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**REPUBLIC OF SOUTH AFRICA**



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

**CASE NO: 23097/19**

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| (1) | <u>REPORTABLE: NO</u>                  |
| (2) | <u>OF INTEREST TO OTHER JUDGES: NO</u> |
| (3) | <u>REVISED.</u>                        |

13/08/2021..  
DATE

.....  
SIGNATURE

In the matter between:

**LINGANISENI JOHANNA SKOSANA**

Plaintiff

And

**ROAD ACCIDENT FUND**

Defendant

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**J U D G M E N T**

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*The judgment and order are accordingly published and distributed electronically. The date and time of hand is deemed to be 10:00 on 13 August 2021.*

**TEFFO J**

Introduction.

[1] The plaintiff, an adult female person who was married to the deceased, Mr Majoni John Masombuka seeks compensation from the defendant, the Road Accident Fund ("the RAF") for damages for loss of support suffered as a result of the death of the deceased arising from the injuries sustained in a motor vehicle.

[2] It was alleged that on or about 18 February 2018 at approximately 20:15 at or near R573 road, Tweefontein, Kwa-Mhlanga, Mpumalanga Province, a motor vehicle accident occurred when a motor vehicle with registration letters and numbers [...] driven by Mr Jafta Jiyane (herein after referred to as "the insured driver") knocked down Mr Majoni John Masombuka ("the deceased") who was a pedestrian at the time.

[3] The collision was caused by the sole negligence on the part of the driver Mr Jafta Jiyane who was negligent in one or more or all of the following respects:-

3.1 He failed to keep a proper lookout;

3.2 He failed to apply the brakes of his car adequately, timeously or at all;

3.3 He drove at an excessive speed under the circumstances;

3.4 He failed to avoid the accident when by exercise of due and reasonable care, he could and should have done so;

3.5 He failed to keep the motor vehicle he was driving under proper control; and

3.6 He drove his vehicle without due regard to other road users.

[4] As a result of the collision thereof, Mr Mojoni John Masombuka died instantly. The deceased was the husband of the plaintiff. He had a duty to support the and maintain her. Pursuant to the collision, the plaintiff has been deprived of the support and maintenance that she was receiving from her deceased husband.

[5] The plaintiff has suffered and will suffer damages in the amount of R1000 000,00 (One million rand).

[6] The defendant has pleaded that it has no knowledge of the allegations, cannot admit or deny same and puts the plaintiff to the proof thereof. The other allegations relating to negligence have been denied and the plaintiff has been put to prove them.

[7] There was no representation on the part of the defendant and I was requested to deal with the matter on the papers. Unfortunately I was not invited on Case-Lines on the day the matter was enrolled to be heard. This affected the handing down of the judgment. I apologize to the parties for the late handing down of the judgment.

[8] Merits in this matter are still in dispute. The issue for determination is whether the defendant is liable to compensate the plaintiff for the loss or the damage suffered.

[9] I have perused the accident report which forms part of the trial bundle. The name of the deceased, the insured driver and the registration letter and numbers of the insured vehicle are not mentioned on the accident report. There is nothing mentioned in the documents that confirms that the deceased was one of the people involved in the accident referred to in the police accident report.

[10] The registration letters and numbers of the insured vehicle mentioned in the section 19(f) affidavit deposed to by the plaintiff is different from the one mentioned in the particulars of claim.

[11] According to the information on the section 19(f) affidavit, and the particulars of claim, the deceased was a pedestrian when he was involved in an accident. There is no indication on the accident report that indicates that someone was knocked down save to say that two motor vehicles were parked next to the police station when another motor vehicle approached and hit the two parked motor vehicles.

[12] The information provided is inadequate and contradictory. It does not confirm that the deceased was involved in the collision mentioned in the accident report. It follows that the plaintiff failed to prove negligence on the part of the insured driver. It then follows that the application for default judgment against the defendant should fail.

[13] Consequently, the application for default judgment is refused. There is no order to costs.

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**M J TEFFO**  
**JUDGE OF THE HIGH COURT**  
**GAUTENG DIVISION, PRETORIA**

Appearances.

None.