

SOUTH AFRICA / JUDGMENT

Dercksen v Road Accident Fund (67254/2021) [2024] ZAGPPHC 970 (3 October 2024)

[2024] ZAGPPHC 970

COURT

North Gauteng High Court, Pretoria

BEFORE

Makhoba

CASE / FILE NUMBER

67254/2021

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THE

REPUBLIC OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

HIGH COURT DIVISION, PRETORIA

Case

no: 67254/2021

(1)

REPORTABLE: NO

(2)

OF INTEREST TO OTHER JUDGES: NO

(3)

REVISED.

DATE:

03 OCTOBER 2024

SIGNATURE

In

the matter between:

DERCKSEN

C J

Plaintiff

And

ROAD

ACCIDENT FUND

Defendant

JUDGMENT**MAKHOB A, J**

- [1] The plaintiff instituted an action against the defendant for damages suffered as a result of injuries sustained in a motor vehicle accident that occurred on 9 January 2019.
- [2] The only issue before court is merits. The issue of quantum is to be postponed sine die.
- [3] On the date of trial the defendant was not represented and an attempt to settle the matter did not yield any results. Counsel addressed the court, and the court asked him to file heads.
- [4] During submissions by counsel he handed an affidavit by the plaintiff (CaseLines 05-3) setting out under oath how the accident happened.
- [5] It is trite that the onus rests on the plaintiff to prove his case on balance of probabilities see *Pillay v Krishna*, 1946 SA 946.
- [6] In his affidavit, plaintiff says the following “I cannot remember how the accident happened and or the mechanisms surrounding the accident. I also cannot remember whether or not I was a driver or passenger at the time of accident”.
- [7] The plaintiff’s affidavit is the only evidence under oath in respect of merits.
- [8] Counsel for the plaintiff contradicted the above affidavit in his heads of argument. He submits as follows (CaseLines 19-3) “ 2.5 From the available evidence, it is clear that no negligence can be attributed to the Plaintiff as the Plaintiff was a passenger in the vehicle when the accident occurred between the first and second insured drivers..”
- [9] In my view the submissions by counsel for the plaintiff are not supported by available evidence uploaded on CaseLines.
- [10] I am further of the view that in the absence of any evidence under oath on how the collision happened, the court cannot find that the plaintiff proved his case on balance of probabilities
- [11] I make the following order:
- 11.1 Plaintiff’s claim on the merits is dismissed.
- 11.2 Defendant to pay plaintiff’s cost on scale “A”.

MAKHOB A J**JUDGE OF THE HIGH COURT****GAUTENG DIVISION, PRETORIA****HEARD AND RESERVED JUDGMENT: 28 AUGUST 2024**

JUDGMENT

HANDED DOWN ON: 03 OCTOBER 2024

Appearances:

For the Applicant: Adv R Kooverjie (instructed by) Gildenhuis Malatji Incorporated For the Respondent: N/A.

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CASE PAGE <https://chat.esheria.ai/case-law/south-africa/dercksen-v-road-unknown-topic-agpphc-2024>

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