

SOUTH AFRICA / JUDGMENT

Ndumiso v Road Accident Fund (059779/2024) [2025] ZAGPJHC 405 (28 March 2025) [2025] ZAGPJHC 405

COURT

South Gauteng High Court, Johannesburg

BEFORE

Weideman

CASE / FILE NUMBER

059779/2024

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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 059779/2024

DATE:28-03-2025

- (1) REPORTABLE: NO.
- (2) OF INTEREST TO OTHER JUDGES: NO.
- (3) REVISED.

In the matter between

SANGWENI NDUMISO

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

WEIDEMAN, AJ: The alleged accident from which this claim arose, occurred on the 29th of July 2023. It is alleged that the plaintiff sustained a closed left tibia plateau fracture as a result thereof.

At the commencement of the hearing of the matter an application in terms of Rule 38(2) was moved and which is to be found on CaseLines at 29-1. In terms of the application plaintiff intended to present his evidence on affidavit.

The section 19(f) statutory affidavit of the plaintiff contains an abbreviated version of what allegedly occurred, and which consists of the following: ‘walking on the pavement when an unknown vehicle collided with me from behind’.

This description of the accident, combined with the injury sustained raised a number of concerns with the court, and which led to the plaintiff being called to testify. During his oral testimony, the plaintiff indicated that the accident occurred at approximately 7 pm when it was already dark, and he was walking home from a shop.

The plaintiff was allegedly accompanied by a friend, whose details are not known. He testified that he was walking on the right-hand side of the road, facing oncoming traffic, when the insured vehicle approached from behind and collided with him just off the road surface.

The sketch plan contained in the Officer’s Accident Report (OAR) shows a road without any markings with the insured vehicle travelling west to east thereon and crossing over from the northern side of the road to the southern side thereof to collide with the plaintiff who was, at the time of the impact, next to a house on the southern side of the house, facing away from the direction in which the insured vehicle was travelling. The number of the house is also recorded in the sketch plan which forms part of the OAR.

The court questioned the probabilities of the accident having occurred in this manner, which prompted counsel to have the plaintiff give a better explanation of how the accident occurred. The plaintiff then added that there were roadworks at the time which explained why the vehicle, which was a Toyota Hilux Taxi, crossed onto its incorrect side of the road and caused the collision.

The matter is before court on a default judgement basis and the ordinary approach would be that once the plaintiff had presented his evidence with no version to challenge it, his version would stand uncontested.

However, whether or not the plaintiff took the court into his confidence in giving evidence should also be tested against the other evidence that had been put before court, such as the OAR, at CaseLines pocket 25 bundle 3, pages 66 to 72, and the photo album of the scene of the collision, at CaseLines 25-62 to 25-65.

Although the accident occurred in 2023 and the photos of the scene of the accident contained in the bundle could have been taken some years later, there are no visible signs that any road repair work was done in the past two years. The road looks to be in a fairly average to less than average state of repair.

The plaintiff's sketch and photographs also seem to be in conflict. On the sketch plan the house next to the road in front of which the accident occurred is clearly identified and numbered. The photographs show no houses next to the road.

The photographs also show open veld on both sides of the road and in the distance on the opposite side of the is what appears to be a filling station. Other than that, there are no visible buildings on any of the five photographs, contained in the bundle which could correlate to the house with the house number reflected on the OAR sketch.

In addition, looking at the photographs, it appears that the road consists of two lanes of travel in each direction, separated by a wide grass centre, on which there appears to be poles with what looks like apollo lights.

The deduction from this is thus, for the vehicle to have collided with the plaintiff from behind, as he testified, the vehicle would not only have had to cross the two lanes of the road on which it was travelling, but it would also have had to cross over the grass centre median, avoiding the lights, and cross two further lanes, before colliding with the plaintiff from behind, all of which while avoiding a head on collision with oncoming vehicles, before making his way back safely across two lanes, and the grass median, to continue his journey on his correct side of the road.

When compared to the surrounding evidence, the sketch plan and the photographs, the version presented by the plaintiff is highly improbable.

In addition, the hospital records confirm that the only injury sustained by the plaintiff was a closed left tibial plateau fracture. In fact, on CaseLines 26-7, the hospital records note: "Sustained injury to the left leg, no other injuries."

In addition to the plaintiff's written and oral evidence compared against the sketch plan and photographs which the plaintiff produced, combined with the nature of the injury, one further also must consider the occupation the plaintiff.

The plaintiff is a traffic warden, and one would expect him to not have to be prompted by counsel during his evidence in chief to present a complete version of events. Looking at the totality of the evidence before it, it is the opinion of this court that the plaintiff did not take the court into his confidence as to the exact circumstances of how he sustained the tibia fracture and the probabilities that his injury was caused by Quantum taxi vehicle is negligible.

In summary, and considering the evidence holistically, the court is not satisfied that the plaintiff's injury was caused as a result of a motor vehicle accident, or if it was indeed caused as a result of a motor vehicle accident, the court considers the circumstances presented by the plaintiff to be implausible and highly improbable.

My order is as follows:

1. The plaintiff's claim is dismissed.

2. There is no need to consider costs, the matter having been before court on a default basis with no representation or participation by the defendant.

WEIDEMAN, AJ

JUDGE OF THE HIGH COURT

DATE:.....

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Prepared on 11 October 2026 · Esheria