

SOUTH AFRICA / JUDGMENT

# Novukela v Road Accident Fund (3160/2020) [2024] ZAECMHC 101 (17 September 2024)

[2024] ZAECMHC 101

## COURT

Eastern Cape High Court, Mthatha

## BEFORE

Mjame

## CASE / FILE NUMBER

3160/2020

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

## Source record

## SAFLII

## Note: Certain

personal/private details of parties or witnesses have been  
redacted from this document in compliance with the law  
and SAFLII

## Policy

## IN

THE HIGH COURT OF SOUTH AFRICA

(EASTERN

CAPE DIVISION, MTHATHA

CASE NO: 3160/2020

## Date

Heard: 19 August 2024

Date Delivered: 17

September 2024

REPORTABLE: YES/NO

## In the matter

## between:

SIVUYILE  
SIYANDA NOVUKELA  
PLAINTIFF  
VS  
ROAD  
ACCIDENT  
FUND  
DEFENDANT

**JUDGEMENT**

Mjame AJ

- [1] The Plaintiff instituted action against the Road Accident Fund arising from an accident that the plaintiff pleads occurred on 13 January 2017 at or near Betshwana Location, Mt Ayliff, Eastern Cape.
- [2] At the commencement of the trial I made an order, based on the application by both parties in terms of Uniform Rule 33(4), separating hearing of the issue of liability from that of quantum. Accordingly, this judgement addresses the issue of liability.
- [3] Plaintiff's counsel made an opening address and commenced proving his claim in terms of Rule 39(1). The plaintiff was the only factual witness called to testify.
- [4] Plaintiff testified that about 23H00 he was driving his bakkie with registration letters and numbers N[...] from Mount Frere to Kokstad in company of Thembelani Gxobole.

He passed Mt Ayliff approaching Betshwana location. He was driving on a slow lane.

In front of him there was a motor vehicle, a cadet which was driving on the same lane. He moved his vehicle to the fast lane on his right-hand side overtaking the cadet. The road is divided by a barrier line from oncoming vehicles, that is, from Kokstad to Mt Ayliff direction.

[ 5] On the oncoming traffic side there was a truck driving towards Mt Ayliff. When the truck appeared, he had not yet passed the cadet which he was overtaking.

Whilst still driving about to pass the cadet which was still occupying the slow lane, a motor vehicle appeared in front overtaking the truck which was driving on the right lane. This motor vehicle changed its lane overtaking the truck whilst it was inopportune to do and therefore traversed the plaintiff's lane of travel. The vehicle was very close to him. This vehicle hit his car on the front wheel.

His car spanned and landed on yellow lane on the left side of the road facing the direction of Mt Ayliff. The point of impact was on the left-hand side of the middle (fast) lane. He could see the other vehicle which knocked him at a distance of one hundred meters from where his car landed.

- [6] He could not avoid the collision with the oncoming vehicle, that was overtaking the truck. He had not yet passed the vehicle which was driving on the slow lane.
- [7] The accident was caused by the negligent driving of the insured driver in that he failed to keep a proper look and drove to the plaintiff's side of the road.

He (plaintiff), sustained injuries as a result of negligence of the driver of a motor vehicle with registration letters and numbers

N[...].

[8] The Plaintiff was not cross examined by the defence.

#### DEFENDANT'S CASE

[9] No evidence was presented by defence. Defendant's counsel addressed Court that driver of the vehicle which collided with plaintiff's vehicle is in Gauteng Province and is not willing to come to court. He then closed the defence case.

#### APPLICANT'S

#### SUBMISSIONS

[10] Counsel for the plaintiff argued that the plaintiff's evidence should be accepted in that the injuries he sustained were as a result of a motor collision which was negligently caused by the insured driver of the vehicle with registration number N[...].

He contended that the court should find in favour of the plaintiff and the defendant is liable for the damages suffered by the plaintiff. He argued that the evidence of plaintiff has not been challenged. The draft order was also placed before court by plaintiff's counsel that the plaintiff seeks be made an order of the court.

[11] There were no submissions made by the defendant.

[12] The question before me, in the present matter is whether the plaintiff proved his case, on a balance of probabilities in that he was injured during a motor vehicle collision. The basic rule is that the person, in this case the plaintiff, who asserts must prove.

[13] The plaintiff bears the onus to prove that Road Accident Fund is liable under the proper provision of the Act, to compensate him for damages suffered because of the injuries sustained in the collision. This, includes the onus to prove that the driver of the insured vehicle negligently caused the collision[1].

[14] In civil cases the burden of proof is discharged as a matter of probability. The standard is often expressed as requiring proof on a "balance of probabilities" but that should not be understood as requiring that the probabilities should do more than favour one party in preference to the other. What is required is that the probabilities in the case be such that, on a preponderance, it is probable that the particular state of affairs existed[2] .

[15] Thus, in the absence of evidence to the contrary, it must follow that negligence of the driver was the cause of damages suffered by plaintiff. [3]

[16] In National Employer's General Insurance Co Ltd v Jagers

[4] , Eksteen AJP (as he was known then) held as follows: -

*"... in any civil case, the onus can ordinarily be discharged by adducing credible evidence to support the case of the party on whom the onus rests. In a civil case is obviously not as heavy as in criminal case, but nevertheless where the onus rests on the plaintiff as in the present case, and where there are two mutually destructive stories, he can only succeed if he satisfies the Court on a preponderance of*

*probabilities that his version is true and accurate and therefore acceptable, and that the other version advanced by the defendant is therefore false or mistaken and falls to be rejected. In deciding whether that evidence is true or not the Court will weigh up and test the plaintiff's allegations against the general probabilities. The estimate of the credibility of a witness will therefore be inextricably bound up with a consideration of the probabilities of the case and, if the balance of probabilities favours the plaintiff, then the Court will accept his version as being probably true. If, however the probabilities are evenly balanced in the sense that they do not favour the plaintiff's case any more than they do the defendant's the plaintiff can only succeed if the Court nevertheless believes him and is satisfied that his evidence is true and that the defendant's version is false."*

[17] The evidence presented by the plaintiff was his own testimony about the accident. He was a credible witness. His evidence was left unchallenged by the defendant. His evidence was reliable.

[18] It is not disputed that the accident happened at night in a rainy condition in N2 near Betshwana Location in Mt Ayloff. It is not disputed that the driver of the vehicle with registration numbers N[...] overtook a truck and crossed the barrier line and collided with the plaintiff's motor vehicle. It is not disputed that the plaintiff sustained injuries as a result of negligence of the other driver.

[19] In *JM Grove v RAF* [5] the Court held: -

*"The Road Accident Fund is obliged to compensate for damages arising from bodily injury caused by or arising from driving of a motor vehicle. The causal link that is required is essentially the same as the causal link that is required for Aquiline liability. There can be no question of liability if it is not proved that the wrongdoer caused the damage of the person suffering the harm."*

Whether the act can be identified as a cause, depends on a conclusion drawn from the available facts and the relevant probabilities. the important question is how one should determine the causal nexus namely, whether one fact follows from another."

## CONCLUSION

[20] On consideration of the facts and circumstances of this case, the defendant has been proved to be liable of damages sustained by the plaintiff. I am unable to find that the plaintiff was negligent in the collision.

The costs of trial on the determination of issue of liability must be paid by the defendant.

## ORDER

[21] In the result, the following order shall issue:

- (a) The defendant is held liable for all agreed and or proven damages incurred by plaintiff resulting from the motor vehicle accident that occurred on 13 January 2017 at or near Betshwana Location, Mt Ayloff, Eastern Cape.

- (b) The determination of quantum is postponed to a date to be arranged with the registrar.
- (c) The defendant shall pay costs to date including costs of counsel in preparation for trial in terms of Scale B.

P.C.N. MJAME

Acting Judge of the High Court

Appearances: Mr Mnqandi

Attorneys for Plaintiff

MTHATHA

Mr Nabela

Defendant's Attorney

State Attorneys Office

[1] Section 17 (1) (a) &(b) Act 56 of 1996

[2] In Sschwikkard PJ (et al) , Principles of Evidence 4th Edition , 2016,ch 32 page 628

[3] Union and South West Africa Insurance Co. Ltd v Bezuidenhout 1982(2) SA 957 at 966A-B

[4] [1984] 4 ALL SA 622 (E) @624 -25

[5] (974/10)[2011] ZA SCA 55 (31/03/2011)@par 7

## 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/ZAECMHC/2024/101.html>

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

Prepared on 10 October 2026 · Esheria