

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

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

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

CASE NO: 62941/2015

DATE OF HEARING: 10 MAY 2019

13/8/2019

In the matter of:

MESHACK THUHLANE MOFOKENG

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

JUDGEMENT

N N Bam AJ

A. Introduction

1. This case is about a claim for damages arising from a motor vehicle accident. The claim is brought in terms of section 17 (1) (b) of the Road Accident Fund Act¹.
2. Before the start of the trial, both counsel relayed that notwithstanding their holding of the pre-trial conferences during 2017 and 2019, the merits

¹ (Act 56 of 1996) as amended

remain disputed. By agreement between the parties then, the issue of merits was separated from the quantum in terms of rule 33(4) of the Uniform Rules of Court and the matter proceeded on merits only.

3. Plaintiff, Mr Meshack Thuhlane Mofokeng, is an adult male of 47 years (43 at the time of the event). He was employed as a driver by [...] at all times material hereto, and he resides at [...] North West.
4. Plaintiff issued a summons against the Road Accident Fund (the Fund) during August 2015, following the accident which occurred on 17 June 2014.

B. Details of the accident

5. Plaintiff called no witnesses; he testified as follows:
6. On 17 June 2014 at about 17h00, he was driving along Jericho and Mondiyane in Britz, Northwest, to deliver some goods on behalf of his employer when he was involved in an accident. He was driving a Toyota Hilux Bakkie with registration number [...]. *[In several instances in the record provided by the plaintiff, the registration number is noted as [...]]* There was however, nothing made of this difference.] Traveling with the plaintiff on the day in question were two passengers who were also in the employ of Britz Wholesalers. The accident occurred when the insured vehicle number (1) driving from the opposite direction to the plaintiff suddenly overtook insured vehicle number (2) and faced oncoming traffic. To avoid a collision, plaintiff swerved his vehicle to his left. It hit the gravel surface and, in the struggle to bring the vehicle back to the road, it hit a tree. As a result, plaintiff was injured. He and his fellow passengers were transported to a hospital in Britz where he woke up the next day. He was hospitalized for a month before he was discharged. Neither the two drivers nor their vehicles could be identified, which brings the claim within the ambit of section 17 (1) (b).
7. Plaintiff did not see any police officers after the accident.
8. After discharge from hospital, plaintiff went to the police to report the

accident because his employer had instructed him to do so. He could not remember the date of the report to the police.

9. In his section 19 (F) affidavit² plaintiff declared under oath that he was the driver of the vehicle [...] on the day in question. The details of the accident are noted in the affidavit as follows: An unknown oncoming vehicle overtook another vehicle. This caused plaintiff to swerve to the left to avoid an accident; he lost control of the vehicle and it began to roll.
10. The narrative as to how the accident occurred according to the plaintiffs particulars of claim is confusing but I produce it as best as I can in this paragraph. According to the plaintiff³ there was a collision on the day in question between vehicle number one, number two, and the vehicle driven by the plaintiff. The collision occurred when the insured driver of vehicle number one overtook the second vehicle. In so doing, vehicle number one was facing oncoming traffic. As a consequence, the plaintiff swerved to avoid a collision. He subsequently lost control and his vehicle overturned.
11. The defence had put no version before the court. It however denied the allegations made by the plaintiff as to the cause the accident, alleging that the accident was caused by the plaintiffs negligence for, among others, failing to keep a proper look out. In the alternative, it pleaded that in the event the court were to find that the accident was caused by the negligence of the insured driver, which it still disputed, then it alleged that the accident was caused by both the insured driver and the plaintiff, in which case it would ask that the damages be apportioned in terms of the Apportionment of Damages Act 34 of 1956.

C. Statement by Njeryl Islam, one of the passengers

12. Njeryl Islam (Njeryl), one of the passengers traveling with plaintiff on the day of the accident along with Jahir Islam, was interviewed by DW/O Jacob Julie D Sechele (Sechele), with force number 05209081 , stationed at Jericho, in connection with the accident noted under case number 30/06/2014. The interview took place on 24 July 2014 at 12h00. Although

² deposed to on 5 January 2015

he was not called to testify, his statement formed part of the record⁴. Speaking under oath, in English, Njeryl avowed that he is of Pakistani origin and 30 years of age. He narrated the details of the accident as follows:

- (i) He is employed by Moss Shop at Leganyane Village. *[It's not clear whether Moss Shop is the same as Britz Wholesalers.]*
- (ii) On 17 June 2014 at approximately 17h04 he and Jahir Islam were passengers in a Toyota Hilux Bakkie, with registration number [...], then driven by Justice Ramotso (Ramotso).
- (iii) They were traveling along Maboloka Road at about 100km/hr when two rear tires burst. He proffered it was because the road has potholes.
- (iv) Ramotso had tried to control the vehicle but it rolled four times before hitting a tree and then came to a standstill.
- (v) They fell out of the vehicle and he sustained injuries to his right thumb, finger, knee and face. The police were informed and they were all transported to Brits hospital where they were discharged after treatment.

D. Police investigate a case of reckless and negligent driving

13. On the same day of Njeryl's interview, at about 14h00, a man was interviewed by the police in connection with an investigation into reckless and negligent driving. The case number is noted as 30/06/2014 and the interview was conducted by D W/O Sechele. The man interviewed identified himself as Ramotso of Mahurnadiha Township, Tornstreet, Britz. After he was informed refer to as the Ramotso statement. He stated:

- (i) On Tuesday 17 June 2014 at approximately 17h10 , he was driving a Toyota with registration plate [...] between Jericho and Modinyane Road at a speed of 100km/h when two of the rear tires burst.

³ Page 6 – Pleadings bundle- paragraph 4.1

⁴ pages 21-22

- (ii) He lost control and the vehicle overturned.
- (iii) He suspected the cause to have been potholes.
- (iv) He could not tell what had happened thereafter as he was unconscious and woke up in hospital the next day with injuries on his left hand and chest. He was later transferred to Ga Rankuwa hospital.
- (v) He also could not tell where the accident took place.

E. Statement by Constable Snyman Matube

14. On 17 June 2014, Constable Snyman Matube, (Constable Matube) of the SAPS was stationed at Jericho when he received a report about an accident.

He attended the scene and thereafter made a statement under oath as follows:

- (i) On his arrival, he found an African male sitting on the ground who introduced himself as Meshack Mofokeng (plaintiff). With him were two males from Bangladesh. The two Bangladeshi men were standing next to the vehicle and there were groceries strewn around the vehicle.
- (ii) The Bangladeshi men introduced themselves as Johrul Islam and Mansur.
- (iii) The two alleged that Meshack was the driver.
- (iv) He summoned an ambulance and the injured men were taken to hospital.
- (v) The victim's vehicle, a Toyota Hilux with registration number [...], was towed to Jericho upon the instructions of a man by the name Mohamed Mansum who identified himself as the brother of one of the injured males.

F. Police sketch⁵

⁵ page 31 of the record

14. According to the sketch drawn by Constable Matube, the vehicle was driving between Jericho and Maboloka on the day in question. The sketch depicts one vehicle, the direction it was traveling and where it was positioned after the accident. There is also a police accident report and the name of Constable Matube appears. The poor quality of the report makes it exceedingly difficult to follow what is recorded.
15. During his examination in chief, plaintiff was referred to an 'affidavit'⁶ made to the police in connection with the accident. The 'affidavit' turned out to be the same statement made by Ramotso. The statement lacks the essentials to make it an affidavit. It has neither the date nor the commissioner's certificate at the end. Nonetheless, plaintiff identified Ramotso as his cousin. Then came the blatantly leading question about the circumstances under which the plaintiff came to sign the statement. Plaintiff confirmed that he gave the statement to the police but had not read it, thus, he did not see that it had his cousin's name on it. He testified that he was accompanied by his cousin to the police station and relayed the information through the cousin. He mentioned that he could not remember where the accident had happened after his month's stay in hospital.

G. Hospital records

16. The hospital records⁷ note that plaintiff was admitted on 17 June 2014 at about 20h30 on account of an involvement in a motor vehicle accident. At the time of arrival, he was alert and complained of painful wrists, chest and back pain. On page 40 under retrospective notes, the same details about the plaintiff being alert upon arrival are repeated. It is further noted that he was well hydrated and not bleeding. Both wrists were observed to be in full range of movements. A prescription note with his name dated 18 June 2014 was issued. There is a further record which confirms that plaintiff was later hospitalized on 29 June to 17 July 2014⁸. This hospitalization

⁶ page 29 of the record

⁷ page 38- 41

⁸ page 63

Page 7

however, was preceded by a consultation for an operation⁹. It is not clear whether the later admission had any connection with the accident.

H. Analysis and Conclusion

The driver

17. I start with the most basic but essential detail of this case, the identity of the driver. I had difficulties reconciling who the real driver of the vehicle was. According to the plaintiff, he was the driver but according to Njeryl who was interviewed a few hours before him on 24 July 2014, at the same police station, by the same officer, in connection with the same case, the driver was Ramotso. First, I found it strange that neither Constable Matube nor Njeryl were called to testify. Njeryl was said to be in the same employ as the plaintiff at the time.
18. Second, plaintiffs testimony that he was rendered unconscious after the accident and he woke up in hospital the next day must be questioned. In direct contradiction is the sworn statement of Constable Matube which identified the driver as the man he found sitting on the ground who identified himself as the plaintiff. Matube was informed by the two Bangladeshi passengers that plaintiff was the driver. Juxtaposed against Matube's statement, the hospital records and the sworn statement of Njeryl, the plaintiff's statement about being rendered unconscious cannot be true. In the absence of evidence that the hospital personnel had any motive to provide him with false records, his statement as to his state of consciousness falls to be rejected. Fortifying my view in this regard is Constable Matube's sworn statement which makes no reference to the plaintiff being unconscious. On the contrary, Constable Matube described the plaintiff as 'a man who was sitting on the ground'. The net result is that from the conspectus of evidence before this court, the driver was either Ramotso or the plaintiff, a result that does not assist plaintiff in his claim.

The cause of the accident

⁹ page 57

19. The difficulties do not only end with the identity of the driver, there are some internal contradictions in plaintiffs own evidence regarding the description of the accident. In his particulars of claim and his section 19 (F) affidavit¹⁰, the vehicle rolled. In court, the plaintiff hit a tree while he was trying to bring the vehicle back to the lane but there was no mention that the vehicle overturned. I may add at this point that not every error made by a witness affects their credibility¹¹. Further, the test is not whether the witness was truthful or reliable in all what he said but whether, on a preponderance of probabilities, the essential features of the story are true¹². However, when one brings to the fore the statements made by Ramotso and Njeryl, that the vehicle overturned following the burst of two rear tires then the credibility of the plaintiff is severely attacked. Both statements went further and confirmed that the cause must have been the potholes on the road. These statements were both made in July 2014, whereas the section 19(F) affidavit and the summons were drawn up during January and July 2015, respectively.
20. Plaintiff's explanation in court about how he signed a statement - which is supposedly that of his cousin¹³ - is undermined when one takes into account that his colleague, who was interviewed two hours before him, also identified the driver as Ramotso. Both statements identified the cause of the accident as burst tires due potholes. Surely, Njeryl had not been not aided by plaintiff's cousin when he made his statement. Also, having been interviewed within two hours apart in connection with the same case, the interviewing officer would have easily picked up the discrepancies as to the cause of the accident and the identity of the driver. Seen in this way, it is more probable that there were no other vehicles involved in the accident, but that the vehicle overturned due to the burst tires as narrated in both the Ramotso and Njeryl statements. However, the two witnesses may have agreed to falsify the identity of the driver to protect the plaintiff

¹⁰ The affidavit was deposed to on 5 January 2015

¹¹ *Satani v Department of Education, Western Cape* 447/201, delivered on 6 March 2019 (unreported), para 19

¹² *Santam Berperk v Vincent Biddulph* 105/2003, SCA para 10

¹³ refer to paragraph 15 of this judgement

from a possible prosecution, *[the police had informed him they were investigating a case of reckless and negligent driving]*. It is one thing for plaintiff to state that he did not read the statement, which is produced in English and quite another for him to sign a statement as his, where his own name did not appear anywhere.

21. These inexplicable inconsistencies point to the plaintiffs attempt to obfuscate the truth. Further indicators of this attempt are: the plaintiffs decision not to call any of the witnesses who were with him on the day of the accident, nor Constable Matube who had attended to the accident scene at the time; the different versions as to the cause of the accident, first the version narrated by the plaintiff in court- in which a tree was involved-, and the version in his particulars of claim and in his section 19(F) affidavit, both of which make it pellucid that plaintiffs vehicle rolled; the different versions as to the plaintiffs state of alertness after the accident as set out in Constable Matube's, Njeryl's, statements, the hospital records, and plaintiffs own testimony in court. All these inconsistencies indicate that plaintiff had decided to depart from the original version and had conjured up a new version which was tailored for a particular purpose but failed dismally. It is also highly unlikely that details such as the vehicle hitting a tree would escape a witness when the story is still fresh in his memory only for it to come back five years later. There is further no evidence that Matube and the hospital staff had any motive to falsify the state of alertness of the plaintiff.
22. The discrepancies I have identified in this judgement are matters that ought to have been addressed by the plaintiff to enable the court to properly assess the merits of his case.
23. This brings me to the issue of cross examination. Cross examination was gentle. It left the plaintiffs case just as it was before cross examination, discrepancies included. I use two examples; it was suggested to the plaintiff that the accident was caused by a burst tyre. Plaintiff simply denied that there was ever a burst tyre. So, the defence moved on. It was further suggested that he had failed to apply his brakes. This, the plaintiff

denied, but conceded that he omitted to mention that he had depressed his breaks during his examination in chief. It was not only during his examination in chief that plaintiff had failed to mention the detail about the brakes, he never mentioned it in any of the statements he had made to the police and not even in his section 19 (F) affidavit. To sum up the issue of cross examination, whatever the plaintiff had placed before the court was left undisturbed, internal contradictions and all.

24. In *Ngozo v Road Accident Fund*¹⁴ the court referred to the dictum in *Daniels v General Accident Insurance Co Ltd*¹⁵ and noted as follows in so far as the evidence of a single witness is concerned:

'It is of course competent for a court to find in favour of a party on the strength of the evidence of a single witness - s 16 of the Civil Proceedings Evidence Act 25 of 1965, which provides that judgment may be given in any civil proceedings on the evidence of any single competent and credible witness.....although there is apparently no 'cautionary rule' in civil cases as in criminal matters where proof beyond reasonable doubt is required, the single witness, more particularly where he is one of the parties, must be credible to the extent that his uncorroborated evidence must satisfy the Court that on the probabilities it is the truth".'

25. While one is alive to differences in the degree of proof in both civil and criminal cases, I consider this dictum from *Zamokwakhe Madondo & 2 Others v The State*¹⁶ quite useful in its exposition of the test when dealing with a single witness:

'Central to a resolution of this appeal, is a consideration of the approach to be adopted by a trier of fact, when faced with the task of assessing the evidence of a single witness.

In an oft repeated dictum, it is said that the evidence of such a

¹⁴ 21866/2012) [2013] ZAGPJHC 390 (19 November 2013) para 67

¹⁵ 1992 (1) SA 757 (C) at 7591-76 08

witness must be "clear and satisfactory in every material respect", and that where the witness "has an interest or bias adverse to the accused ¹⁷" the evidence must be approached with caution. In other words, the evidence

"must not only be credible but also reliable¹⁸" , but it is clear that, "There is no rule of thumb, test or formula to apply when it comes to a consideration of the credibility of the single witness¹⁹" , and "The trial Judge will weigh his evidence, will consider its merits and demerits and, having done so, will decide whether it is trustworthy and whether, despite the fact that there are shortcomings or defects or contradictions in the testimony, he is satisfied that the truth has been told²⁰" .

26. After careful analysis of the evidence presented before this court and taking into account the rules relevant to the testimony of a single witness, there can be no doubt that plaintiff failed to put a proper case before this court. The myriad of contradictions I have referred to lead to one rational conclusion, that his story is not truthful²¹. Consequently, plaintiffs claim falls to be dismissed. The following order is made:
27. (i) Plaintiff's claim is dismissed with costs.

NN BAM
ACTING JUDGE OF THE HIGH
COURT, GAUTENG DIVISION,
PRETORIA

¹⁶ 512/11 ZAKZPHC/2012/43 para 3.

¹⁷ R v Mokoena 1956 (3) SA 81 (A) at 85 H

¹⁸ S v Janse van Rensburg & Another 2009 (2) SACR 216 (C) at 220 G

¹⁹ S v Webber 1971 (3) SA 754 (A) at 758

²⁰ S v Sauls & others 1981 (3) SA 172 (A) at 180 E - F

²¹ note 10 supra

APPEARANCES

DATE OF HEARING :10 MAY 2019

DATE OF JUDGMENT : 13 AUGUST 2019

PLAINTIFF'S ATTORNEYS : GERT NEL ATTORNEYS

DEFENDANT'S ATTORNEYS : BORMAN DUMA ZITHA