heads of argument for 100% liability in favour of the Plaintiff and that the court should find that the insured driver is sole cause of the accident. He further argued that the issue of contributory negligence, the onus to aver and prove rests with the defendant.

[20] As alluded earlier, the court listened to the evidence of the Plaintiff under oath. In his own version, the truck had a right way. However, the Plaintiff entered the road before satisfying himself that the truck being driven by

⁵ Id at P73.

the insured driver had completely turned and turned to the correct side because it indicated to turn. Clearly the Plaintiff assumed that the truck or the insured driver would turn to the side he had indicated and intended to turn to. It is apparent from the Plaintiff's conduct that he did not keep a proper look out and did not exercise reasonable care as he should have. Had the Plaintiff not entered the road prematurely before satisfying himself that the insured driver had completely turned, the accident could not have happened.

[21] As far as contributory negligence is concerned, the court in *AA Mutual Insurance Association Ltd v Nomeka* ⁶considered whether the Apportionment of Damages Act applied where contributory negligence had not been formally raised in the pleadings. As alluded to above, Counsel for the Plaintiff argued that the 100% liability should be in favour of the Plaintiff and that the court should find that the insured driver is sole cause of the accident to the exclusion of contributory negligence. Therefore, arguing that the court is barred from applying the Act, although the above evidence suggests that the Plaintiff was also at fault.

[22] The court further held that:”

“ The weight of the decisions is, therefore, that provided the Plaintiff's fault is put in the issue, an apportionment need not be specifically pleaded or claimed.”⁷

⁶ 1976 (3) SA (A).

⁷ Id at P40.

[23] According to the courts in *Van der Merwe v Fourie* 1959 (3) SA 568 (E), *Tonyela v South African Railways and Harbours* 1960(2) SA 68 (C) , *Logiotis v Van Eyck* 1968(3) SA 429 (E), the court retained its discretion.

[24] In the latest decision of *Moemise v Road Accident Fund*,⁸ the court held that the court can still find such negligence on the Plaintiff 's own version if his evidence clearly supports such a finding.

[26] In my view the Plaintiff failed to exercise caution as a driver. He had to wait at the stop sign and satisfy himself that the truck had completely turned as he had put before the court in his own version that the truck had a right of way. It is clear from the evidence presented that he contributed to the accident. Had he exercised the necessary caution and not entered the road, the accident would have not have occurred.

[26] I therefore find that the Plaintiff was 50% negligent while the insured driver was also 50% negligent.

Order

[27] In the result, the following order is granted:

1. The Defendant is ordered to pay 50% of the Plaintiff 's proven damages

⁸ [2025] ZAGPPHC 686 at para 24 and 25.

2. The Defendant shall pay the Plaintiff's taxed party and party costs on the High court scale including Counsel's fees in the discretion of the Taxing Master.
3. Quantum is postponed *sine die*

B LESUFI
ACTING JUDGE OF THE HIGH COURT
PRETORIA

APPEARANCES

For the Plaintiff:

Adv ML van Ryneveld

Instructed by:

Dreyer and Dreyer Attorneys Inc

angelique@dreyerlaw.co.za

For the Defendant:

No Appearance