

SOUTH AFRICA / JUDGMENT

Morwe v Road Accident Fund (293/2021) [2025] ZANCHC 18 (7 March 2025)

[2025] ZANCHC 18**COURT**

Northern Cape High Court, Kimberley

BEFORE

Stanton

CASE / FILE NUMBER

293/2021

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Policy**IN****THE HIGH COURT OF SOUTH AFRICA****(NORTHERN CAPE****DIVISION, KIMBERLEY)****Case No: 293/2021****In**

the matter between:

LEBOGANG

MORWE

PLAINTIFF

and

THE

ROAD ACCIDENT FUND

DEFENDANT

Neutral

citation: Morwe

v The Road Accident Fund (293/2021) [25

February 2025]

Coram:

Stanton J

Heard:

25 February 2025

Delivered:	07 March 2025
Summary:	Claim for damages – whether plaintiff proved that the accident was caused by the sole negligence of the insured driver – defendant failed to present evidence to the contrary – plaintiff’s version undisputed – section 19(f) of the Road Accident Fund 56 of 1996 – defendant liable to pay 100% of the plaintiff’s proven or agreed damages. ORDER 1. The merits and quantum are separated in terms of Rule 33(4) of the Uniform Rules of Court;
Court:	2. The issue of quantum is postponed sine die; 3. The collision under consideration was caused solely by the negligence of the insured driver; 4. The defendant is liable for 100% of the plaintiff’s agreed upon or proven damages; 5. The defendant shall pay the costs of this hearing on a party and party scale, scale B.

JUDGMENT

Stanton J:

Introduction:

- [1] The plaintiff instituted action against the Road Accident Fund (“the Fund”) for damages he suffered as a result of injuries sustained in a motor vehicle accident that happened on 24 November 2019 (“the collision”).
- [2] The parties, at the outset of the hearing, applied for a separation between the issues of merits and quantum in terms of Rule 33(4) of the Uniform Rules of Court. This application was granted, and the trial proceeded on the merits.
- [3] The parties agreed that the following issues were common cause and did not require adjudication:

3.1 On 24 November 2019, a motor vehicle with registration number C[...] 1[...] N[...], driven by the plaintiff, collided with a motor vehicle with registration number H[...] 1[...] F[...] and a trailer with registration number F[...] 8[...] F[...] (“the trailer”), driven by the insured driver, Mr T Tshwabalala (“the insured driver”);

3.2 The collision occurred on the main road at or near Seven Miles, Kuruman, Northern Cape Province; and

3.3 A trailer is a motor vehicle as defined in section 1 of the Road Accident Fund Act 56 of 1996 (“the Act”).

[4] In his particulars of claim, the plaintiff alleges that the collision was caused by the sole negligence of the insured driver in one or more of the following respects:

4.1 He failed to keep a proper look out;

4.2 He drove his motor vehicle at an excessively high speed under the prevailing weather circumstances;

4.3 He failed to avoid the collision when by the exercise of reasonable care and skill he could, and should have, been able to do;

4.4 He failed to apply the brakes of the motor vehicle sufficiently and/or timeously and/or at all, alternatively, he drove his motor vehicle whilst the braking system thereof was in a defective condition;

4.5 He failed to exercise proper control over the motor vehicle that he was driving;

4.6 He failed to take proper cognisance of the prevailing conditions he was driving under; and therefore failed to exercise reasonable care in the operation of his motor vehicle; and

4.7 He failed to take cognisance of the rights of the other road users, more specifically that of the plaintiff.

[5] In its plea, the Fund, as an introductory remark, denies, alternatively, avers that it has no knowledge that the insured driver was the sole cause of the collision as alleged. The Fund’s alternative and conditional pleas are that:-

5.1 The insured driver was not negligent as alleged or otherwise; or

5.2 The collision was caused by the sole negligence of the plaintiff in that:

5.2.1 he drove at an excessive speed in the prevailing circumstances;

5.2.2 he failed to exercise proper control over the motor vehicle that he was driving;

5.2.3 he failed to apply the brakes of the motor vehicle timeously and/or at all;

5.2.4 he failed to avoid the collision when, with the exercise of reasonable care he could, and should have, done so; and

5.2.5 any other ground(s) that may be proven during the course of the trial; or

5.3 In the event that the Court finds that the insured driver was negligent, that the plaintiff's damages, if proven, should be apportioned in accordance with his degree of negligence vis-à-vis that of the insured driver in terms of the Apportionment of Damages Act 34 of 1956.

[6] The question for determination is whether the collision was caused by negligence on the part of the insured driver; and, if so, whether the plaintiff's negligence was a contributory cause.

Evidence:

[7] The plaintiff was the only witness who testified in the trial. When examined in chief, he testified that he attended a funeral on 23 November 2019. He left Bathlaros Village in the early hours of the following morning to return to work in Kuruman, but that he first wanted to visit his parents in Pampierstad. The road he travelled on was a straight tarmac road. According to his evidence, the collision occurred before Mothibistad at Seven Miles when the insured driver, who was travelling from the opposite direction suddenly turned right into an informal road; and the plaintiff collided with the trailer.

The plaintiff attempted to apply his breaks to avoid the collision, but it was too late; and he also tried, unsuccessfully, to swerve to the right as the trailer was already on the road in front of him. He lost consciousness immediately after the collision.

[8] Mr Mogano, on behalf of the Fund, admitted the contents of the accident report, save for the description of how the accident occurred. The plaintiff testified that his evidence on how the collision occurred is identical to the information on the sketch plan and the accident report.

[9] When cross-examined, the plaintiff's version was not disputed. He was, however, questioned about the veracity of his section 19(f) affidavit. The plaintiff conceded that he could not recall that he deposed to, or signed, the section 19(f) affidavit.

[10] When questioned by the Court, the plaintiff confirmed that he was driving between 60km and 80km on the road with a speed limit of 80km/h; and that he could not see whether the insured driver's motor vehicle had indicated the intention to turn right.

[11] The Fund closed its case without calling any witnesses.

[12] Mr Mogano argued that the plaintiff's claim should be dismissed for two reasons. In the first instance, he submitted that the Fund is not liable to pay the plaintiff as the plaintiff could not recall the content of the section 19(f) affidavit. In the second instance, he contended that the plaintiff's evidence is contrary to his particulars of claim in that it did not include the evidence that the insured driver had made a right turn in front of the plaintiff, and as such, the evidence should be disregarded.

Applicable law:

Onus:

- [13] In order to succeed, the plaintiff must establish that the collision had occurred as a result of the causal negligence on the part of the insured driver.
- [14] It is the duty of every road user to keep a proper lookout. This duty involves not only the physical act of looking, but also a reasonably prudent reaction to what might be observed.
- [15] It is clear from the evidence of the plaintiff, read with the description of the collision on the accident report, that the collision occurred when the insured driver executed a right turn and thereby cut directly across the path of travel of the plaintiff who was travelling straight at the time. It has been stated in a long line of cases that to turn across the line of oncoming or following traffic, is an inherently dangerous manoeuvre and that there is a stringent duty upon a driver who intends executing such a manoeuvre to do so by properly satisfying himself that it is safe and choosing the opportune moment to do so.[1]

Contributory negligence:

- [16] The onus of establishing contributory causal negligence on the part of the plaintiff rests with the defendant.[2] The Fund should accordingly adduce or elicit sufficient evidence to support a finding of negligence on the part of the plaintiff as well as a causal connection to the collision if it is to succeed with establishing contributory negligence.

Section 19(f) of the Act:

- [17] Section 19(f) of the Act provides that the Fund or an agent shall not be obliged to compensate any person in terms of section 17 for any loss or damage if the third party refuses or fails —

17.1 to submit to the Fund or such agent, together with his or her claim form as prescribed or within a reasonable period thereafter and if he or she is in a position to do so, an affidavit in which particulars of the accident that gave rise to the claim concerned are fully set out [My emphasis]; or

17.2 to furnish the Fund or such agent with copies of all statements and documents relating to the accident that gave rise to the claim concerned, within a reasonable period after having come into possession thereof.

The evidence versus the particulars of claim:

- [18] In *Du Toit obo Dikeni v Road Accident Fund*,[3] the court quoted with approval the following extract from Erasmus Superior Court Practice:

‘The object of pleading is to define the issues so as to enable the other party to know what case he has to meet. The parties are, therefore, limited to their pleadings: a pleader cannot be allowed to direct the attention of the other party to one issue, and then at the trial attempt to canvas another. However, since pleadings are made for the court . . . it is the duty of the court to determine what are the real issues between the parties and, provided no possible prejudice can be caused to either party, to decide the case on these real issues. . . ’

Evaluation and conclusion:

- [19] As indicated, no witnesses were called by the Fund in support of its case and no evidence was elicited from the plaintiff to assist the Fund in its plight. It is clear from the evidence of the plaintiff, read with the description of the collision on the accident report, that the collision occurred when the insured driver executed a right turn and thereby cutting directly across the path of travel of the plaintiff.
- [20] A reasonable man in the position of the insured driver would not only have observed the plaintiff’s approach, if a proper lookout was kept, but would also have respected the plaintiff’s right of way before executing a right turn. If this was done, no collision would have occurred. There is accordingly also no factual basis for a finding of contributory negligence.
- [21] Section 19(f) of the Act requires nothing more than the submission of the affidavit to the Fund. The argument pertaining to section 19(f) of the Act is unmeritorious as the affidavit was signed by the plaintiff and submitted to the Fund, together with all relevant statements and documents on 08 June 2020, without the Fund taking issue therewith.
- [22] The plaintiff submitted the accident report to the Fund and reference was made to it during the re-examination of the plaintiff. This accident report accords with his evidence in court. How the collision occurred, as set out in the particulars of claim, does not amount to the plaintiff changing his version. For the same reason, I am satisfied that the Fund was not prejudiced by the pleading as it was aware of the real issue in this matter.

Costs:

- [23] I find no reason why the costs should not follow the result, with the Fund paying the plaintiff’s costs. A cost order on a party and party scale, scale B, is appropriate.

Order:

In the result the following order is made:

1. The merits and quantum are separated in terms of Rule 33(4) of the Uniform Rules of Court:
2. The quantum is postponed sine die;
5. The defendant shall pay the costs of this hearing on a party and party scale, scale B.

STANTON, A

JUDGE

On behalf of the Plaintiff: Mr H. Strauss On instruction of: Gildenhuis Malatji Inc. Care of: Elliott, Maris Attorneys On behalf of the Defendant: Mr M.A. Mogano On instruction of: The State Attorney

[1] AA Mutual Insurance Association Ltd v Nomeka 1976

(3) SA 45 (AD) at 52E.

[2] Solomon and Another v Mussett and Bright Ltd 1926 AD 427 at 435.

[3] 2016

(1) SA 367 (FB) at para 43. See also Macatsha v Road Accident Fund (2018/6687) [2019] ZAGPJHC 553; 2020 (4) SA 275 (GJ) (13 December 2019) at paras 22 – 29.

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Prepared on 9 October 2026 · Esheria