

**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA**

**CASE NO. 5784/2021**

(1) REPORTABLE: **YES/NO**  
(2) OF INTEREST TO OTHER JUDGES: **YES/NO**  
(3) REVISED: **YES/NO**  
**DATE: 29/03/2023**

In the matter between:

**S H B M B KOEN**

**PLAINTIFF**

**THE ROAD ACCIDENT FUND**

**DEFENDANT**

**JUDGMENT**

**MAKHOB A J**

1) On the 26th of July 2019 the plaintiff was driving his motor vehicle with the registration number [...] on N4 highway coming from work going home to Rustenburg. His motor vehicle collided with an unidentified motor vehicle.

2) The plaintiff sustained injuries which rendered him a quadriplegic. The merits and quantum are in dispute and the parties agreed to postpone the quantum sine die. The only issue before Court is merits.

3) The plaintiff testified, and he called a witness. The defendant did not call any witness. Both parties filed their heads of argument.

4) The plaintiff testified that he was travelling on N4 highway towards Rustenburg. As he was driving, he approached a motor vehicle from behind and it was traveling slow. This vehicle moved out of its lane to the shoulder of the road to allow him to pass since it was traveling slow. According to the plaintiff this was to enable him not to drive on the face of oncoming traffic.

5) As the plaintiff was in the process of passing this motor vehicle on his left, the said vehicle suddenly for reasons unknown to the plaintiff veered to the right-hand side thereby causing the plaintiff to slam on his breaks and swerve to the right in order to avoid colliding with this vehicle.

6) His vehicle skidded out of control and landed on the embankment and overturned he can't say what happened to the unidentified vehicle as he was seriously injured.

7) When the accident happened, it was at about 18H30 clear sky and the speed limit on that road is 120KM/H his headlights were on and he was not traveling more than 100KM/H.

8) The plaintiff called Mr Barry Grobbelaar a motor vehicle accident reconstructive specialist to investigate the scene of the accident and to compile a report.

9) Mr Grobbelaar testified that he visited the scene of the accident on the 30th of November 2022 and the 1st of December 2022, and he was provided with photographs of the scene of the accident.

10) He testified that on inspection of the accident site there was an unrestricted visibility for the plaintiff. The road is virtually straight, had the driver of the unidentified vehicle remained in the emergency lane when the plaintiff passed him on his right it would not be necessary for the plaintiff to have swerved to the right and lose control of his vehicle.

11) Mr Grobbelaar pointed out that in all probability the sudden swerving of the unidentified vehicle from the left shoulder of the road caught the plaintiff off guard hence he had to swerve in order to avoid colliding with the unidentified vehicle.

12) The emergency lane (shoulder of the road) where the unidentified vehicle moved was measured and found to be 2.4 meters wide and this is sufficient for any motor vehicle to travel.

13) Mr Grobbelaar concluded by saying it was improbable that the plaintiff would have been able to mean to have controlled the vehicle under the circumstances. The curved tire marks visible on the road surface indicate that the plaintiff's vehicle was in anti-clockwise position when the tire marks were made on the road surface, and this is consistent with the version of the plaintiff.

14) Counsel for the defendant in his submissions accepts that Mr Grobbelaar's evidence was consistent with the plaintiff's version of braking and swerving which led to the loss of control of the vehicle.

15) However, counsel for the defendant contended that the plaintiff's attempt to pass the unidentified vehicle in a place where there is a solid line which precludes overtaking as a result plaintiff contributed to the negligence of the unidentified driver.

16) On behalf of the defendant the court is requested to make an apportionment of damages due to the negligence by the plaintiff the apportionment suggested is 20% negligence against the plaintiff.

17) Counsel for the plaintiff argued against the country's contributory negligence to be attributed to the plaintiff. counsel for the plaintiff submitted that the plaintiff is

entitled to an order that the defendant is liable to pay 100% of the plaintiffs proven damages. In this regard the court was referred to various decided cases.

18) It is the trite that the onus rests on the plaintiff to prove his case on the balance of probabilities see Pillay v Krishna 1946 SA946.

19) Again the defendant must show that the plaintiff's failure to act reasonably was casually connected with the collision see Guardian National Insurance Company Ltd V Saal 1993 (2) SA 161 (C); South British insurance company V Smith 1962 (3) is 8826 (A).

20) The defendant did not lead evidence to gain say the evidence of the plaintiff. Both the plaintiff and his witness gave their evidence in a clear and direct manner.

21) In my view from the evidence before me the plaintiff did not overtake the unidentified vehicle on a solid line but attempted to pass it when it was driven within the emergency lane. The unidentified vehicle came back to its lane thus causing the plaintiff to swerve to his right.

22) In the absence of any evidence justifying any contributory negligence on the part of the plaintiff I am unable to attribute to the plaintiff any negligence on his part.

23) The draft order is made the order of the court.

D. MAKHOB  
JUDGE OF THE HIGH COURT  
GAUTENG DIVISION, PRETORIA

## **APPEARANCES**

**For the Plaintiff:**

**Adv Petrus Vermeulen SC**

**Instruction:**

**Mrs M Havemann**

**For the Defendant:**

**Instructed by:**

**Adv Jaiseelan Perumal**

**State Attorney**

**Date heard: 10/03/2023**

**Date delivered: \_\_\_\_ 29/03/2023**