



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

Case No: 84333/2017

(1) Reportable: No
(2) Of interest to other judges: No
(3) Revised: Yes

16 October

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Signature

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Date

In the matter between:

KHAYELIHLE MTHETHWA

PLAINTIFF

And

MIWAY INSURANCE LIMITED

DEFENDANT

JUDGMENT

LESO A.J.

INTRODUCTION

1. The Plaintiff instituted an action against MiWay Insurance Limited after the insurer repudiated his claim for indemnification under the policy insurance pursuant to a motor vehicle accident that occurred at around 05h30 on the morning of 26 December 2016 wherein the insured vehicle was damaged.

BACKGROUND

2. The matter was set down for hearing from 13 to 15 February 2024 after the parties agreed to separate the issue of liability and quantum.
3. On the first morning of trial the parties had agreed to certain aspects of the trial to narrow the issues which the Court is required to adjudicate including the fact that the defendant will not persist with its claim that Mthethwa was intoxicated or was under the influence of drugs when the accident occurred. Consequently, the defendant also abandoned the special plea of prescription.
4. The parties agreed that Mthethwa had a cover for the retail value of the vehicle, less the excess; credit shortfall, storage and towing charges as per the policy and that in principle, he would be entitled to interest paid on the loan subject to proof thereof, mitigation onus and paying on time. It was agreed that the issues relating to Mthethwa's interest claim being the additional interest he incurred as a result of the defendant's repudiation, rather than the interest on amounts claimed as pleaded, would be determined at the quantum stage of the trial. It was further agreed that Mthethwa paid his premiums in terms of the contract of insurance and that he complied with his obligations in terms of the insurance policy save for the alleged conduct of the driver and the disclosure about his speed and how the accident occurred.
6. Lastly the parties agreed that if the defendant is not successful with its grounds for repudiation pleaded, then the defendant would be liable for the Plaintiff's proven or agreed damages.

COMMON CAUSE FACTS

7. Mthethwa was driving a motor vehicle described as a 2015 Mercedes Benz A45 AMG4 Matic equipped with ABS, EBD and DSC and braking coefficient of 1G on dry tarred road.

8. The damage to the vehicle was consistent with a vehicle hitting the wall at between 50km/h⁷ to 60km/h⁸ although it is difficult if not impossible to give an absolute answer.
9. The scene was visited by both experts long after the accident and it was agreed that any evidence that there would have been of braking on the tar, would at best have been available for a couple of days after the collision at most.
10. There was no evidence to confirm or disprove a dog's existence at the crime scene.
11. The method of calculating the initial speed of the insured driver by calculating the deceleration of the vehicle was not disputed between the experts or the parties, but the variables used in such calculations were a key issue of dispute. The variables referred to above are as follows:
 - 11.1 The speed at which the vehicle impacted the wall;
 - 11.2 The amount of deceleration (braking) applied;
 - 11.3 The distance over which such deceleration was applied.

THE MERITS

12. The defendant alleged that Mthethwa supplied the defendant with dishonest information relating to the speed he was driving, and how the accident occurred. According to the defendant, Mthethwa failed to take reasonable care and/or reasonable precaution to prevent the accident as he was driving at an excessive speed. The defendant called an accident reconstruction to give testimony in support of its claim.
13. Mthethwa denies that he exceeded the speed limit and he claims that he did apply brakes when he swerved to the left to avoid hitting the dog. The matter started with the plaintiff case and the plaintiff's brother, Mngobisi Meluleki Mthethwa was the first witness to testify on behalf of the plaintiff followed by the evidence of the accident reconstruction expert, Craig Proctor-Parker.

PLAINTIFF'S CASE

Mthethwa's evidence

14. Mthethwa testifies that on 26 December 2016 at approximately 05h20 he was the driver of the insured motor vehicle. He said that he drove under the bridge, stopped at a stop street before the circle and 5 meters further he brought his vehicle to a complete stop by applying brakes at the yield marker, he checked that the path was clear and accelerated to his right and entered Virginia circle.
15. Mthethwa indicated that while traveling on Virginia Circle, a dog entered his path of travel from his right side directly in front of his vehicle leaving him no time to react. He referred to a tree line on the right side and the traffic circle on the left side which was identified in photograph 2 on the report and stated that the place at which the dog had entered his path of travel was "just after" the tree line on the right side and "just before" the exit of the traffic circle on the left side. He said he was driving between 45-50km/h when he first saw the dog and he needed to react in an instant and swerved the vehicle left to avoid colliding with the dog, then swerved right to try to correct his steering. Mthethwa stated that after avoiding the collision with the dog he had impacted the curb with his front left tire, his airbags deployed and he lost control of his vehicle despite attempting to maintain control. He indicated that he had driven that road numerous times as he lived nearby and this was a normal route he took. He was coming from an event at Virginia airport going home to Durban North and the conditions were clear, it was not quite sunlight but there was light as it was early morning, and the street lights were not on.
16. The witness testified that MiWay interviewed him and his brother more than six(6) times and he was never taken to the scene when the inspection was done.

Evidence of Craig Proctor-Parker

17. Proctor-Parker testified that he visited the scene of the accident long after the accident and the only four pieces of objective physical evidence available were the following:

- 17.1 The impact point of the vehicle with the curb;
- 17.2 The rut or gouge in the grass;
- 17.3 The impact point of the vehicle with the wall;
- 17.4 The position of the final rest of the vehicle.
- 17.5 The damages on the vehicle were inspected.
- 17.6 The tracker logs were reviewed but very little weight was placed on the report because the Km driven were not showing.
- 17.7 On 18 May, 26 June and 29 August 2018 he conducted interviews with the driver, the passenger and the insured to fill the gaps in the physical evidence.

18. Having regard to the direction the driver was traveling and the circle a trajectory of the vehicle's path could be plotted. He stated that he relied on photographs of the collision for certain aspects of the report and for calculating his measurements from the point of impact with the curb to the position of the final rest of the vehicle as approximately 14.7 meters.

Evidence of the rut of the grass and braking

19. On the evidence of the rut on the grass and braking, Proctor-Parker could not accept the driver had applied 100% deceleration as the defendant's expert has suggested in his report. According to the witness, higher braking could affect speed. He accepted the proposition that a rut in the grass could indicate that there was at least some form of braking applied although he could not say where the braking began. His evidence was that the rut in the grass could have been caused by ABS and/or steering input and/or damage to the front left tire of the vehicle. He did however state that the rut might have been caused by some braking but he could not assume that the driver braked the whole way. He considered the insured driver's version that he did not apply brakes when the dog ran into his path of travel, but instead attempted to swerve to avoid the impact and had factored this into his calculations.

20. Proctor-Parker also stated that it is highly probable that the tire had burst from impact with the curb because even the rim may have been damaged. He stated that he conducted many tests at low speeds of 20-60km/h and that he had observed many complete tire ruptures, he agreed that this would not necessarily break the rim, but the likelihood of bursting a tire was highly probable.

Evidence on Speed

21. Proctor-Parker differed from Pretorius in his calculation of the initial speed of the driver. He disagreed with the variables that were used by Pretorius to arrive at the distance of 30 meters because he does not view the initial impact speed as being conservatively 60km/h as Pretorius does but states that it could be as low as 50km/h or even lower.
22. In terms of the variable for distance applied, he indicated that he did not understand how Pretorius arrived at the distance of 30 meters (from when it is alleged the braking began) as there was no objective physical evidence available to arrive at this distance. Proctor-Parker stated that Pretorius calculation of a distance of 30 meters by using the same 14.7m distance from the point of impact of the vehicle with the curb to the position of final rest, taking 15.3m back from the point of impact with the curb, being the point at which the insured driver reacted just before he got to the turn did not make sense. He maintained that using an absolute figure of 30m in his opinion could not be done unless the driver specifically indicated a point, he said that there must be a margin of error applied.
23. He furthermore indicated that a difference of just 5 meters in the distance used in Pretorius' calculations (25m or 35m) would have the effect of making the initial speed as low as 80-85km/h (25m) or as high as well over 100km/h (35m).
24. The witness stated that because the driver's description of where the dog entered his path of travel was not exact, from between the end of the trees to the left-hand turn therefore it was not possible to assume any absolute value. The plaintiff's expert's witness stated that when there was a "gap" in the information of evidence he defaulted to the driver's version that he did not brake.

25. When discussing the aspect of critical curve speed (CCS) as dealt with in his report and the joint minutes, he stated that the CCS is an evaluation tool used to indicate the speed at which a vehicle would start to lose control when entering a curve, depending on the speed it was traveling and 59km/h was what he had calculated, but in reality this is not an absolute figure but a range. He stated that because the figure of 59km/h was conservative, there is a range of around 10km/h meaning that 69km/h was probably a more realistic figure for the vehicle losing control.
26. Proctor-Parker stated that even at 69km/h the vehicle would start to lose control once over that speed, the higher the speed it is more likely that the vehicle would completely lose control, but suggested that if the driver had been traveling at the speed suggested in Pretorius' report he would have had a more head-on collision with the wall rather than the glancing blow observed. He did not agree that a vehicle traveling at anything over the CCS of 59km/h would lose control. He also stated that it is important when considering CCS once the vehicle impacts the curb and is on grass, the same CCS will not be applicable due to the difference in friction of the surface the vehicle is being the grass as opposed to the tarmac.
27. He testified that the veering, braking and damage is consistent with what the driver said.

DEFENDANT'S CASE

Evidence of Walter Pretorius

28. The witness testified that when dealing with the question of the relationship between the speed and the trajectory he indicated that the trajectory suggests that there was no swerving for an animal because the trajectory indicated has a higher radius than the bend itself. His evidence was that the driver could not have swerved left and then right, because at 45km/h, with 1 second as the approximate time to complete such a maneuver, the driver would have traveled 12.5m leaving enough space for him to correct his travel. He further indicated that the final direction of the vehicle would have been different.

29. The witness stated that full braking (100%) was applied to have caused the rut or gouge which was observed and even with steering and harsh braking, it is highly probable that one would observe such a rut but not with steering alone. He stated that it was highly improbable that the marks were caused by any damage to the front tire as he stated that the vehicle was fitted with 18-inch wheels and the height and angle of the curb meant that the curb would not pose a big obstacle for the tire and the curb would not have caused damage to the tire. Pretorius stated that it was impossible that the tire would have burst from "mounting" the curb but the impact with the curb might have caused the tire to burst.
30. Pretorius stated that in terms of his report, the distance from A(the entrance of the right-hand curve) to B (the area where the insured vehicle impacted the left-hand curb) was 19m, and the distance from B (the area where the insured vehicle impacted the left-hand curb) to C (the area of final rest) was 11m, however stated that this was not relevant as the total distance still equates to 30m and is consistent with his report. About the distance he applied in his calculation of 30m, he calculated a distance of 30 meters by using the same 14.7m distance calculated by Parker from the point of impact of the vehicle with the curb to the position of final rest, he then took 15.3m back from the point of impact with the curb. being the point at which the insured driver reacted just before he got to the turn.
31. He testified that calculations would change if he did not apply 100% braking on the road surface for the full 15.3m, and the speed of 90-100km/h as found in his report would have been substantially lower if the calculations he had done were based on the evidence of the driver, including no braking applied while on the road, a dog entering the road and therefore swerving.
32. Pretorius stated that anything approaching not being able to control the vehicle around the bend would be reckless, and stated that the minimum speed for that curve would be 90km/h.
33. Most of his evidence was concessions he made during cross-examination which I will discuss in my analysis of evidence.

ISSUES FOR DETERMINATION

34. Whether MiWay Insurance ought to have rejected the Mthethwa's claim under the policy of insurance.

ANALYSIS OF EVIDENCE

35. The insurer would be entitled to repudiate Mthethwa's claim if he failed to comply with the listed terms and conditions of the policy contract. MiWay alleged that the conduct of the driver by driving at an excessive speed deliberately caused loss or damage which could have been prevented or minimized. The insurer also rejected Mthethwa's claim on allegations that he supplied dishonest information relating to the speed he was driving, and how the accident occurred. The court must determine whether or not MiWay's rejection of the plaintiff's claim on the above grounds is justified.
36. It is common cause that the parties agreed in terms of the insurance policy that MiWay will provide Mthethwa with financial cover in the event of an insured event occurring subject to certain terms and conditions relevant to this dispute as follows:
 - 'a. *MiWay will not pay me for a claim when I, a member of my household, anybody who acts on my behalf or the regular driver, deliberately caused the loss, damage or injury; and*
 - b. *If I or anyone acting on my behalf submits a claim or any information or documentation relating to any claim that is in any way fraudulent, dishonest or inflated, all benefits under this policy in respect of such claim will not be paid.;*
 - c. *In order to have continuous cover and a valid claim, I must: ...use all reasonable care and take all reasonable steps, with the same degree of carefulness which can be expected from the reasonable man on the street, to prevent or minimize loss, damage, death, injury or liability.*

- d. *If I misrepresent, incorrectly describe or fail to tell MiWay of any important fact or circumstances relating to this policy, my policy may be cancelled, or invalidated from the start date and any claim under this policy will not be paid. ...'*
37. Disputes between insurers and policyholders often hinge on the interpretation of policy language, adherence to regulatory standards, and the presentation of evidence. In this case there is no issue with the interpretation of the policy wording and the conditions are clear. The first condition for refuting a claim by the insurer in terms of the listed conditions in paragraph 'a' above is based on intent. The legal implication of this condition is that if Mthethwa was speeding intentionally, it may indicate reckless behavior that could establish intent, simply put, Mthethwa's claim could be rejected upon evidence of deliberate cause of loss, damage or injury. The second ground of rejection of the insurer's claim in terms of listed conditions in paragraph 'b' is based on fraud. The legal implication of this policy condition is that if there's evidence suggesting Mthethwa manipulated information regarding speed, this could constitute fraud, simply put, Mthethwa's claim could be rejected upon misrepresentation of facts on how the accident occurred or presentation of fraudulent documents.
38. The third but last condition for refuting a claim by the insurer in terms of the listed conditions in paragraph 'c' is based on negligence. The legal implication of this condition is that driving at excessive speed may demonstrate a failure to exercise reasonable care, thereby establishing negligence. The insurer attributes Mthethwa's alleged action of driving at excessive speed to deliberately causing damage or loss, failure to take reasonable and reasonable precautions to prevent loss on the day of the accident. The finding on whether or not the plaintiff drove at high speed on the day in question should settle the issue of the allegation of misinformation or dishonesty by Mthethwa and the issue of negligence.
39. In this case, the court's primary task is to establish what constitutes 'excessive speed' to determine whether Mthethwa was indeed driving at an excessive speed on the day in question. The determination of speed is crucial because it relates directly to issues of intent, fraud, and negligence and is foundational in determining liability in this case.

40. The Court is therefore required to determine whether, based on the evidence presented by witnesses, the relevant traffic laws and regulations, evidence on speed measurement, the trajectory of the vehicle involved, the condition on the road on which the Mthethwa was driving and his behavior on the road on the date in question and accident circumstances it can be said that Mthethwa drove at an excessive speed and he did not act reasonably on the day of the accident thereby deliberately causing damage which he could have prevented as he was speeding.
41. In cases involving negligence the burden of proof often shifts between parties. Mthethwa must demonstrate that he was not driving at an excessive speed and that he acted reasonably on the day of the accident on the other hand MiWay must establish negligence and liability by showing that Mthethwa's actions directly contributed to the accident and that he failed to meet the standard of care expected of him in that situation.
42. Two reconstruction experts calculated speed and analyzed the collision by using various data points, including the trajectory of the vehicles involved to determine factors like speed at the time of the accident. They analyzed the trajectory by assessing the paths that the vehicles took before, during, and after the collision. This exercise involved examining The impact point of the vehicle with the curb the rut or gouge in the grass, the impact point of the vehicle with the wall and the position of the final rest of the vehicle. They compare the calculated speeds to the posted speed limits to determine if any party was exceeding legal limits, which can be crucial in establishing liability.
43. The insurer did make out a case because Pretorius report and evidence was based on contradicting assumptions because even though he denied the driver's version of the dog, he commented that if there was a dog, no swerving occurred and 100% braking was applied there would have been a dead dog as a further piece of objective physical evidence. What this witness is saying is that he expects to have found a dead dog several months after the accident, this is absurd if not improbable. The insurer's expert does not deny nor accept the existence of the dog. The expert should explore various scenarios such as how the presence of a

dog could alter the timeline, affect witness accounts, or influence the behavior of the driver and the Contingencies should be applied where there is uncertainty. By accounting for these possibilities, the report would provide a more comprehensive analysis and avoid relying on assumptions that may not reflect reality.

44. Pretorius's report is flawed because it was based on the assumption that there was no dog at the scene and that 100% braking was applied. This assumption is critical, as the presence of the dog could have influenced the calculation of speed.
45. I will not accept Pretorius's evidence that 100% deceleration had been applied by the driver because of the concessions he had already made and the fact that neither expert managed to observe any physical evidence of braking, such as tire marks on the road. The fact that the expert relies on his experience when he is faced with sudden emergency to assume that the driver applied full brake is problematic. Similarly, his explanation of what should be considered reckless is not satisfactory.
46. His answers to the questions posed by the court to explain the difference in the two marks apparent in the rut with the left marking being more extensive were not satisfactory.
47. I also observed the imbalance in the defendants' expert concessions which undermines his overall testimony and also weakens the defence's position because those concessions are at odds with the conclusion that Mthethwa was driving at a high speed or that he was negligent. The weakness of his testimony often hinges on the quality of the data and the methods used in his analysis. The defendants' expert conceded as follows:
 - 47.1 that the damage to the vehicle was consistent with a vehicle hitting the wall at between 50km/h to 60km/h speed.
 - 47.2 he accepted that the speed at which the vehicle impacted the wall could have been as low as 50km/h due to the impact being a glancing blow as indicated by Procter Parker.

- 47.3 that the critical curve speed at which one could safely negotiate the bend was 69 km/h and that from this point onwards the vehicle would gradually begin to understeer as indicated by Procter-Parker.
- 47.4 He accepted the images in Procter-Parker's report as being accurate in respect of the trajectory and distances used.
- 47.5 He agreed with the calculations of distance and trajectory used in Procter-Parker's report and confirmed that he had used the same calculations.
- 47.6 He conceded that his report in no way dealt with the questions of CCS, trajectory or radius, and that this was not mentioned anywhere in his report and he used Procter Parker's report in dealing with those aspects.
- 47.7 Pretorius conceded that there were no objective physical markings demonstrating braking applied on the road surface, and that this was consistent with what both experts agreed as the vehicle was fitted with ABS.
- 47.8 Pretorius conceded that if the calculations he had done were based on the evidence of the driver, including no braking applied while on the road, a dog entering the road and therefore swerving, the speed reached of 90-100km/h would be substantially lower.
- 47.9 He agreed that the speed of 90-100km/h as found in his report would have been substantially lower change if he did not apply 100% braking on the road surface for the full 15.3m.
- 47.10 Pretorius conceded that there were no objective physical markings demonstrating braking applied on the road surface and that this was consistent with what both experts agreed as the vehicle was fitted with ABS.
48. I also found the imbalance in the defense evidence on the fact that the driver's version or statement of what exactly led to the accident was not considered. The drivers version is crucial in this case because the insurer does not only allege that

the Mthethwa drove at a high speed but alleges that Mthethwa's unreasonable actions caused a loss on the day in question.

49. I am inclined to agree with the defence counsel that the experts must reconstruct the accident in the most likely manner in which it occurred. The process cannot however be complete without the plaintiff's version of how the accident occurred especially where the process of reconstruction is done after a lapse of a considerable period. There is no explanation why the defence did not obtain information from the plaintiff and pedestrian who was around the scene on the day of the accident. The insurer's expert should have made efforts to gather as much evidence as possible to establish the factual evidence even though his analysis is based on assumption. It was necessary to consult with the plaintiff as the expert who testified on behalf of Mthethwa did. This exercise was necessary because very nature of what the experts do requires them to make certain assumptions and wherever possible, those assumptions should be tied to the factual and physical evidence provided. It is nonsensical that the defence expert will totally reject the plaintiff's version and insist that his assumptions are correct while it is common there was no evidence to confirm or disprove the existence of a dog at the scene of the crime. There was no basis for his rejection of the driver's version that the driver did not apply brakes.
50. The insurer's expert was aware that the reports lacked quality because of poor SAPS reports and the deterioration of evidence at the collision scene yet he failed to consult with the driver to get further necessary information. His approach of using only the objective, physical evidence available to him to assess the collision and to reach his conclusions is wrong.
51. There are serious challenges of incorrect facts in the report of the defendant's report. Where his report referred to a right-hand curve in the road, this was a left-hand curve in the road as the incident occurred in a traffic circle, and traffic circles in South Africa only have left-hand curves. He however indicated that this was simply an oversight.
52. Proctor-Parker who testified on behalf of Mthethwa also made certain concessions under cross-examination however the concessions made were consistent with the

conclusions in his report. This expert correctly considered physical evidence and also consulted with the plaintiff to determine factual evidence because there was no further physical evidence available. He did not make assumptions that lacks a foundation and his evidence was not bias.

53. I find that Mthethwa's version of events that he did not drive at an excessive speed and he did not apply brakes when he saw the dog, but instead attempted to swerve and correct his travel is probable despite the fact that the experts could not confirm the existence of the dog on the day in question. I accept that the accident was not caused by the speed but a distraction which caused Mthethwa oversteer and hit the wall. Mthethwa was a reliable witness and his evidence regarding the collision was consistent and remains unchallenged. In the absence of physical evidence to the contrary. I could not find anything which would lead me to believe that Mthethwa was being untruthful about how the collision occurred.
54. Both experts agreed that certain assumptions would have to be made, Proctor-Parker tied any assumptions made to the evidence available, whereas in the case of Pretorius, aspects such as swerving, distance, and braking among others went beyond the realm of assumptions and were speculative.
55. There is no doubt that the report of the insurer's expert is based on speculations or assumptions that are not correct. It is also clear from the timing of the report that the report was obtained for court processes and it could not have been used to qualify the insurer's claims. Similarly, the insurer was malicious when rejecting Mthethwa's claim because the report did not exist when it repudiated the claim.
56. From the total evidence tendered by Pretorius(the expert who testified for the insurer) no evidence was presented as to what would constitute an excessive speed. The evidence of this expert was not satisfactory because his assumption is based on photographs of the collision and certain aspects of Proctor-Parker's report which was obtained after his report.
57. I have analyzed the insurer's grounds for repudiation and I found that the nature of the repudiation is not aligned with the policy provisions.

CONCLUSION

58. MiWay has failed to meet the threshold required in law to sustain a repudiation of Mthethwa's claim and failed to prove a breach of the insurance agreement that would entitle it to repudiate the claim.
59. The reasons for repudiation does not accord with the terms and condition of the insurance agreement concluded between Mthethwa and Miway Insurance. Similarly, the basis for the repudiation of the claim made by Mthethwa is not justifiable in terms of the law.
60. From proven facts and the evidence before me there is no evidence that suggest that Mthethwa supplied the insurer with dishonest information relating to the speed he was driving, and how the accident occurred.
61. The insured cannot succeed with its grounds for repudiation as pleaded. Consequently, Plaintiff is entitled to judgment in his favour.

COSTS

62. The Plaintiff argued that he is entitled to costs on the following basis:
 - 62.1 that he had consulted with his legal representative, and arranged for travel, and accommodation for the police officer who was present at the scene, after the collision because the defendant had intended to pursue its defence that the insured driver was driving under the influence of drugs and/or alcohol up until the morning of the trial.
 - 62.2 The witness was flown from and to Durban.
 - 62.3 The interpreter was present to assist the witness in the giving of his evidence who was paid, and was present at Court on the morning of the trial.

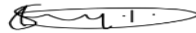
62.4 The interpreter's costs were paid in advance to secure his services for a day.

63. It is therefore submitted that the defendant should be liable for these costs, irrespective of the outcome of the matter, as the costs were incurred and are attributable purely as a result of the conduct of the defendant.
64. The Plaintiff therefore seeks a costs order in this regard to include and any all costs incurred by the Plaintiff relating to the interpreter and costs of suit, with such costs to include travel, accommodation, and additionally, the qualifying and travel costs of the Plaintiff's expert witness, Proctor-Parker.
65. The defendant should not be penalized for late concessions which contributed to curtailing the proceedings. All the expenditure listed by the plaintiff was necessary for his case during trial.

THEREFORE, I MAKE THE ORDER AS FOLLOWS:

ORDER

1. The insurer is liable for the plaintiff's proven or agreed damages including the retail value of the vehicle less the excess plus the interest on the aforesaid from 26 December 2016.
2. The credit shortfall, storage and towing charges as per the policy, plus interest on the aforesaid and finance charges on the loan to the date of the payment.
3. the additional interest he incurred as a result of the defendant's repudiation.
4. The amount to be paid on the aforesaid and the interest and additional interest would be determined at the quantum stage of the trial.
5. Cost are costs in the course



**J.T LESO
ACTING JUDGE OF THE
HIGH COURT, SOUTH AFRICA**

Date of Hearing: 13 February 2024

Date of Judgment: 16 October 2024

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