

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO:43139/2020

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

Date:28 November 2023

E van der Schyff
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In the matter between:

ANGELA SLATER

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

Van der Schyff J

- [1] The plaintiff was injured in an incident that occurred on 8 October 2016, while she was a passenger in a motor vehicle. She was 64 years old at the time. Both merits and quantum are in dispute. Since the plaintiff was a pensioner when the accident

occurred, the only relevant heads of damages are past and future medical expenses. The injury sustained does not qualify to be categorized as a serious injury.

- [2] The plaintiff testified that she was a passenger in a courtesy vehicle, a bus, being conveyed between venues at the Sun City resort. The plaintiff testified that she was seated in the shuttle bus next to the door on a seat reserved for the frail and elderly. She held onto what she believed was a safety rail. It transpired, however, that the safety rail was removed and that she held onto a pole attached to the shuttle's doors. When the shuttle reached a drop-off point and came to a stop for some passengers to alight, the driver opened the door, and this resulted in her arm being wrenched backward and her hand being crushed in the door.
- [3] It was put to the plaintiff in cross-examination that she chose to hold on to the pole. She reiterated that she was under the impression that it was a safety feature to assist the elderly and frail in keeping their seating while being transported in the shuttle. She explained again that she only became aware of the missing safety rail when she and her husband looked at the other doors after the accident occurred, saw the safety rails there, and noted the empty bracket at the door where she was injured. They realised that a safety rail had to be attached to the bracket.
- [4] The plaintiff's evidence was corroborated by her husband, who was not cross-examined.
- [5] The relevant part of s 17(1)(a) of the Road Accident Act 56 of 1996 provides that the Fund shall be obliged to compensate any person for any loss or damage that the third party has suffered as a result of any bodily injury caused by or arising from the driving of a motor vehicle by any person at any place within the Republic if the injury is due to the negligence or other wrongful act of the driver or the owner of the motor vehicle.
- [6] The injury *in casu* arises from the driving of a motor vehicle, in that the plaintiff had to stabilize herself by holding on to what she deemed to be a safety rail to secure her seating while the shuttle was driven from point A to point B. The wording 'cause by or arising from' denotes the common law requirement that there must be a

sufficiently proven causal link between the conduct (the driving of the vehicle) and the consequence of such conduct (the injury). It has been established that the notions 'caused by' and 'arising from' are not synonyms.¹

- [7] The term 'caused by' refers to the factual link between the driving of a motor vehicle and the resulting damages. A sufficient link will exist if the conduct is the immediate and direct consequence of the injury.²

- [8] The term 'arising from' refers to those instances where the driving is the indirect cause of the injury. Injury will 'arise from' the driving of a motor vehicle where, according to the standard of common sense, the injury is sufficiently connected or related to the driving. Although the injuries in this matter arose because a door was opened to allow passengers to alight, the facts of this case distinguish it from the facts in *Wells*. Other than in *Wells*, the ignition of the bus was not switched off, and the driver did not exit the bus, causing the accident while exiting the vehicle. In *casu*, the bodily injury is causally linked to the driving of the vehicle because, amongst others, the undisputed evidence of the plaintiff was that she was obliged to hold on to what she deemed the safety rail to secure her seating while the shuttle was in motion, and the driver was merely allowing passengers to alight before continuing on his route. For purposes of this set of facts, it is necessary to note that the term 'convey' is defined in the Act to include alighting from the vehicle.

- [9] The subsequent enquiry relates to whether the injuries that arose from the driving of a motor vehicle were due to the negligence or other unlawful act of the driver or the owner. The second leg of the liability inquiry is often lost sight of because, in most cases, the injury is caused by the negligent driving of the insured motor vehicle.³

- [10] *In casu* the injuries arose from the driving of a motor vehicle, and although the injuries were not sustained due to the negligent driving, it is still due to the negligence of the driver and/ or 'another' wrongful act of either the driver or the owner. It was

¹ *Wells and Another v Shield Insurance Co Ltd and Others* [1965] 3 All SA 132 (C) at 135.

² *Petersen v Santam Insurance Co Ltd* 1961 (1) SA 205 (C).

³ *Kemp v Santam Insurance Co Ltd and Another* 1975 (2) SA 329 (C) at 331A-C.

not disputed that the plaintiff, an elderly lady, sat on the seating reserved for the elderly and frail. It was also not disputed that the safety railing was missing, a fact proven by the photographs admitted into evidence. The reasonable driver would have foreseen the possibility that an elderly or frail passenger occupying the designated seat for elderly and frail passengers would have to hold on to a safety railing, and would mistake the pole attached to the door for a safety railing and would not have allowed a frail and elderly person to occupy a seat where the safety rail was missing. The driver and owner of the vehicle had the duty to ensure that elderly and frail passengers were transported safely, and therefore, they had the duty to ensure that the safety railings were properly installed where seating was specifically reserved for the elderly and frail. Their omission in this regard created a potentially dangerous situation and is wrongful and in itself negligent. In not warning the plaintiff of the danger of holding on to the pole, the driver failed to take reasonable steps to guard against a potentially dangerous situation.

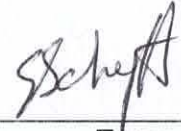
- [11] This view is substantiated if regard is had to *Road Accident Fund v Abrahams*.⁴ The Fund was held liable where the plaintiff was injured in a single-vehicle collision in a burst-tyre accident based on the owner's alleged negligent maintenance of the vehicle.
- [12] I am thus satisfied that the jurisdictional requirements for a claim against the Road Accident Fund are met and that the Fund is 100% liable for any of the plaintiff's proven or agreed damages.
- [13] As for the past medical expenses, the orthopaedic surgeon confirmed the extent of the plaintiff's injuries and set out the treatment she received. The schedule of expenses correlates with the evidence, and the plaintiff proved on a balance of probabilities that the past medical expenses amount to R 149 478.66.

ORDER

In the result, the following order is granted:

⁴ 2018 (5) SA 169 (SCA).

The order marked 'X', dated and signed by me is made an order of court.



E van der Schyff

Judge of the High Court

Delivered: This judgement is handed down electronically by uploading it to the electronic file of this matter on CaseLines. It will be emailed to the parties/their legal representatives as a courtesy gesture.

For the plaintiff:

Adv. A.R. Van Staden

Instructed by:

MacRobert Incorporated

For the defendant:

Mr. M. Sekgotha

Instructed by:

State Attorney, Pretoria

Date of the hearing:

31 October 2023

Date of judgment:

28 November 2023

51

(012) 425-3400

IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

Before the Honourable Justice Van der Schyff

On the 31 ^{October} day of ~~November~~ 2023

This Order is made an Order of Court by the Judge whose name is reflected herein, duly stamped by the Registrar of the above Honourable Court and is submitted electronically to the parties/their legal representatives by e-mail. This Order is further uploaded to the electronic file of this matter on CaseLines by the Judge or his/her secretary. The date of this order is deemed to be 28 November 2023.

Case No: 43139/2020

In the matter between:

ANGELA JOYCE SLATER

Plaintiff

and

ROAD ACCIDENT FUND

Defendant



DRAFT ORDER

After having heard counsel for both parties and having considered the evidence, the Court orders as follows:

1.

APPLICATION IN TERMS OF RULE 38(2):

The application in terms of Rule 38(2) is granted and the affidavit as well as the medico-legal report referred to in the Founding Affidavit of Mr FA Dreyer are admitted into evidence, including the costs of the application payable by the Defendant.

2.

LIABILITY:

The defendant is liable for 100 % of the plaintiff's damages.

PLAINTIFF'S CAPITAL:

3.

3.1

THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

Private Bag X67, Pretoria 0001

2023 -11- 28

GD-PRET-002

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

R 49 478-66

3.1 The Defendant is ordered to pay to Plaintiff the amount of R 49 478-66

[Handwritten signature]

One Hundred and Forty Nine Thousand Four
Hundred and Seventy Eight Rand 66/100 cents
in delictual damages due to a motor vehicle accident which occurred on 08

October 2016, which amount is made up as follows:

	AMOUNT
PAST HOSPITAL AND MEDICAL EXPENSES	R 149478.66
TOTAL:	R 149478.66

3.2 The amount is payable by Defendant to Plaintiff, on/or before 180 days from the date of this order, by depositing same into Plaintiff's attorneys of record's trust account, the details of which are as follows:

ACCOUNT HOLDER	:	MACROBERT INC
BANK	:	STANDARD BANK
TYPE OF ACCOUNT	:	TRUST
ACCOUNT NUMBER	:	010424288
BRANCH	:	PRETORIA
BRANCH CODE	:	01-00-45
REFERENCE	:	00051563

INTEREST:

4.1 The Defendant will not be liable for interest on the outstanding amounts, subject to paragraph 3.2 herein below:

4.2 Should the Defendant fail to make payment of the capital amounts on/or before 180 days from date of this order, Defendant will be liable for interest on the amount due to Plaintiff at the applicable interest rate per annum.



5.

UNDERTAKING:

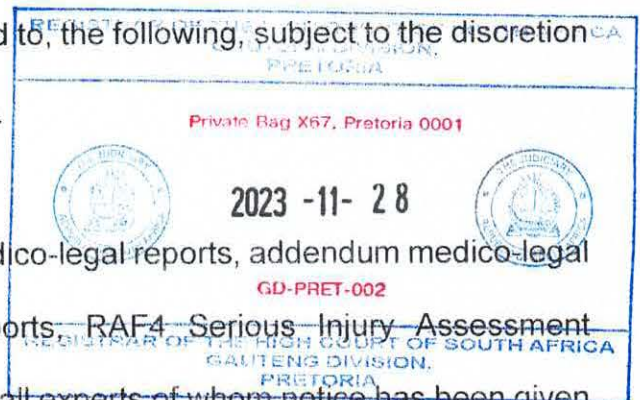
The Defendant is ordered to deliver to Plaintiff, within a reasonable time, an undertaking in terms of Section 17(4)(a) of the Road Accident Fund Act, Act 56 of 1996, wherein the Defendant undertakes to pay to Plaintiff 100% of the cost of future accommodation in a hospital or a nursing home or treatment of, or rendering of a service or supplying of goods to Plaintiff pursuant to the injuries Plaintiff sustained in a motor vehicle accident which occurred on 08 October 2016, after the costs have been incurred and on proof thereof.

6.

COSTS:

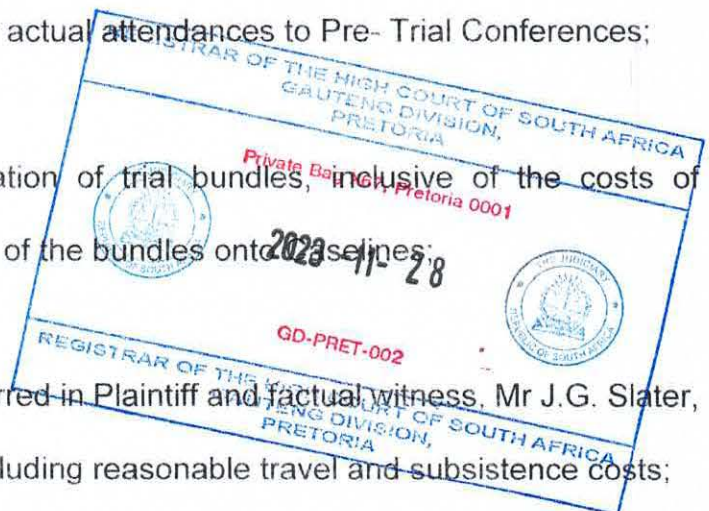
The Defendant is ordered to pay the Plaintiff's taxed or agreed party and party costs on High Court Scale, but will not be limited to, the following, subject to the discretion of the taxing master:

- 6.1 The costs of all expert reports, medico-legal reports, addendum medico-legal reports, and combined joint reports, ~~RAF4 Serious Injury Assessment Report(s) and radiology reports of all experts of whom notice has been given~~ and/or whose reports have been furnished to the Defendant and/or its attorneys and/or whose reports have come to the knowledge of the Defendant and/or its attorneys as well as all reports in their possession and/or contained in the Plaintiffs' bundle of documents. This shall include, but not be limited to, the following experts of whom notice has been given, namely:



6.1.1 Dr HB Enslin, Orthopaedic Surgeon.

- 6.2 The full fees of Plaintiff's senior-junior counsel in respect of perusal, preparation, consultations, pre-trial conference(s), preparation of heads of argument and a day fee for 31 October 2023;
- 6.3 The reasonable transportation costs incurred by and on behalf of Plaintiff for attending the medico-legal examinations arranged by Plaintiff;
- 6.4 The reasonable costs of and consequent to the holding of all expert meetings between the medico-legal experts appointed by the Plaintiff's;
- 6.5 The reasonable costs of the Plaintiff's attorney, which includes attendance to court, all costs for preparing for Pre-Trial Conferences, formulation of Pre-Trial Minutes and costs for actual attendances to Pre-Trial Conferences;
- 6.6 The costs of the preparation of trial bundles, inclusive of the costs of compilation and uploading of the bundles onto the e-cases;
- 6.7 The reasonable costs incurred in Plaintiff and factual witness, Mr J.G. Slater, attending Court for trial including reasonable travel and subsistence costs;
- 6.8 The reasonable cost incurred in obtaining payment and/or execution of the capital amount mentioned in paragraph 2 above.



7.

TAXATION:

- 7.1 The Plaintiff is ordered to serve the Notice of Taxation of Plaintiff's party and party bill of costs on Defendant's attorneys of record;
- 7.2 The Defendant is ordered to pay the Plaintiff's taxed and/or agreed party and party costs within 180 days from the date upon which the accounts are taxed by the Taxing Master and/or agreed between the parties;
- 7.3 Should the Defendant fail to make payment of the party and party costs within 180 days after service of the taxed accounts on the Defendant, Defendant will be liable for interest on the amount due to Plaintiff at the applicable interest rate per annum as from the date of taxation to date of final payment.

8.

CONTINGENCY FEE AGREEMENTS:

The Plaintiff and the Plaintiff's attorneys of record did not enter into any contingency fee agreement.

SIGNED AT PRETORIA ON THIS THE _____ DAY OF _____ 2023.





ATTORNEY FOR PLAINTIFF :

MR G DREYER

MACROBERT INC

TEL: (012) 425 3557

COUNSEL FOR PLAINTIFF :

ADV AR VAN STADEN

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ATTORNEY FOR DEFENDANT :

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TEL: 078 645 4458