

SOUTH AFRICA / JUDGMENT

Msimango v Road Accident Fund (28738/2019) [2021] ZAGPPHC 638 (6 September 2021) [2021] ZAGPPHC 638

COURT

North Gauteng High Court, Pretoria

BEFORE

Crutchfield

CASE / FILE NUMBER

28738/2019

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED

06 September 2021

CASE NO: 28738/2019

In the matter between:

BONGUMUSA CYRIL MSIMANGO

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

EX TEMPORE JUDGMENT

CRUTCHFIELD AJ

- [1] This is an action for damages arising out of personal injuries sustained by the plaintiff, BONGUMUSA CYRIL MSIMANGO, brought against the defendant, the Road Accident Fund ('RAF').
- [2] The plaintiff suffered the injuries in a motor vehicle collision as defined in the Road Accident Fund Act 56 of 1996 ('the collision').
- [3] The RAF defended the claim and the matter came before me on trial on 01 and 02 September 2021.
- [4] The parties agreed to separate the issues in dispute in terms of Rule 33(4) and to proceed on the issue of the RAF's liability arising from the collision, and to postpone the balance of the

issues.

- [5] The matter proceeded accordingly. The plaintiff led the evidence of one witness, the eye-witness to the collision, one Mr Ebrahim Asman, ('Mr Asman'). Mr Asman testified broadly as follows:
 - 1. The accident occurred on 28 December 2016 during day light hours on the N2 road between Kokstad and Port Shepstone, Mr Asman was travelling from Kokstad to Harding near Port Shepstone. Mr Asman was driving behind an unidentified truck. As Mr Asman followed the truck a white Toyota quantum motor vehicle, the motor vehicle driven by the plaintiff, ('the quantum') approached from the opposite direction in which the witness was traveling behind the truck. The truck proceeded downhill on a sharp bend in the road and veered into the lane reserved for use by vehicles travelling towards the truck and Mr Asman, and travelled against the railing along the far side of the road. The truck continued travelling against the railing along the far side of the road.
 - 2. The witness testified that he saw the quantum trying to avoid the truck travelling directly towards the quantum, by swerving into the lane occupied by the witness and in which the truck ought to have been travelling but was not at that stage. The quantum then spun around, overturned and rolled resulting in the injuries to the plaintiff. The truck failed to stop and did not make contact with any vehicle including the quantum.
 - 3. The witness decided to stop and help the driver of the quantum. The witness telephoned the SAPS and attempted to contact the owner of the quantum whose details were written on the side of the quantum. The witness departed from the scene after the police arrived.
- [8] Under cross-examination, the witness identified the statement deposed to by him on 20 June 2018 at the Port Shepstone police station. The RAF's legal representative cross-examined Mr Asman on the basis that the version advanced by him in evidence was new and different from that articulated in his affidavit. The relevant parts of the

witness's statement provided; '...on a sharp bend I saw a White Toyota Quantum trying to avoid a truck. The truck was travelling in the same lane as the Quantum. The truck was going into the right lane. I was braking and the quantum swerved out for the truck that was in front of the Quantum, and overturned.'

- [9] The witness's statement was submitted to the RAF in support of the plaintiff's claim. The accident report completed by the police after they arrived on the scene was used as the basis for disputing the witness's evidence. This was despite the accident report not being proved. The accident report referred to a single vehicle being involved in the collision and did not allude to a potential head on collision.
- [10] The RAF raised contributory negligence on the part of the plaintiff as a result of the content of the accident report. The police who completed the accident report did not give evidence at the trial. There are no material differences between the witness's version adduced in evidence before me and the statement deposed to by him on 20 June 2018. In fact, the witness's evidence and the statement were consistent and the witness testified in a clear, forthright and open manner. No good reason was articulated on behalf of the RAF for rejecting the evidence of the witness.
- [11] The plaintiff did not call any further witnesses and the RAF did not call any either.
- [12] The RAF raised a defence of contributory negligence on the part of the plaintiff. However, no admissible evidence justifying a finding of contributory negligence was lead on behalf of the RAF. The fact that the plaintiff, the driver of the quantum, swerved to avoid a collision with the truck indicated that the plaintiff was keeping a proper look out and took such steps as were available to him to avoid the collision. The consequence of the plaintiff's avoiding action was that the quantum spun and overturned.
- [13] Thus the RAF failed to discharge the onus of proving contributory negligence on the part of the plaintiff, which burden of proof rested on the RAF on a balance of probabilities.
- [14] The only evidence before this Court was that of the witness whose version was not contradicted or assailed in any manner.
- [15] In the circumstances, the plaintiff's version stands to be accepted and the RAF must be found liable to compensate the plaintiff for 100 % of the plaintiff's proven damages and I intend to grant such an order.
- [16] The plaintiff claimed costs against the RAF on the scale as between attorney and client on the basis that the RAF ought to have resolved the merits of the matter prior to trial, and that the plaintiff ought not to have been put to the cost of dealing with the RAF's opposition on trial to the matter. The RAF advanced no relevant admissible evidence at the trial and the RAF's reliance on the accident report did not justify the RAF's failure to investigate the collision and investigate the content of the witness's statement prior to the trial. The plaintiff relied in this regard on *Msimelo Boltona vs Road Accident Fund* (90401/2014) Eastern Cape Local Division Port Elizabeth (254/04/17).

- [17] Regrettably, it must be found as I intend to do that the RAF's conduct in this matter was unreasonable and wasted this Court's time.
- [18] In the circumstances, it is appropriate that the plaintiff should not be out of pocket pursuant to the RAF's conduct of the matter and that an order for the attorney and client costs is appropriate in respect of the trial that ran before me from mid-afternoon on Wednesday 01 September 2021 and on Thursday 02 September 2021 when I heard argument from the legal representatives for the parties.
- [19] However, I am of the view that the issues in this matter were not sufficiently complex as to justify the use of senior counsel and that the RAF should not be burdened with those costs. In the circumstances, I grant the following order:
1. The defendant is declared liable to compensate the plaintiff for 100% of such damages as the plaintiff may prove or may be agreed, caused to the plaintiff by the collision that occurred on 28 December 2016.
 2. The defendant is ordered to pay the plaintiff's costs, such costs to include;
 - 2.1 The costs of one junior counsel;
 - 2.2 The costs of the hearing on 01 to 02 September on the scale as between attorney and client;
 - 2.3 The balance of the plaintiff's costs to be on the scale as between party and party.

I hand down the order.

Delivered: This judgement was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be 6 September 2021.

CRUTCHFIELD AJ

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

Appearances

For the Plaintiff

: Adv. BP Geach SC

Instructed by

: Van Niekerk Attorneys

For the Defendant

: Ms T Gaokgwathi

Instructed by

: The State Attorney, Pretoria

Date of Hearing

: 01 and 02 September 2021

Date of Judgment

: 06 September 2021

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAGPPHC/2021/638.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/msimamgo-v-road-unknown-topic-agpphc-2021>

Prepared on 24 October 2026 · Esheria