

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 0577/2019

DATE: 15-09-2023

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES / NO.

(2) OF INTEREST TO OTHER JUDGES: YES / NO.

(3) REVISED.

DATE 2023/09/22

SIGNATURE 

10 In the matter between

HENRY PETER LEWIS

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

J U D G M E N T

MPOFU, AJ: The Court makes a ruling ex tempore. This Court is called upon to make a decision on the merits
20 whether RAF is liable or not in this matter of Lewis Hendry Peter. Matter 0577/2019.

Evidence was led from the Plaintiff, a 65-year-old male who is self-employed. This incident took place in 2017 and it started as follows, that the Plaintiff's son owned a motorcycle which he wanted to sell. It would not start as

a result the parties, the son and father decided to jumpstart it by towing it to a *bakkie* belonging to the Plaintiff as the battery was running flat. And they assisted each other to take the two vehicles out of the yard a panhandle I am told it is, this kind of a property and they tied the straps very tight onto the vehicle. I do not know what happened there, but it is suspected that the son hit the brakes as a result of which the motorcycle threw or ejected the Plaintiff he landed on the ground on the rocks and suffered serious
10 injuries which were seen on case lines as well as the reports of the experts.

According to the Plaintiff he swerved to the left to avoid hitting the *bakkie* and that is how he landed on the ground. He was ejected as I said earlier. He broke his shoulder, collar bone and few ribs, a severe head injury which caused him subarachnoid haemorrhaging that is (bleeding in the brain). He was in Court this morning and he reported to the Court that his left side does not function as it should. The son is not in South Africa he is based in
20 Texas in the USA working or doing farming in that area. They did not report this accident until after four months. The Plaintiff tells the Court that he was in an induced coma for four months. The Plaintiff used to work as contractor in the mines but he could not pass the test of going back to employment after the accident due to the fact that you need

your health in that space.

The Court wanted to know from the Plaintiff these utterances which were made by the Defendant, Ms Singh as to why there is a suspicion that RAF is investigating claims of fraud on the basis that he may not be owning a car or that there are other issues which need to be investigated. The Defendant's defence was struck out in this matter by my sister or brother. These issues are being brought for the first time according to the Plaintiff's defence for the first
10 time. According to recent judgment, rules were relaxed in terms of collision. See *R Ahmed & L Steinberg*.

"Even though the object of the Act is to provide wider protection to road users, the liability of the RAF should be limited at some point and the clear unambiguous ways of the Act did exactly that, until the courts interpreted the words too liberally to presumably widen the liability of the RAF. In light of the Court's liberal approach as to what constitutes a motor vehicle it will be of no surprise if the two-wheeler personal transporters (such as those
20 manufactured by Segway Incorporated) currently used in shopping malls and parking lots will also be considered a "motor vehicle" in the near future."

Counsel for the Plaintiff argued before Court that he deems that the Court should grant liability in favour of the Plaintiff 80/20%. However, the Plaintiff in their

evidence accept that the Plaintiff did not wear a helmet. They used a strap of about 4½ - 5 metres to tow this motorcycle.

I refer to the case of *Jeffrey v Road Accident Fund 2012(4) SA 475 (GSJ)*.

“It was held in this decision that a claimant can only be successful with a claim against the Road Accident Fund if the claimant was in fact injured by the negligent driving of a motor vehicle or other unlawful act connected to
10 a motor vehicle or the driving thereof. Thus, the definition of a motorcycle is of paramount importance. If the injury or death of a person was caused by something other than the driving of a motor vehicle or other unlawful act then the claimant could not be able to claim from the RAF. Section 1 of the Road Accident Fund defines a motor vehicle as any vehicle designed or adapted for propulsion or haulage on the road by means.”

This is not the issue in this matter, I beg your pardon. Because according to the Plaintiff this was a van
20 which was towing the motorbike.

This Court finds that there was a portion of negligence on the side of the Plaintiff. Firstly, by not wearing the helmet as he should have.

Secondly, I am not very sure of this, but I am advised that straps should be a certain meterage in order to

qualify to tow a particular vehicle. I have no basis for this contention. The Court has thoroughly considered this and the Court thinks that the RAF is liable but not at the 80/20 that the Plaintiff was claiming but instead at 60/40. Thank you very much.

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MPOFU, AJ

JUDGE OF THE HIGH COURT

DATE: ...2023/09/22...