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**IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO LOCAL DIVISION, THOHOYANDOU**

CASE NO. 777/2014

DATE: 23 MAY 2016

In the matter between:

LUFUNO MATORO:

PLAINTIFF

And

ROAD ACCIDENT FUND:
JUDGEMENT
SEMENYA AJ

DEFENDANT

[1] The plaintiff issued summons against Defendant, *a* juristic person established and constituted in terms of the Road Accident Fund Act, 56 of 1996 and a body which is liable to compensate victims of road accident within the Republic of South Africa.

[2] The Claim is for damages in the amount of R1 5000 000, 00 arising out of a collision between a motor vehicle with registration letters and numbers [B.... 4.... L], driven by Plaintiff and one with registration letters and numbers [C..... 3..... L], driven by Moses Randima (the insured driver). It is alleged that Plaintiff suffered damages as a result of bodily injury to himself arising from a collision between his motor vehicle and the one driven by the insured driver. It is further alleged that the collision was caused by the negligent manner of driving of the insured driver.

[3] At the onset of the trial the parties agreed, and it was so ordered, that the issues of quantum should be separated from those of merits.

[4] The plaintiff was the only witness at the trial. He stated that on the 10th day of June 2012 after 20:00, he was travelling alone in a motor vehicle along Thohoyandou-Sibasa public road. When he was approaching a robot control Intersection near Khorom Hotel, he noticed that the robot has turned green thereby giving him the right of way. As he was in the process of crossing the robot, a motor vehicle approached from the side of the road where the robot

was red and collided with the tow-bar of his motor vehicle. The impact caused the vehicle driven by the plaintiff to spin twice in the air and to land on its side. He approached the other motor vehicle and found that its driver had fled. He later learned that it was the insured driver. The plaintiff suffered an injury on his shoulder.

[5] The version of the plaintiff was not materially challenged during cross-examination and no evidence was led on behalf of the defendant. It was submitted that it witnesses could not be traced.

[6] That the defendant did not lead any evidence does not *per se* entitle the plaintiff to his claim. The defendant would be held liable in this case only if the court will arrive at a conclusion that the injury and the resultant damage suffered by the plaintiff were caused by negligence on the part of the insured driver. The test to be applied is whether a reasonable man would foresee the possibility of his conduct injuring another in his person or property and causing him patrimonial loss; and would take reasonable steps to guard against such occurrence; and the defendant failed to take such steps. **Kruger v Coetzee** 1966 2 SA 430. What is required of the court is to determine whether the conduct of the insured driver in the instant case measures up to this standard.

[7] I accept the version of the plaintiff in this case as there is no other evidence to gainsay it. A reasonable driver in the position of the insured driver would not

have entered the intersection in the face of a red robot thereby endangering those who have the right of way. I find that the collision between the two motor vehicles was caused by the negligent driving of the insured driver.

[8] The plaintiff however failed to show the court the steps that he himself took to avoid the collision.

[9] I find that the defendant is liable for 90% of the injury suffered by the plaintiff.

- i) The plaintiff's claim succeeds.
 - ii) Plaintiff is awarded costs of the action.
- M V SEMENYA

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

LIMPOPO DIVISION:

THOHOYANDOU

FOR THE PLAINTIFF:

ADV MAKHADO

INSTRUCTED BY

RAMASHIA ATTORNEYS

FOR THE DEFENDANTS:

ADV MUSETHA

INSTRUCTED BY PULE

ATTORNEYS