IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Not reportable
Case no: 5500/2022

In the matter between:

PULE ISHMAEL MOKALAKE **PLAINTIFF**

And

THE ROAD ACCIDENT FUND **DEFENDANT**

Neutral citation: *Mokalake v RAF* (5500/2022) [2025]
Coram: Ntanga AJ
Heard: March 18, 2025
Delivered: May 16, 2025

Summary: Civil procedure – motor vehicle accident claim – whether insured driver caused plaintiff's injuries – whether driver of the vehicle was negligent – whether defendant was liable for compensation to be paid to plaintiff – conflicting versions regarding cause of accident – principles regarding conflicting versions restated.

ORDER

1. The plaintiff's claim is dismissed.
2. The plaintiff is to pay costs on a party-to-party scale, including costs of counsel on scale B.

JUDGMENT

Ntanga AJ

Introduction

[1] The plaintiff, Pule Ishmael Mokalake, instituted an action against the Road Accident Fund ("the defendant") for damages suffered as a result of injuries to which he claims to have been sustained in a motor vehicle accident which occurred on September 1, 2019 on the N8 which is the road from Bloemfontein to Botshabelo, Free State Province. The motor vehicle accident involved a motor vehicle with registration number D[…], driven by the plaintiff and another motor vehicle with registration number F[…], driven by Mr Makhoro, the insured driver.

[2] At commencement of trial, the parties indicated agreement for separation of determination of merits and quantum and that the matter was set down only for determination of merits. An order separating merits from quantum was already granted on June 4, 2024. After due consideration of what is stated above, including the Uniform Rules of the Court, I then issued an order as follows:

"2.1 Determination of quantum is postponed *sine die"*.

Issues for determination

[3] This court is called upon to determine merits on: (a) whether the plaintiff was involved in a motor vehicle accident; (b) whether the injuries sustained by the plaintiff were caused by a motor vehicle accident; (c) whether the driver of the insured vehicle was negligent; and (d) whether the defendant is liable for compensation to be paid to the plaintiff.

Background

[4] In his particulars of claim, the plaintiff averred that the accident which resulted in his injuries was caused by the sole negligence of the insured driver in the driving of the insured vehicle, he being negligent in one, more or all of the following respects:

(a) He failed to apply the insured vehicle's brakes at all, alternatively timeously and/or sufficiently;
(b) He failed to avoid the collision when by the exercise of reasonable care and skill and the taking of reasonable precautions: he could and should have done so;
(c) He failed to take any, alternatively sufficient, cognisance of the presence, the actions and the visibly intended, and/or alternatively probable further actions of the plaintiff; and
(d) He failed to observe that the plaintiff was driving along the road and proceeded to make an illegal 'U-turn' in front of the plaintiff and caused the plaintiff to collide with the truck, which resulted in the plaintiff's vehicle being rolled over.

[5] The defendant did not dispute the occurrence of the motor vehicle collision. The defendant denied the plaintiff's averment that the collision occurred as a result of the insured driver's negligence and pleaded, in the alternative, that the sole cause of the collision was the negligence of the plaintiff who was negligent in one or more of the following respects:

(a) He failed to keep a proper look out;
(b) He failed to take cognisance of the prevailing traffic and/or prevailing traffic conditions;
(c) He failed to take cognisance of the rights of other road users and in particular, the rights of the said insured driver;
(d) He failed to avoid the collision, when by the exercise of reasonable care and consideration, he could and should have done so; or
(e) Any other ground(s) which may be proven during the course of the trial.

The plaintiff's case

[6] The plaintiff testified that on September 1, 2019, he was travelling from the direction of Bloemfontein towards Botshabelo. He drove in an uphill and, after reaching the other side of the hill, his vehicle hit a tyre of a truck. He was driving a blue VW Golf with registration DFM 571 FS. The incident ocurred at 01h30 in the morning. After the impact of the collision, his vehicle retreated and caught fire. The driver of the insured vehicle tried to assist him by extinguishing the fire but that did not help. The driver of the insured vehicle made a telephone call and the plaintiff asumed that he was calling the police. He testified that, when the police arrived, his vehicle was in the same position it was when the collision occurred. He averred that the insured vehicle was either stationery or trying to make a turn when the colission ocurred. He testified that he was driving at 120 kilometers per hour when the collision ocurred and that he has travelled on that road on many occassions and, sometimes, when going to work.

[7] Under cross-examination, the plaintiff testified that he had visited his sister and denied that he consumed alcohol during the visit to his sister. He was then referred to the hospital record indicating that the patient was intoxicated but awake. He still denied that he was under the influence of alcohol. When confronted with the defendant's version was put to him that Seargent Majola will testify that the plaintiff was drunk and stuck in his vehicle, his response was that he does not know. He also disputed the defendant's version that the investigating officer that she investigated the case of reckless and negligent driving and that, in the statement she took from him, he never told her that the insured vehicle was making a "U-turn". A further version was put to the plaintiff that the investigating officer will testify that the driver of the insured vehicle was traveling from Botshabelo to Bloemfontein, he passed the plaintiff's vehicle and heared noise from the insured vehicle, he stopped and went out of the insured vehicle to see what had happened. This version was disputed by the plaintiff who insisted that his vehicle collided with the insured vehicle on the side of the vehicle. He did not see the lights of the insured vehicle as they were switched off.

The Defendant's case

[8] The defendant called the first witness Ms Kotsoane who testified that she was the investigating officer in the matter. She testified that she investigated two vehicles

that were involved in a motor vehicle collision and the charge was reckless and negligent driving against both drivers. Both drivers wrote warning statements. The driver of the insured vehicle passed on before he could testify in trial. His statement was made available and was admitted into evidence. Ms Kotsoane testified that the driver of the insured vehicle told her that:

"He was driving from East to West at N8 road and it was on a Sunday. He was driving the truck alone. Along the way there was an oncoming vehicle, he then heard a bump sound. He immediately alighted and observed a car that collided with the wheel of the vehicle he was driving. This was a blue GTI Volkwagen Golf with only the driver as an occupant".

[9] Ms Kotsoane further testified that the plaintiff, in his warning statement, stated that:

"He was driving from Bloemfontein to Botshabelo and he was driving a blue GTI Volkswagen Golf, traveling alone. There was no traffic at all at the time and when he approached a hill he saw a truck parked crossing the road and it was stationery. He was stuck in the vehicle and sustained injuries".

[10] Under cross-examination, she confirmed that the driver of the insured vehicle was 80 years old but, according to her observation, he was flexible and looked fine. Ms Kotsoane further testified that the plaintiff was not clear on how the accident occurred but she could not question him on the reason for coliding with the rear of the truck whilst the driver was traveling from west to east.

[11] The next witness called by the defendant was Mr Majola who testified that he was on duty when he received a call alerting him about a motor vehicle accident on the N8 and he proceeded to the scene of the accident. He found a blue Volkwagen Golf and a truck. The blue Volkwagen Golf had crossed the two barrier lines in the middle of the road and the driver was trapped inside the vehicle. The right wheel of the truck trailer had impact. He observed glass on the side of the insured vehicle and that the insured vehicle was parked on

the side of the road, still in its lane. According to the accident sketch plan that he drew, the truck was facing west on the left lane travelling towards Bloemfontein and the plaintiff's vehicle was travelling from north facing southern direction. He testified that he does not know whether the vehicles were moved. When he arrived, the driver of the insured vehicle was standing next to the truck and the plaintiff was trapped inside his vehicle until the fire and rescue team assisted to retrieve him from the vehicle. He was then taken to hospital by an ambulance. Regarding the sketch plan submitted as Exhibit "C", he testified that the plaintiff's vehicle was on the barrier line whilst in the accident report appearing on page 220 of the trial bundle, the plaintiff's vehicle is on the dotted lines. He explained that the sketch plan appearing on page 220 of the trial bundle was drawn by Mr Leshota.

[12] He confirmed that, according to the sketch plan, the insured vehicle was in its lane. When he arrived, the vehicles were as depicted on page 224 of the trial bundle and he found them on the same positions. According to his observation, that is how the accident occurred. He disputed the plaintiff's version on how the accident ocurred. He stated that the lights of the insured vehicle were on and it was visible. It also had a reflector belt on the sides and the rear. Under cross-examination, he disputed the plaintiff's version that he was approaching uphill and testified that the road was a straight line. He testified that the truck was on the yellow line when he arrived and forgot to draw the yellow line in the sketch plan.

Legal framework and evaluation of evidence

[13] The Road Accident Fund has a statutory duty in terms of the Road Accident Fund Act 56 of 1996 (the RAF Act) to compensate a person who suffered injury caused by the negligent driving of the driver, owner or employee of a motor vehicle. Section 17(1) of the RAF Act provides that:

"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: 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".

[14] This court must determine whether the plaintiff's claim falls within the parameters set out by the RAF Act, that is, whether the injuries sustained by the plaintiff were caused by a motor vehicle collision and by wrongful and negligent conduct of the driver of the insured vehicle. Once the negligence of the driver of the insured driver has been proved, the defendant's liability to compensate the claimant for bodily injuries arises. In *Wells and Another v Shield Insurance Co. Ltd* (*Wells*),[1] the court enunciated the test for liability of an insurance company towards the injured third party by stating that:

"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".

[15] In *Frank v Road Accident Fund,*[2] the court followed the decision of *Grove v Road Accident Fund,*[3] where the Supreme Court of Appeal stated that:

"*The RAF is obliged to compensate for damages arising from bodily injury 'caused or arising from' the driving of a motor vehicle. The causal link that is required is*

---

[1] *Wells and Another v Shield Insurance Co. Ltd and Others* 1965 (2) SA 865 (C) at 868G-869A; see also *Makola v Road Accident Fund* [2024] ZAMPMBHC 75 and *Maatla v Road Accident Fund* [2015] ZAGPPHC 129.

[2] *Frank v Road Accident Fund* [2023] ZAGPJHC 1183 (*Frank*).

[3] *Grove v The Road Accident Fund* [2011] ZASCA 55 para 7.

essentially the same as the causal link that is required for Aquilian liability. There can be no question of liability if it is not proved that the wrongdoer caused the damage of the person suffering the harm. Whether an act can be identified as a cause, depends on a conclusion drawn from available facts and relevant probabilities. The important question is how one should determine a casual nexus, namely whether one fact follows from another".[4]

[16] The plaintiff has a duty to prove negligence of the driver of the insured vehicle and such negligent driving must be the cause of the injuries sustained by the claimant. Furthermore, the claimant must prove existence of legal blameworthy conduct of the insured driver. In *casu*, the plaintiff averred that the insured vehicle was either stationary or trying to make a "U-turn" when the colission ocurred. This version was disputed by the two police officers who testified on behalf of the defendant. Ms Kotsoane averred that she took a statement from the plaintiff and he did not indicate that the insured vehicle was making a "U-turn". She also averred that she could not question the plaintiff on the reason for coliding with the rear of the truck whilst the driver was traveling from west to east. Mr Majola averred that the blue Volkwagen Golf had crossed the two barrier lines in the middle of the road and the driver was trapped inside the vehicle. The right wheel of the truck trailer had impact. His evidence on the positioning of the two vehicles was supported by the sketch plan which Mr Majola testified that he drew a rough scetch on arrival on the scene of accident and later drew it in the manner and format submitted as Exhibit "C". The statement of the driver of the insured vehicle is also consistent with the version of Ms Kotsoane and Mr Majola.

[17] The plaintiff's evidence is that he was traveling from Bloemfontein to Botshabelo and that the insured vehicle was either stationery or trying to make a "U-turn" when the colission ocurred. The driver of the insured vehicle's evidence, in his statement, stated that he was travelling towards Bloemfontein and this evedence is undisputed. The sketch plan drawn by Mr Majola submitted as Exhibit "C" shows that the plaintiff's vehicle was travelling from Bloemfontein to Botshabelo and that the insured vehicle was travelling towards Bloemfontein. In the sketch plan submitted as

---

[4] See note 4 supra at para 7.

Exhibit “C”, the insured vehicle is shown to be on the left and the plaintiff’s vehicle is on the right. The sketch plan shows that the plaintiff’s vehicle crossed the barrier line and it was on the side of the insured vehicle.

[18] The plaintiff argued against reliability of the sketch plan based on the inconsistencies between the one appearing in the accident report and the one drawn by Mr Majola including inconsistencies on measurements taken between the two points on the sketch plan. Under cross-examination, the plaintiff testified that the impact of the collision took place on the left hand side of the road, this being the side that he was traveling on.

[19] Considering the evidence regarding the direction that the two vehicles were travelling and the impact of the accident on the insured vehicle, it is, in my view, improbable that the insured vehicle was stationery or making a “U-turn”. It is not possible that a vehicle making a “U-turn” from East to West of the road could be bumped on the rear right back wheel, the version that the insured vehicle was making a “U-turn” is improbable.

[20] The plaintiff seemed to struggle to explain his inconcistencies and his explanation was that he was on medication. The hospital records which were admitted as evidence indicated that he was intoxicated but he denied that he consumed alcohol on the day, however, he confirmed that he does consume alcohol. There is no evidence indicating that the plaintiff’s intoxication, as appears in the hospital records, may have impared his ability to drive, his judgment and reaction at the time of the collision. Other than making reference to the hospital record indicating that the plaintiff was intoxicated, no submission was made by the defendant that the plaintiff’s intoxication impared his ability to drive or reaction at the time of the colision.

[21] Considering the plaintiff’s evidence, the driver of the insured vehicle and that of the two police officers, there are two mutually constructive versions and this court

has to determine where the truth lies between the two versions. In *Mutual Employers Mutual General Insurance Association v Gany*,[5] the Court stated that:

"Where there are two stories mutually distructive, before the onus is discharged, the Court must be satisfied upon adequate grounds that the story of the litigant upon whom the onus rests is true and the other is false".[6]

[22] In *Stellenbosch Farmers' Winery Group Ltd and Another v Martell & Cie SA & Others*,[7] the Supreme Court of Appeal set out the principle for resolving factual disputes as follows:

"The technique generally employed by courts in resolving factual disputes of this nature may conveniently be summarized as follows. To come to a conclusion on the disputed issues a court must make findings on: (a) the credibility of the various factual witnesses; (b) their reliability; and (c) the probabilities. As to (a), the court's finding on the credibility of a particular witness will depend on its impression about the veracity of the witness . . . the court will then, as a final step, determine whether the party burdened with onus of proof has discharged it".

[23] The evidence of the two police officers, Ms Kotsoane and Mr Majola was, in my view, clear and satisfactory.[8] They were convincing in both evidence-in-chief and under cross-examination. The evidence of the driver of the insured vehicle was consistent with the evidence of the two police officers regarding the incident. The plaintiff argued that the written statement of the driver of the insured vehicle should be approached with caution against attaching too much weight to the evidence of the driver of the insured vehicle. Particularly, because the driver was deceased and he could not give oral evidence and be subjected to cross-examination. The plaintiff relied on the decision of *S v Pienaar*,[9] where the court stated that:

---

[5] *Mutual Employers Mutual General Insurance Association v Gany* 1931 AD 187 at 199.
[6] See *Frank* para 28 and 40-41.
[7] *Stellenbosch Farmers' Winery Group Ltd and Another v Martell & Cie SA & Others* [2002] ZASCA 98; 2003 (1) SA 11 (SCA) para 5; see also *Mhlanga v Passenger Rail Agency* [2020] ZAGPJHC 147 para 29.
[8] See *R v Mokoena* 1932 OPD 79.
[9] *S v Pienaar* 1992 (1) SACR 178 (W) at 180H.

"Obviously an affidavit will have less probative value than oral evidence which is subject to the test of cross-examination. At the same time an affidavit will carry more weight than a mere statement from the Bar".

[24] The statement of the driver of the insured vehicle was admitted as evidence subsequent to an application for its admission as evidence as he had passed on at the time of trial proceedings. He unfortunately was not available to provide oral evidence, consequently, his evidence could not be tested by cross-examonation. It is apposite at this stage to determine whether reference to the the driver of the insured vehicle's evidence is hearsay evidence and the application of the Law of Evidence Amendment Act 45 of 1988 ("Hearsay Act").[10]

[25] Section 3 of Law of Evidence Amendment Act provides that:

"…
(1) Subject to the provisions of any other law, hearsay evidence shall not be admitted as evidence at criminal or civil proceedings, unless-
(a) each party against whom the evidence is to be adduced agrees to the admission thereof as evidence at such proceedings;
(b) the person upon whose credibility the probative value of such evidence depends, himself testifies at such proceedings; or
(c) the court, having regard to-
(i) the nature of the proceedings;
(ii) the nature of the evidence;
(iii) the purpose for which the evidence is tendered;
(iv) the probative value of the evidence;
(v) the reason why the evidence is not given by the person upon whose credibility the probative value of such evidence depends;
(vi) any prejudice to a party which the admission of such evidence might entail; and
(vii) any other factor which should in the opinion of the court be taken into account, is of the opinion that such evidence should be admitted in the interests of justice". [11]

[26] Zeffert and Paises describes the primary reason behind exclusion of hearsay evidence as follows:

"... its general unreliability – the fact that it rested for its evidential value on the untested memory, perception, sincerity and narrative capacity of a declarant or actor who was not

[10] Law of Evidence Amendment Act No. 45 of 1988.
[11] Section 3 the Law of Evidence Amendment Act 45 of 1988.

subjected to the oath, cross-examination or any other procedural devices to which our adversary system of trial procedure subjects a witness giving original evidence".[12]

In *S v Molimi*, the Constitutional Court stated that the rationale of excluding hearsay as inadmissible is a recognition of the unreliability and unfairness emanating from such evidence and that its unreliability and susceptibility is said to be based on the so-called 'hearsay dangers' of insincerity and defective memory, perceptive powers and narrative capacity.[13]

[27] Hearasy evidence is inadmissible unless it is in the interests of justice to admit it. However, consideration of the factors set out in section s 3(1)*(c)*(i) *to* (vi) are of paramount importance.[14] The court has discretion to admit hearsay evidence after having due consideration of factors set out in the Hearsay Act, an arbitrary rejection of hearsay evidence may constitute a material error in law.[15] The statement of the driver of the insured vehicle considered together with the evidence of the two police officers Ms Kotsoane and Mr Majola meets the test for admission in the interest of justice.

[28] The plaintiff bears the onus to prove existence of negligence on a balance of probabilities. The court has a duty to make inquiry on whether the injuries sustained by the plaintiff were caused by the negligent driving of the driver of the insured vehicle. Once this is proved, then the plaintiff would be entitled to be compensated for the injuries he sustained. In *South Cape Corp. v Engineering Management Services*,[16] the then Appellate Division stated that:

"As was pointed by Davis, A.J.A. in Pillay v Krishna and Another, 1946 at pp. 952-3, the word *onus* has often been used to denote, *inter alia*, two distinct concepts: (i) the duty which is cast on the particular litigant, in order to be successful, of finally satisfying the Court that he is entitled to succeed on his claim or defense, as the case may be, and (ii) the duty cast

[12] DT Zeffert and AP Paizes *The South African Law of Evidence* 3 ed (2017) at 400.
[13] *S v Molimi* [2008] ZACC 2; 2008 (2) SACR 76 (CC); 2008 (3) SA 608 (CC); 2008 (5) BCLR 451 (CC); see *also President of the Republic of South Africa and Others v M & G Media Limited* [2010] ZASCA 177; 2011 (2) SA 1 (SCA) ;2011 (4) BCLR 363 (SCA); [2011] 3 All SA 56 (SCA) para 34.
[14] *Kapa v S* [2023] ZACC 1; 2023 (4) BCLR 370 (CC); 2023 (1) SACR 583 (CC) para 32.
[15] *Matsokoleng v Shoprite Checkers (Pty) Ltd t/a* [2012] ZALAC 41; [2013] 2 BLLR 130 (LAC).
[16] *South Cape Corp. v Engineering Management Services* 1977 (3) SA 534 (A) at 548A.

upon a litigant to adduce evidence in order to combat a prima facie case made by his opponent. Only the first of these concepts represents onus in its true and original sense*".*

[29] In *S v Govender and Another,*[17] the court followed the Supreme Court Appeal[18] where the Court stated that:

"The juridical approach to contradictions between two witnesses and contradictions between the versions of the same witness (such as, inter alia, between her or his viva voce evidence and a previous statement) is, in principle (even if not in degree), identical. Indeed, in neither case is the aim to prove which of the versions is correct, but to satisfy oneself that the witness could err, either because of a defective recollection or because of dishonesty. The mere fact that it is evident that there are self-contradictions must be approached with caution by a court. Firstly, it must be carefully determined what the witnesses actually meant to say on each occasion, in order to determine whether there is an actual contradiction and what is the precise nature thereof . . . Secondly, it must be kept in mind that not every error by a witness and not every contradiction or deviation affects the credibility of a witness. Thirdly, the contradictory versions must be considered and evaluated on a holistic basis . . . Lastly, there is a final task of a trial Judge, namely to weigh up the previous statement against the viva voce evidence, to consider all the evidence and to decide whether it is reliable or not and to decide whether the truth has been told, despite any shortcomings".

[30] I have pointed out that there are two mutually distructive versions regarding who was the cause of the accident and negligent. The plaintiff argued against reliability of Mr Majola's evidence and, in particular, the conflicting versions regarding the sketch plan and inaccuracy of measurements relating to point of impact. I agree with the defendant's submission that the defendant's witnesses answered the questions honestly, they have no personal interest in the outcome of the matter. The sketch plan drawn by Mr Majola was done soon after the collision. I cannot find any reason for Mr Majola to have been untruthful when he drew the scatch plan. Ms Kotsoane testified about the evidence she gathered after she was appointed as the investigating officer to investigate a case of reckless and negligent driving against both drivers. Her evidence was based on the statements given to her by the driver of

---

[17] *S v Govender and Another* 2006 (1) SACR 332 (E).
[18] *S v Mafaladisho and Another* [2002] ZASCA 92; [2002] 4 All SA 74 (SCA); 2003 (1) SACR 583 (SCA) at 593E-594H.

the insured vehicle and the plaintiff. Mr Majola testified about his observation when he arrived at the accident scene and the scetch plan he drew. The discrepancies in Mr Majola's evidence regarding the measurements relating to the point of impact and the sketch plan appearing in the accident report is not material.

[31] The discrepancy regarding the difference in the identity numbers provided by the plaintiff is immaterial. I accept the plaintiff's version that he was confused at the time as he was under medication. It is not unreasonable that, immediately after the accident and on being on medication, a person may be in a state of confusion regarding acuracy of details he is required to provide. The plaintiff's disputed version that he was removed from his vehicle by a police officer instead of emergency services personel, as averred by the defendant, is understandable given the state of confusion he might have been immediately after the colision. The difficulty with the plaintiff's version is how his vehicle colided with the insured vehicle on the rear right wheel based on the uncontested version that the insured vehicle was traveling towards Bloemfontein. There is also an uncontested version that the insured vehicle was traveling on the left lane and the plaintiff's vehicle was traveling on the right lane.

[32] There is a further uncontested version of Mr Majola that, on his arrival at the scene, he observed glasses on the left lane, which is the side where the insured vehicle was traveling on. The position of the two vehicles in the sketch plan drawn by Mr Majola shows the insured vehicle facing Bloemfontein on the left lane and the plaintiff's vehicle facing Botshabelo on the right lane with part of it crossing the barier line to the left lane. This evidence gives indication that the point of impact for the collision was on the left lane, being the lane where the insured vehicle was traveling on.

Conclusion

[33] Considering the conspectus of evidence presented on behalf of the plaintiff and defendant, I am of the view that the most probable version between the two versions is that of the defendant's witnesses. I find that Mr Majola's version regarding the sketch plan is more probable than the plaintiff's version regarding the point of impact of the colision. The plaintiff has failed to prove that the driver of the

insured vehicle is the cause of the colision that resulted in the injuries he sustained. The plaintiff has failed to prove that his injuries were caused by the wrongful and negligent driving of the driver of the insured vehicle.

Costs

[34] Concerning the costs of this matter, I see no reason that costs should not follow the results.

Order

[35] In the circumstances, I make the following order:

1. The plaintiff's claim is dismissed.

2. The plaintiff is to pay costs on a party-to-party scale, including costs of counsel on scale B.

NTANGA AJ

Appearances

For the plaintiff: N van der Sandt
Instructed by: Webbers Attorneys, Bloemfontein

For the respondent: C Bornman
Instructed by: State Attorney, Bloemfontein.