



**IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MBOMBELA**

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

CASE NUMBER: 949/2024

7/10/2024

DATE

SIGNATURE

In the matter between:

MOSES MOSHE MAKOLA

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

OOSTHUIZEN-SENEKAL CSP AJ:

Introduction

- [1] In the matter before the court, the incident under consideration involves a truck with interlinks that experienced a catastrophic failure of its braking system while traveling downhill.

- [2] The plaintiff, Mr Makola Moses Moshe has instituted a claim for damages against the Road Accident Fund (“ the RAF”) pursuant to injuries sustained in a single-vehicle, a truck accident. He asserts that the accident occurred due to a failure in the truck’s braking system, which caused him to lose control and crash. The plaintiff alleges that the accident was the result of negligence on part of the insured owner, who did not properly maintain the truck’s brakes. This negligence, according to the plaintiff, rendered the vehicle unable to brake while navigating a curve, leading to the accident and his serious injuries.

- [3] The defendant denies liability, arguing that the claim falls outside the scope of the Road Accident Fund Act (“the Act”), since it does not involve negligence related to the driving of a vehicle, as specified in the Act. The defendant also contends that the insured owner of the truck was not negligent, as he was unaware of the faulty braking system. Furthermore, the defendant asserts that the plaintiff is solely responsible for the accident, as he continued to drive despite knowing the brakes were defective.

- [4] A ruling was made, upon request, to separate the issues of liability and quantum in accordance with Rule 33(4) of the Uniform Rules of Court (“the Rules”). The determination of quantum was postponed *sine die*.

Litigation History

- [5] On 5 September 2018 the plaintiff issued summons against the defendant claiming damages in the amount of R 4 350 000.00 (Four million three hundred and fifty rand) as a result of a motor vehicle accident on 26 January 2017 along the R533, Robbers Pass, Pilgrims Rest Road, Mpumalanga Province.

- [6] The summons was served on the defendant on 18 September 2018. The defendant filed a notice to oppose on 27 September 2018, followed by the defendant's plea on 5 November 2018.
- [7] During various pre-trial conferences, the parties reached the following agreements;
- [7.1] The issues of merits and quantum are to be separated.
- [7.2] The motor vehicle accident occurred on 26 January 2017, as alleged in the particulars of claim.
- [7.3] The plaintiff was the driver of the motor vehicle at the time of the accident.
- [7.4] The accident was a single-vehicle incident.
- [7.5] The plaintiff was transported by ambulance from the accident scene to a medical facility.
- [7.6] The discovered documents are what they purported to be, and may be used without formal proof. While the parties do not admit the correctness of their contents; and such will have to be determined during trial.
- [8] The trial commenced 15 May 2024, during which the plaintiff's evidence was fully presented. The defendant chose not to call any witnesses. Both parties agreed to submit written arguments by 20 May 2024. However, before these submissions were made, the plaintiff's counsel expressed the intention to apply for the reopening of the plaintiff's case to present additional witnesses. This application was opposed by the defendant and was heard on 3 July 2024.
- [9] After hearing arguments from both sides, the court reserved judgment. On 10 July 2024, ruling was delivered, dismissing the application to reopen the plaintiff's case.
- [10] The parties subsequently submitted their written arguments on 16 and 27 August 2024, respectively, and judgment in the main action was reserved.

Evidence by the Plaintiff

- [11] The plaintiff was the sole witness to testify during the trial. He stated that on the afternoon of 26 January 2017, he was driving a truck from Groblersdal to Pilgrims Rest to deliver goods. After traveling approximately 230 km, and descending a steep incline, he noticed a road sign instructing drivers to shift to a lower gear. As the truck gained speed, the plaintiff attempted to apply the brakes to control the vehicle's descent. However, it quickly became evident that the braking system was not functioning as intended. He immediately called his employer, Schoeman Boerdery (Pty) Ltd, and spoke to the workshop manager, Etienne. He was instructed to complete the delivery and that the truck would be serviced upon his return.
- [12] The plaintiff further testified that, as he continued driving, he sought a safe place to stop the truck. However, as he approached a curve in the road, the truck continued to accelerate uncontrollably down the hill, the plaintiff lost the ability to manoeuvre the vehicle safely because he was unable to engage the brakes. As a result, he lost control of the truck, and it overturned.
- [13] The plaintiff also stated that he sustained serious injuries and was bleeding when the South African Police Services ("the SAPS") arrived at the scene. He added that he could not recall what happened after that point.
- [14] During cross-examination by the defendant's counsel, the plaintiff denied having made any written statement to the SAPS regarding the incident. He also testified that after the accident, he remained employed at Schoeman Boerdery, where he was assigned light duties to accommodate him. This continued until his dismissal in July 2017. According to the plaintiff, his dismissal was due to misconduct and dishonesty, not for reckless or negligent driving.

Legal Framework and Evaluation of Evidence

- [15] Section 17 (1) of the Act reads:

17. Liability of Fund and agents-(1) the fund or an agent shall-

(a) ...

(b) ...

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:” [my emphasis]

[16] Section 18 (2) reads:

18. Liability limited in certain cases. –

(1) ...

(2) Without derogating from any liability of the Fund or an agent to pay costs awarded against it or such agent in any legal proceedings, where the loss or damage contemplated in section 17 is suffered as a result of bodily injury to or death of any person who, at the time of the occurrence which caused that injury or death, was being conveyed in or on the motor vehicle concerned and who was an employee of the driver or owner of that motor vehicle and the third party is entitled to compensation under the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993), in respect of such injury or death -”

[17] Section 19 provides as follows:

“19. Liability excluded in certain cases

The Fund or an agent shall not be obliged to compensate any person in terms of section 17 for any loss or damage-

(a) For which neither the driver nor the owner of the motor vehicle concerned would have been liable but for section 21; or

(b) ”

[18] It is important to note that to determine whether an injured party has a valid claim against the Fund, one must consider the provisions of Section 18. If the injured party was injured in the course and scope of their employment, they are entitled to claim compensation under the Compensation for Occupational Injuries and Diseases Act 130 of 1993 (“COIDA”). If the injury occurred during the course of employment in a motor vehicle accident, the claim must be made through COIDA, and the Fund’s liability is limited to any balance not covered by COIDA. In other words, the Fund is only responsible for the remaining amount after the COIDA claim.

[19] In this case, I must determine whether the plaintiff’s claim falls within the scope of section 17 of the Act, specifically assessing whether the plaintiff’s injuries resulted from a motor vehicle accident caused by the wrongful and negligent actions of the insured owner.

[20] *Wells and Another v Shield Insurance Co. Ltd and Others*¹ Corbett J stated the following in relation to section 17:

“The section lays down two prerequisites of liability upon the part of a registered insurance company for damages suffered by a third party as a result of bodily injury. These are (i) that the injury was caused by or arose out of the driving of the insured motor vehicle and (ii) that the injury was due to the negligence or other unlawful act of the driver of the insured vehicle, or the owner or his servant. There are thus two separate enquiries, a fact which is sometimes lost sight of because in most cases the injury is caused by the negligent driving of the insured driving vehicle.”

[21] In the unreported decision of *Maatla v Road Accident Fund*² the court found that the twofold enquiry referred to in *Wells supra*, had to be answered in the affirmative, namely, that the injuries arose out of a motor vehicle collision and secondly that the owner of the vehicle in terms of the common cause facts was negligent. Accordingly, the court

¹ *Wells and Another v Shield Insurance Co. Ltd and Others* 1965 (2) SA 865 (C) at 867.

² *Maatla v Road Accident Fund* (11690/11) [2015] ZAGPPHC 129 (6 March 2015) at para {15}.

concluded that the defendant should be held accountable for the injuries sustained by the plaintiff.

Discovered Documents

- [22] In this matter, the court must consider the status and admissibility of the discovered documents submitted by both parties. During the cross-examination of the plaintiff, the defendant heavily relied on a warning statement allegedly made by the plaintiff to Warrant Officer Kruger of the SAPS on 31 January 2017 at the Pilgrims Rest Police Station. It has been established in the pre-trial conferences that these documents are what they claim to be; however, it is important to note that the correctness of the contents of the documents was to be determined during the trial.
- [23] The parties have agreed that the discovered documents can be admitted without the need for formal proof. This means that the documents will be accepted as genuine representations of the content they claim to contain. Nonetheless, this acceptance does not equate to a determination of their correctness or reliability.
- [24] As the trial progresses, it will then be the responsibility of the parties to provide evidence that supports the correctness of the information contained in these documents. This may involve presenting witness testimony, expert analysis, or other forms of evidence that can confirm the truth of the contents of such documents.
- [25] The court emphasizes that the fact that these documents are deemed admissible does not preclude either party from challenging the proof or the originality thereof during the trial. Each party retains the right to scrutinize and contest the correctness of the documents and the implications of their contents in relation to the claims and defences raised.
- [26] As the plaintiff is not the author of the warning statement, the standard rules regarding hearsay evidence apply. For the court to consider the statement's contents, either a proper foundation must be established for its admission, or the plaintiff must consent to both its submission as evidence and the accuracy of its contents. Without this foundation or the plaintiff's consent, the statement remains hearsay. Consequently, the defendant must prove the contents of the statement by calling the person who recorded it.

- [27] In this case, the court must assess the implications of the defendant's decision not to call the police officer who took the plaintiff's warning statement to testify. This choice carries significant consequences for the evaluation of the evidence presented.
- [28] The warning statement taken by the police officer is a critical piece of evidence in this matter and particularly in the case for the defendant. It contains statements made by the plaintiff regarding the incident in question and serves as a foundational document for the claims and defences raised by the defendant. However, the absence of the police officer's testimony leaves several important issues unresolved.
- [29] Firstly, without the police officer's testimony, the court cannot ascertain the context in which the statement was taken, including the circumstances surrounding its creation, the manner in which it was recorded, and whether the plaintiff fully understood the implications of the statements made. Furthermore, the officer's presence would have allowed for clarification of any ambiguities within the statement and provided an opportunity for cross-examination by the opposing party.
- [30] Secondly, the correctness and authenticity of the content of the warning statement remain unproven in the absence of supporting testimony. The defendant has not presented any evidence to corroborate the correctness of the statement, nor has it been subjected to scrutiny through questioning of the author thereof. This lack of verification raises concerns regarding the reliability of the statement as evidence.
- [31] The defendant must establish the authenticity and the correctness of the documents and statements relied upon in their case. By failing to call the police officer to testify, the defendant has not established same. Consequently, the court finds that the content of the warning statement, while discovered, lacks the necessary evidentiary weight to substantiate the claims or defences associated with it.
- [32] In conclusion, the defendant's decision not to call the police officer who was the author of the warning statement affected the probative value the court can attach to the contents of the statement. The correctness and reliability of the statement remain unproven, and as such, the court cannot accept it as a credible piece of evidence in this matter.

Single Witness

- [33] The plaintiff's testimony is pivotal as it provides the primary account of the circumstances surrounding the accident. While the court recognizes the importance of the plaintiff's perspective, it is essential to note that he stands as a single witness, and his version of events is uncorroborated by any additional evidence or testimony from other witnesses.
- [34] It is well established that the burden of proof lies with the plaintiff to demonstrate, on a balance of probabilities, that the injuries sustained were a direct result of the negligence of the insured party.
- [35] Notably, the defendant did not call any witnesses to dispute or challenge the plaintiff's account of events. This lack of counter-evidence leaves the plaintiff's version unchallenged, offering the court no alternative perspective to consider. The defendant's failure to present evidence contradicting the plaintiff's claims can be seen as an implicit acceptance of them. Although the burden of proof rests with the plaintiff, the defendant's omission to provide any conflicting evidence has a significant impact on the overall evidentiary landscape of this case.
- [36] The court acknowledges the unique situation of relying on the testimony of a single witness, but the plaintiff's evidence remains unchallenged and is therefore accepted as it is the only version before the court. Beyond his testimony, no further facts or circumstances were presented to either corroborate or contradict his account. Therefore, I find it unnecessary to make any determination regarding his credibility or demeanour as a witness.
- [37] A key issue before the court is whether the defendant has adequately demonstrated that the plaintiff was negligent at the time of the accident. For the defendant to deny liability, it must establish that the plaintiff acted in a manner that fell below the standard of care expected of a reasonably competent driver. This necessitates evidence showing that the plaintiff's actions directly contributed to the accident and the resulting injuries.

- [38] After reviewing the evidence presented in this case, the court finds that the defendant has not provided any substantial evidence before the court to support a claim of negligence against the plaintiff. The defendant did not call any witnesses to testify about the circumstances of the accident or offer expert opinions on driving standards and practices. Additionally, no documentation or other forms of evidence were presented that would indicate any wrongdoing or lapse in judgment on the part of the plaintiff at the time of the accident.
- [39] In the absence of such evidence, the court cannot conclude that the plaintiff was negligent. The plaintiff's testimony, which stands unchallenged by the defendant, provides a clear account of the events leading up to the accident. There is no basis for the court to infer negligence when the party alleging it has failed to produce any such evidence.
- [40] The crux of this case lies in the failure of the vehicle's braking system, which the plaintiff contends was due to the owner's lack of maintenance and failure to keep the vehicle in good working condition. The evidence presented before the court indicates that the plaintiff was operating the vehicle when the brakes failed, leading to a loss of control and, ultimately, the accident. The plaintiff provided credible testimony regarding the accident, describing the circumstances leading up to the brake failure and the subsequent crash.
- [41] In assessing the defendant's liability, the court must determine whether the owner of the vehicle exercised reasonable care in maintaining the vehicle. It is well-established that vehicle owners have a duty to ensure that their vehicles are safe and roadworthy. This duty includes regular inspections and maintenance of critical safety features, such as the braking system. The failure to perform such maintenance may constitute negligence.
- [42] In this case, the evidence shows that the braking system was faulty at the time of the accident. No adequate maintenance records were presented by the defendant to demonstrate that proper care had been taken to ensure the vehicle was in good working order. The absence of documentation reflecting regular servicing of the vehicle or any corrective measures taken to address known issues further supports the claim of negligence.

[43] Consequently, the court concludes that the owner of the vehicle, failed to meet the required standard of care in maintaining the vehicle in a safe and operable condition. The brake failure clearly indicates negligence, as it directly contributed to the accident and the injuries sustained by the plaintiff.

[44] In conclusion, the court determines that the accident resulted from the negligence of the vehicle owner for failing to maintain the vehicle in proper driving condition, particularly due to the malfunction of the braking system.

[45] I am satisfied that the plaintiff has met the burden of proof to establish that the defendant is 100% liable for the damages he sustained in the aforementioned motor vehicle collision.

Costs

[46] The only issue that remains is the question of costs arising from this merits trial. Generally, the rule regarding costs is that the successful party is entitled to recover its costs from the unsuccessful party. In this case, as the plaintiff has prevailed on the merits, he is entitled to an order for costs.

[47] The defendant, having been found liable, must bear the costs incurred by the plaintiff in pursuing this aspect of the claim. This principle aligns with the notion of fairness and justice within the legal framework, as the plaintiff should not be penalized for having to pursue a claim to establish liability, particularly when the defendant's actions necessitated this trial.

[48] However, given that the quantum has been postponed *sine die*, it is essential to consider whether there should be any limitations or qualifications regarding the costs awarded. The court recognizes that further proceedings will be necessary to establish the extent of damages owed to the plaintiff. As such, while the plaintiff is entitled to costs associated with the merits trial, the costs awarded at this stage will not encompass those related to the future quantum proceedings.

[49] In conclusion, the court orders that the defendant, the Road Accident Fund, shall pay the plaintiff's costs associated with the merits trial on party and party scale, Scale "B".

[50] In the premises, I make the following order:

1. The defendant shall pay the plaintiff 100% of his proven agreed damages.
2. The trial in respect of quantum is postponed *sine die*.
3. The defendant is ordered to pay the costs of the merits trial on party and party scale, Scale "B"



**CSP OOSTHUIZEN-SENEKAL
ACTING JUDGE OF THE HIGH COURT
MPUMALANGA DIVISION, MBOMBELA**

The date and time for hand-down is deemed to be 10h00 on 7 October 2024.

Dates of Hearing:	15 May, 7 June 2024
Application for Reopening Plaintiff's case:	3 July 2024
Judgment delivered in Application:	10 July 2024
Written Heads of Arguments: Plaintiff delivered:	16 August 2024
Written Heads of Arguments: Defendant delivered:	29 August 2024
Date Judgment delivered:	7 October 2024

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