

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 32090/2021

1. REPORTABLE: NO
2. OF INTEREST TO OTHER JUDGES: NO
3. REVISED: NO

DATE: 14 JUNE 2024

SIGNATURE OF JUDGE:

A black rectangular box redacting the signature of the judge.

In the matter between:

MALESA ANDILEIT

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

JUDGEMENT

FLATELA; J

1. This matter concerns a claim for damages by the Plaintiff against the Road Accident Fund (RAF) for personal injuries sustained in a motor vehicle accident. The accident occurred on 05 February 2020 near Apex, Benoni, Gauteng, and

the Plaintiff, who was a passenger at the time, alleges that the accident was caused by the negligent driving of one Pitso Moeketsi.

2. On 22 November 2023, the matter was allocated to me on default judgment trial. The Defendant was not represented. Counsel on behalf of the Plaintiff informed me that both merits and quantum are still in dispute. I was also informed that the Plaintiff had lodged a claim with the Compensation Commissioner in terms of the Compensation for Occupational Injuries and Diseases Act 130 of 1993 as the Plaintiff was injured in the course of her employment. I was also informed that the Compensation Commissioner had not made any settlement offer at the time of the trial.
3. The Plaintiff was the only witness who testified to support her claim. She also relied on her affidavit in terms of section 19(f). An application for an order to have the expert's evidence admitted on the affidavit in terms of Rule 38(2) of the Uniform Rules was made and it was granted.

The Legal Position

4. The RAF is obliged to compensate any person for any loss or damage that such person has suffered as a result of any bodily injury to him/herself caused by or arising from the driving of a motor vehicle¹.
5. In *Wells v Shield Insurance*² the Court held that:

¹ **Section 17. Liability of Fund and agents.** —(1) The Fund or an agent shall—

- (a) subject to this Act, in the case of a claim for compensation under this section arising from the driving of a motor vehicle where the identity of the owner or the driver thereof has been established;
- (b) subject to any regulation made under section 26 in the case of a claim for compensation under this section arising from the driving of a motor vehicle where the identity of neither the owner nor the driver thereof has been established,

be obliged to compensate any person (the third party) for any loss or damage which the third party has suffered as a result of any bodily injury to himself or herself or the death of or any bodily injury to any other person caused by or arising from the driving of a motor vehicle by any person at any place within the Republic if the injury or death is due to the negligence or other wrongful act of the driver or of the owner of the motor vehicle or of his or her employee in the performance of the employee's duties as employee: Provided that the obligation of the Fund to compensate a third party for non-pecuniary loss shall be limited to compensation for a serious injury as contemplated in subsection (1A) and shall be paid by way of a lump sum;...

² *Wells and Another v Shield Insurance Co and Others* 1965 (2) SA 865 (C).

"Two pre-requisites of liability upon the part of the registered insurance company for loss or damage suffered by a third party as a result of bodily injury are thus laid down. They are (i) that the bodily injury was caused by or arose out of the driving of the insured motor vehicle; and (ii) that the bodily injury was due to the negligence or other unlawful act of the driver of the insured vehicle or the owner thereof or his servant. The decision as to whether, in a particular case, these prerequisites have been satisfied involves two separate enquiries. Broadly speaking, the first pre-requisite is concerned basically with the physical or mechanical cause of the bodily injury, whereas the second is concerned with legally blameworthy conduct on the part of certain persons as being the cause of the bodily injury ('due to' having the same meaning as 'caused by' - *Workmen's Compensation Commissioner v S.A.N.T.A.M. Beperk*, 1949 (4) SA 732 (C) at pp. 736 - 7). Accordingly, these enquiries may follow wholly distinct lines."³

6. The Plaintiff bears the onus to prove that the wrongdoer caused the damages she suffered; She must create a causal link between the damages she suffered and the actions of the wrongdoer.
7. In ***Gumede v Road Accident Fund***⁴ Bhoolah J sets out the requirements that a litigant must pass to establish a delict against the Fund.
8. The court held as follows, with reference to liability as contemplated in Regulation 2(d), framed under section 26 of the Act:

"23. By an analysis of the above section, liability of the defendant is founded upon the principles of delict. Six jurisdictional facts will need to be proved by the plaintiff in order for the defendant to be liable in each claim in respect of the Act and the Amendment Act added a seventh jurisdictional fact. These jurisdictional facts are as follows:

...

23.4 Causality: *The plaintiff must allege and prove the causal connection between the negligent act relied upon and the damages suffered. The requirement that there must be a causal link between the conduct, the resulting injury or death and*

³ Ibid at p867 – 868.

⁴ *Gumede v Road Accident Fund* [2021] ZAGPPHC 568 (24 August 2021) unreported decision

consequent damage is expressed by the phrase "caused by or arising from," as it is found in section 17 of the RAF Amendment Act. *Grove v Road Accident Fund* [2017] ZAGPPHC 757 (28 November 2017). In determining the causal nexus between the negligent driving of the driver of the insured vehicle and the injuries sustained by the plaintiff, Van Oosten J, in *Miller v Road Accident Fund* [1999] 4 All SA 560 (W), at p 565(i), formulated the inquiry as follows:

"Two distinct enquiries arise, which were formulated by Corbett CJ in *International Shipping Co (Pty) Ltd v Bentley* 1990 (1) SA 680 (A) at 700E–I as follows:

'The first is a factual one and relates to the question as to whether defendant's wrongful act was a cause of the plaintiff's loss. This has been referred to as 'factual causation'. The enquiry as to factual causation is generally conducted by applying the so-called 'but-for' test, which is designed to determine whether a postulated cause can be identified as a *causa sine qua non* of the loss in question... On the other hand, demonstration that the wrongful act was a *causa sine qua non* of the loss does not necessarily result in legal liability. The second enquiry then arises viz whether the wrongful act is linked sufficiently closely or directly to the loss for legal liability to ensue or whether, as it is said, the loss is too remote. This is basically a juridical problem in the solution of which considerations of policy may play a part. This is sometimes called 'legal causation.'"

The Plaintiff's Pleaded case

The Accident

9. In paragraph 5.1 of the particulars of the claim, the Plaintiff alleged that:

"On February 2020 at all around Apex, Benoni, Gauteng Province, and accident occurred when a motor vehicle with unknown registration letters and numbers there and then driven by Pitso Moeketsi lost control and caused the accident. At the time of the accident, the plaintiff was a passenger of the above motor vehicle with unknown registration letters and numbers here and then driven by Pitso Moeketsi."

10. The Plaintiff pleaded numerous generic grounds of negligence, including that the driver drove at an excessive speed, failed to keep the vehicle he was driving under proper or effective control, failed to apply brakes of his vehicle either timeously, adequately or at all, he failed to reduce speed when he ought to and should have done so, he failed to keep a proper lookout, he failed to take any or adequate steps to avoid the accident by exercise of reasonable care and diligence, he could and should have done so, he failed to take the rights of other road users in cognizance, specifically that of the Plaintiff.
11. Section 19(f)(i) requires the particulars of the accident that give rise to the claim to be fully set out. The Plaintiff's affidavit lacks full details of the accident; it reads as follows:
- "On or about 05 February 2020 at or near Apex, Benoni in the Gauteng Province, I was involved in a motor vehicle accident.*
- At the time of the accident, the plaintiff was a passenger of the above motor vehicle with unknown registration letters and numbers here and then driven by Pitso Moeketsi."*
12. Importantly, the Plaintiff states that as a result of this accident, she suffered serious injuries and was admitted to Glenwood Hospital. However, she was not hospitalised, and the treatment plan included analgesia, rest, and elevation.
13. The Plaintiff claims R 1 235 883.50 for loss of earnings.

14. Moreover, in the Pre-Trial conference attended by both parties on 23 February 2023, the following questions were put to the defendant:

THE COLLISION

- i. Does the Defendant admit that the driver failed to keep the vehicle he was driving under proper or effective control?
 - ii. Does Defendant admit that the above-insured driver failed to reduce speed when he ought to and should have done so?
 - iii. Does the Defendant admit that the above-insured driver failed to keep a proper lookout?
 - iv. Does Defendant admit that the above-insured driver failed to take any or adequate steps to avoid the accident with the exercise of reasonable care and diligence? They could have and should have done so.
 - v. Does Defendant admit that the above-insured driver failed to take cognizance of the rights of the other road users, especially that of Plaintiff?
 - vi. Does the Defendant admit that the above-insured driver is solely to blame for causing the accident? If not, what is the Defendant's version?
15. The line of questions that Plaintiff's legal representatives put to Defendant's legal representatives are in line with Plaintiff's pleaded case that the injuries were a result of the collision.

The plaintiff's injuries and impact on her earning capacity

16. The Plaintiff alleged that as a result of the collision, she suffered the following injuries namely:
- a. Injury on the neck;
 - b. Injury on the right shoulder;
 - c. Injuries on the chest;
 - d. Injuries on the right elbow;
 - e. Soft tissue injuries.

17. It is further stated that as a result of the injuries mentioned above, the Plaintiff suffered damages, the nature, extent, and duration of which are as follows:
- a. Following the accident, the Plaintiff was admitted to Glenwood Hospital;
 - b. Experienced pain, suffering and discomfort and will experience same in future;
 - c. Experience emotional shock and trauma and will experience the same in the future;
 - d. Required medical treatment and will in future require further such treatment and will have to incur expenditure with regard thereof;
 - e. she experienced the loss of amenities in life and will do so in the future.

Evidence

Plaintiff's testimony

18. The Plaintiff testified that at the time of the accident, she was employed as a security personnel member at Sinqobile Security. PRASA appointed Sinqobile Security to guard its premises in Brakpan. On the day of the accident, the plaintiff was a passenger in her employer's vehicle who was transporting security personnel traveling from Daveyton to Brakpan. After the vehicle offloaded those who were working at Apex station, the vehicle left with others, including her; they were posted in another post. The Plaintiff was seated at the back of the vehicle when the door suddenly opened; she fell out of the speeding car, landed on the road, and sustained injuries. The Plaintiff testified that she does not know the name of the road, but it was a tarmac road in Apex. The vehicle did not stop after the plaintiff fell off as the driver was driving at an excessive speed. The driver made a U-turn to check on her; she was lying on the road. Her employer took her to Life Glenwood Hospital for treatment.

Analysis

19. In terms of Section 16 of the Civil Proceedings Evidence Act⁵ A judgment may be given in any civil proceedings on the evidence of any single competent and credible witness. For the Plaintiff to succeed in her claim, she must satisfy the Court that, on the probabilities, her evidence is the truth.⁶
20. I am not satisfied that Plaintiff has discharged the onus on the issue of liability for RAF.
21. In causation inquiry, the logical starting point is the consideration of the RAF 1 Form, section 19(f) affidavit and the receiving facility's hospital records. These documents constitute primary records to establish the accident's occurrence.
22. As stated earlier, the Plaintiff was the only one who testified regarding the events that led to the accident. In these circumstances, the court may accept her version or reject it as a fabrication.
23. The plaintiff testified that she fell from a speeding vehicle in Apex Road Benoni, and the injuries she suffered were caused solely by the negligent driver of his employer, who drove the vehicle at an excessive speed and lost control of it. In her particulars of claim, Plaintiff failed to disclose how the accident occurred. Both in her particulars of claim and section 19 (f) affidavit, she only states that she was involved in an accident and or collision.
24. The Plaintiff's section 19 (f) affidavit deposed on 25 November 2020, the Plaintiff stated under oath that she was a passenger of the motor vehicle bearing unknown registration letters and numbers, there and there being driven by Pitso Moeketsi. In her evidence, the Plaintiff testified that she was conveyed by her employer's vehicle with her colleagues at the time of the accident, but she did not provide the registration numbers of the insured vehicle. In addition, in the RAF 1 Form, the plaintiff failed to complete crucial information regarding the accident. Section 6, which deals with the registration number of the vehicle, the

⁵ Act 25 of 1965 as amended.

⁶ *Daniels v General Accident Insurance Co. Ltd* (1992). (1) SA 757 (C).

driver's physical address, the driver's contact details were not completed. Instead, the plaintiff inserted the words "Not Applicable ."How can this crucial information be regarded as not applicable? This information could have been obtained easily as the Plaintiff was conveyed by her employer's vehicle to her workstation.

25. Other crucial information missing from the claim form is the details of the workman's compensation, Employment and Employer details and witnesses. The plaintiff did not provide any information regarding the workman's compensation, employment details, or employer details; instead, she inserted the words "not applicable." Notably, the details of the COID were completed in the hospital records, including the company name, the registration number, the employer's address, the contact person and number, and the employer's address.
26. The Road Accident Fund provides for three main prescribed forms to be submitted when a claim is lodged against the RAF. RAF1 form, RAF 3 or section 19(f) affidavit, RAF 4 if general damages are claimed and supporting documents. In this matter, only the loss of income and future medical expenses are claimed.
27. The RAF1 deals with general information about the claim. The Plaintiff is required to complete it to validate the claim for substantial compliance.
 - a. Personal information of the Claimant (sec 1);
 - b. Motor Vehicle Accident details (sec 5): The plaintiff did not fully complete the motor accident details; the details of the street number and name were not provided,
 - c. Passengers, Pedestrians & Cyclists (sec 6), the information was not provided at all
 - d. Details of Workman's Compensation (sec 11); the information was not provided at all
 - e. Witness (sec 12): No details were provided, and the words not applicable were inserted
 - f. Employed details (sec 14); No details were provided, the words not applicable were inserted;

- g. Employers' details, (sec15); this section was not completed, the words not applicable were inserted;
28. I doubt that the claim against the RAF regard being had to the information supplied is valid, but I make no finding in this regard.

Hospital Records

29. According to Life Glenwood Hospital Clinical records, it is recorded that the plaintiff came in walking, verbalizing that she fell from a truck, and now has a painful right shoulder and arm. The patient's history recorded that the plaintiff "fell out of a truck while the stationary door accidentally happened. The injury suspected was the right shoulder and chest wall pain. The clinical findings were as follows:
- a. The right shoulder was tender, with no swelling
 - b. Right elbow was tender;
 - c. C-spine + paraspinal tenderness
 - d. Chest -tender anterior wall.
30. The Plaintiff was treated with analgesics, and the treatment plan was rest and elevation.
31. The independent sources do not support the Plaintiff's evidence that she fell off the moving vehicle that was driven at an excessive speed.
32. When I asked the applicant why the hospital records mechanism of injury differs with the one she gave on her evidence, the plaintiff did not explain; she insisted on her version that she fell from a speeding truck.
33. There are material contradictions between the Plaintiff's testimony and the independent evidence. The Court must consider all the evidence and the objective facts in deciding the onus of proof.⁷

⁷ *City of Johannesburg Metropolitan Council v Ngobeni* (314/11) [2012] ZASCA 55 (30 March 2012).

Expert Evidence

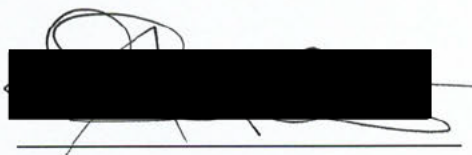
34. The Plaintiff filed the reports and affidavits of Dr. Kumbirai, an Orthopedic Surgeon; Ngwato, an Occupational Therapist; Sechudi, an Industrial Psychologist; and Minaar, an Actuary.
35. The primary report put up by the Plaintiff is a report by Dr. Kumbirai, an Orthopedic Surgeon who assessed the Plaintiff on 17 February 2022. I will only deal with Dr. Kumbirai's evidence.

Dr Kumbirai -Orthopaedic Surgeon

36. Dr Kumbirai recorded that the Plaintiff advised that she was a passenger in a truck when she fell off because of the open door.
37. Dr Kumbirai assessed the Plaintiff's whole-body impairment according to AMA guidelines at 0% and opined that the injuries have not resulted in non-serious long-term impairment/loss of body function.
38. Dr. Kumbirai examined the Plaintiff on her head, neck, chest and back. He made the following findings:
 - a. Neck- No deformity noted.
 - b. Full range movement -no pain.
 - c. Neovascularity intact—The cervical spine X-ray done by Dr. Mkhabele and Indunah Diagnostic Radiologists on 17 February 2022 was normal. The clinical and Radiological findings =0% WPI (class 0).
 - d. Chest –Normal.
 - e. Back- No deformity noted; Full Range Movement (No pain) X-ray of the lumbar spine done by Dr Mkhabele and Indunah Diagnostic Radiologists on 17 February 2022 shows normal lumbar lordosis. The clinical and Radiological findings =0% WPI (class 0).

f. Right Shoulder -No deformity, Full range movement (no pain), Neovascularity intact – X-ray of the right shoulder is normal. The clinical and Radiological findings =0% WPI (class 0).

39. Given the scenario painted by the Plaintiff, that she fell from the truck that moving at an excessive speed to the extent that the driver lost control of the car, the Plaintiff's injuries ought to have been far more serious than the ones recorded in the hospital records. The Plaintiff's expert assessed her whole-body impairment to 0% and stated that the injuries have not resulted in non-serious long-term impairment/loss of body function.
40. Having considered the evidence as a whole, I found the Plaintiff's evidence unreliable and untruthful. I believe the Plaintiff was involved in an accident arising from a stationary vehicle. She would still be entitled to compensation for proven damages for injuries sustained even in case a vehicle was stationary. However, this is not the Plaintiff's pleaded case, the plaintiff's claim falls to be rejected.
41. In the circumstances, the following order is made:
1. The Plaintiff's claim is dismissed with no order as to costs.



L FLATELA
JUDGE OF THE HIGH COURT
GAUTENG DIVISION

This Judgment was handed down electronically by circulation to the parties' and or parties' representatives by email and by being uploaded to CaseLines. The date and time for the hand down is deemed to be 10h00 on 14 June 2024

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No appearance