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

CASE NO: 4549/22

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED.

DATE: **6 October 2023**

MPIENAAR

SIGNATURE

In the matter between:

THABANG TIKANE

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

Pienaar (AJ)

Introduction

1. The Plaintiff instituted action against the Defendant in terms of **Section 17** of the **Road Accident Fund Act 56 of 1996**, as amended (“the Act”), pursuant to injuries suffered by the Plaintiff in a motor vehicle accident which occurred on the 22nd of December 2019 at approximately 21h00.
2. The Defendant is the Road Accident Fund, a juristic person established in terms of the Act. In terms of **Section 17(1)** of the Act, as amended, and regulations promulgated thereunder, the defendant is liable to compensate victims of motor vehicle accidents arising from the driving of a motor vehicle where the identity of the owner or the driver thereof has been established and/or subject to any regulation made under **Section 26** where the identity of neither the owner nor the driver thereof has been established.
3. A road accident victim can claim for loss or damage which such a road accident victim has suffered because of any bodily injury caused by or arising from the driving of a motor vehicle by any person at any place within the Republic, if the injury is due to the negligence or the wrongful act of the driver or of the owner of the motor vehicle.

Separating merits and quantum

4. The Plaintiff applied for a separation of the merits and quantum in terms of **Uniform Rule 33(4)**. I granted the application and postponed quantum sine die.
5. The only issue which I must decide is the merits of the Plaintiff’s claim.

The Plaintiff’s claim

6. The Plaintiff pleaded that on or about the 22nd December 2019 at approximately 21h00, a motor vehicle accident occurred along MT Tlhabane Road, involving the Plaintiff, who was the driver of a motor vehicle bearing registration numbers and letters H[...] G[...], and a motor vehicle bearing registration numbers and letters “T[...] N[...]” being driven by one Tshepang Manchonyane (hereinafter referred to as “the insured

driver”). In which the Insured driver collided head on with the Plaintiff as the Insured driver was overtaking vehicles on the MT Tlhabane Road.[1]

7. The Plaintiff alleges in his particulars of claim that the sole cause of the accident was due to the negligent driving of the insured driver, who was negligent in one or more of the following ways: [2]

7.1 He/she/ they failed to keep a proper look out;

7.2 He/she/they drove too fast in the circumstances;

7.3 He/she/they failed to apply the brakes of the vehicle he/she was driving either timeously or at all.

The defendant's default

8. The Defendant served a Notice to Defend on 20th day of March 2023 and appointed the State Attorney as its legal representative. The Defendant has failed to deliver a Plea and has been barred from doing so on 3 May 2023. [3]

9. The notice of set down was served on the State Attorney on 4 July 2023. I was also mindful of the Plaintiff's requirements to prove substantive compliance with the Road Accident Fund Act [5] which the Plaintiff duly did.

The evidence

10. The Plaintiff, at the commencement of the hearing, relied on the evidence on affidavit. [6] The evidence which was before me was the Plaintiff's version 19(f) affidavit. I admitted the evidence by way of affidavit as contemplated by Section 34(2) of the Civil Proceedings Evidence Act 25 of 1965 with Uniform Rule 38(2).

11. According to the Plaintiff he was the driver of a red Golf R bearing registration numbers and letters H[...] G[...] and his friend Gopolang Ocwelwang. He drove on MT Tlhabane Road towards Magojaneng Village. At the T-Junction intersection of Magojaneng and Tswelelopele village. He stopped at the stops sign as he drove off a blue Jeep Grand Cherokee bearing registration numbers and letters "T[...] N[...]” was overtaking on oncoming traffic on the shoulder (dirt road), the driver then tried to get back on the road at high speed and lost control of his motor vehicle and collided with his motor vehicle a head on collision which resulted in his vehicle overturning. He submit the whole cause of the accident was as a result of the negligence the insured driver.

12. According to the brief description of the Accident Report (AR) [7], Driver A (Insured Driver) alleged that he has just joined T M Tlhabane road at Magojaneng Village after alighting a passenger. Driver B (Plaintiff) facing him after overtaking and collided with him head on. Driver B (Plaintiff) alleged that he was traveling straight at Magojaneng Village along Thabang road when Driver B (should be Driver A) was overtaking on gravel road lost control and collided with him head on.

13. In the Police statement of Ronald Molaphane it is stated that the Insured vehicle “ stopped on the left lane, slightly facing left” and that the Plaintiff’s vehicle was lying on the left side of the road overturned with its wheels up” [8]

14. I turn to the question of contributory negligence under section 1 of the **Apportionment of Damages Act 34 of 1956**. Under this section, the Court may reduce damages having regard to the degree of fault attributable to the driving of the claimant driver.

15. I refer to the case of **Burger v Santam Versekeringsmaatskappy Bpk** [9]. In this case, the Court found that when a reasonable driver approaches another vehicle over a considerable distance, which had been veering onto the wrong side of the road, the reasonable driver would take at least three steps. He would brake, move his vehicle to

the left as far as possible and hoot continuously. In **Burger**, the driver failed to hoot and was held to be 25% at fault as a result.

16. Reverting to the facts in this case. Mr Tikane conduct contributed to the collision because he did not take any reasonable steps to avoid it. His own version supports this facts. He did not brake. He did not hoot. He did not swerve to the left as far as possible. He was faced with a sudden emergency, on his own version, but he failed to take reasonable precautionary measures to avoid the accident.

17. Taking all of the above into consideration, I find that the Plaintiff was at least 25% to blame for the accident.

18. The following order is made:

- a. The defendant is find liable for 75% of the Plaintiff's proven or agreed damages.
- b. The defendant is directed to pay the costs of the action in respect of the merits.
- c. The issue of quantum is postponed sine die.

MPIENAAR
PIENAAR (AJ)

Date of Hearing : 18 September 2023

Judgment : 6 October 2023

Appearances:

For the Plaintiff : Adv H Du Toit
Instructed by : Cambell Attorneys
email: geoggrey@campbellattorneys.co.za
Counsel for Defendant: No appearance
Link no: 5191077

- [1] Pleadings Caselines 2 Pleadings item 1
Note: There is pages missing on the Particulars of Claim
 - [2] Unissued summons & POC
 - [3] Notice of Bar Caselines 2: Pleadings, item 5
 - [4] Notice of set down Caselines 6, item 7
 - [5] RAF v Busuku (1013/19) [2020 ZASCA 158 (1 December 2020) at par 9;
Pithey v RAF 2014 (4) SA 112 (SCA) at para 19 and 12
 - [6] Section 19(f) affidavit Caselines 3 Trial documents, item 1, pg3-15
 - [7] Accident Report (AR) Caselines 3 Trial documents, item 1 pg 3-20
 - [8] Police Statement, Caselines 3 Trial documents, pg 3-18
 - [9] Burger v Santam Versekeringsmaatskappy Bpk 1991 (2) SA 703 A
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