



IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED: NO

DATE 12 MAY 2025

SIGNATURE [REDACTED]

CASE NUMBER: A343/2023

In the matter between:

ZIBUYISE ROMUALO MAZEKA

Appellant

(as substituted by THOKOZANI PRISCILLA
MAZEKA)

and

ROAD ACCIDENT FUND

Respondent

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to the CaseLines system of the GD and by release to SAFLII. The date and time for hand-down is deemed to be 10H00 on May 2025.

JUDGMENT

MAZIBUKO AJ (BAQWA *et* STRIJDOM JJ CONCURRING)

INTRODUCTION

- [1] The litigation culminating in this appeal was launched in the court *a quo* by Zibuyise Romualo Mazeka (herein referred to as 'the deceased'), who, by the time the court *a quo* heard the matter, had passed away and was substituted by his mother, Thokozani Priscilla Mazeka (herein referred to as 'the appellant'). The action instituted by the deceased against the respondent, Road Accident Fund (herein referred to as 'the RAF'), is for personal injury damages arising from an alleged motor vehicle collision.
- [2] By agreement between the parties, the court *a quo* only heard the issue of liability whilst postponing that of quantum *sine die*. It dismissed the appellant's claim with costs. Aggrieved by the court *a quo*'s decision, the appellant appealed the order and judgment. Leave to appeal was granted by the court *a quo*. The appeal is opposed.

FACTUAL BACKGROUND

- [3] At the commencement of the proceedings, the court *a quo* granted an application for the evidence to be adduced by way of affidavits in terms of rule 38(2) of the Uniform Rules of Court¹. The deceased's affidavit was admitted into evidence in terms of section 3 of the Law of Evidence Amendment Act.² Only one witness, the deceased's brother, Mr Mlondolazi Cyril Mazeka (herein referred to as 'Mlondolazi'), testified on behalf of the appellant.
- [4] The RAF closed its case without adducing any evidence.

THE DECISION OF THE COURT A QUO

- [5] The appellant's case at the court *a quo* was that on 24 December 2016, whilst a pedestrian, he was struck by an unidentified motor vehicle whose driver was negligent as he did not keep a proper lookout, failed to exercise proper and effective control over the vehicle, drove an unroadworthy vehicle, failed to

¹ *Uniform Rules of Court, Supreme Court Act, Act 59 of 1959.*

² *Law of Evidence Amendment Act, Act 45 of 1988.*

avoid a collision when it was possible to do so, drove at an excessive speed and failed to apply the brakes of the vehicle timeously or at all.

- [6] In its defence, the RAF denied that the collision occurred but pleaded that if a collision occurred, the insured driver was confronted with a sudden emergency, or the plaintiff was to blame or was guilty of contributory negligence. Further, the deceased was conveyed to the hospital by EMRS paramedics, not a taxi.

- [7] What was before the court *a quo* for determination was whether or not the deceased was injured in a motor vehicle accident. If so, was the motor vehicle driver who struck him causally negligent?

- [8] Upholding the views expressed on behalf of RAF, the court *a quo* dismissed the deceased's action on the basis that he failed to prove that the injuries the deceased sustained arose from the collision caused by the negligent driving of a motor vehicle since the deceased's and Mlondolozzi's statements were contradictory to the hospital records. Further, there was an allegation of alcohol according to the hospital records.

GROUND OF APPEAL

- [9] According to the appellant, the appeal is based on the grounds that the court *a quo* erred in finding that :
 - [9.1] The appellant failed to discharge the onus that the deceased was injured in a motor vehicle collision,
 - [9.2] Mlondolozzi was not present at the scene of the accident, as his testimony and affidavit contradicted the deceased's affidavit and hospital records concerning how the deceased was conveyed to the hospital after the collision.
 - [9.3] According to the hospital records, the deceased's injuries were as a result of assault, not a motor vehicle collision, though the hospital records were not placed before it.
 - [9.4] The contradictions in the appellant's case were material.

ISSUE FOR DETERMINATION

- [10] The question before this court is whether the court *a quo* was correct in finding that the deceased did not prove that he was injured in a motor vehicle accident.

APPELLANT'S SUBMISSIONS

- [11] An argument advanced on behalf of the appellant was that the court *a quo* could not rely on the content of the hospital records as no such evidence was placed before it. Further, the respondent did not prove the hospital records' authenticity nor their content's correctness.

RAF'S SUBMISSIONS

- [12] The RAF contention is around who and how the deceased was transported to the hospital.

DISCUSSION

- [13] It is trite that an appeal court may interfere with a court *a quo*'s decision only when it was based on misdirection of facts and/or law or exercised its discretion improperly.
- [14] In terms of section 17(1) of the Road Accident Fund Act³, the defendant is obliged to compensate a person for loss or damage suffered because of bodily injury caused by or arising from the driving of a motor vehicle. The defendant's liability is conditional, however, upon the injury having resulted from the negligence or wrongful act of the driver.⁴
- [15] The appellant has a duty to prove the negligence of the insured driver and the nexus between the motor vehicle accident and the bodily injuries he suffered. In this regard, the evidence must be clear that as a result of the collision, the deceased suffered bodily injuries.

³ Act 56 of 1996

⁴ MP Olivier, 'Social Security: Core Elements', LAWSA (LexisNexis, Vol 13(3), 2ed, July 2013), at paragraph 163.

- [16] It has been held that in any civil case, as in any criminal case, the onus can ordinarily only be discharged by adducing credible evidence to support the case of the party on whom the onus rests.⁵
- [17] Mlondolozzi testified that the deceased was his elder brother, and on the day in question, he was in the company of the deceased and his late uncle. They were walking from Shoprite to the taxi rank. At the traffic light-controlled intersection, the traffic light was *blue* only for pedestrians. Whilst crossing using the demarcated pedestrian crossing, a speeding white bakkie came from behind them and struck the deceased. The unidentified driver did not stop at the scene. The deceased suffered injuries on his body, including the head. He was conveyed to the hospital by a community member, a certain Mr Vumani Mpelele (herein referred to as 'Mpelele').
- [18] In its cross-examination, the RAF sought to establish whether the deceased consumed alcohol and who conveyed him to the hospital. It also became clear that when Mlondolozzi stated the traffic light was blue, he meant green.
- [19] Deposing to his section 19(f) affidavit, the deceased stated that:
'I Zibuyise Romuald Mazeka just wish to state that on the 24th of December 2016 at about 14:00 when I walked as a pedestrian the vehicle came and knocked me on the head, knee and on my left hand and I fell down the accident happened on corner Mandela and Ryder street P/Shepstone and the EMRS came and uplifted me and ended up in Port Shepstone hospital my AR number is 58/11/2017.' (sic).
- [20] The evidence of Mlondolozzi is corroborated by the deceased's section 19(f) affidavit. Both state that there was a collision, and the injuries suffered by the deceased were as a result of the said collision, after which the deceased was conveyed to the hospital for treatment. Even during cross-examination, his testimony was uncontroverted concerning how the deceased was struck by the motor vehicle and what injuries he suffered.

⁵ [1984] 4 All SA 622 (E), at 624-5.

- [21] The criticism levelled against Mlondolozzi's testimony was, among others, that his testimony was that from the scene of the accident to the hospital, the deceased was conveyed by Mpelele in a taxi, which was not supported by the deceased's affidavit and the hospital records. According to the deceased's affidavit, he was conveyed to the hospital for treatment by an EMRS ambulance. To this end, the deceased is supported by the hospital records entries, which indicate that he was conveyed to the hospital by EMRS in a state of unconsciousness. The court *a quo* found that the authenticity of the hospital records was unquestionable.
- [22] A party who wishes to rely upon statements contained in a document must ordinarily comply with the following three general rules, subject to various exceptions:
- a) The contents of a document may be proved only by production of the original.
 - b) Evidence is normally required to satisfy the court of a document's authenticity.
 - c) Finally, the document may have to be stamped in accordance with the provisions of the Stamps Duties Act, Act 77 of 1968 (as amended).⁶
- [23] Given the preceding, it cannot be said that the hospital records were placed before the court, even though they formed part of the trial bundle. Neither the RAF nor the appellant sought their admission into evidence, nor did the parties consent to them being admitted into evidence. It was not open for the court *a quo* to have regard to the hospital records as they could not be based on facts, evidence and pleadings.
- [24] On behalf of RAF, Mr Phokwane, responding to Mr Jordaan's opening address on behalf of the appellant at the court *a quo*, stated:
- 'As I indicated that the issue of merits is whether the accident happened because they are legend that the accident happened and then we are, when we are trying to assess the matter we realised that the hospital records are talking about something different, hence the*

⁶ Zefferdt & Paizes: *The South African Law of Evidence*, 2nd Edition, Lexis Nexis, at P.828.

witnesses are here to confirm that the accident did happen or not...'.(sic).

Notwithstanding RAF's knowledge of the issue in dispute and that it, according to the pre-trial conference minute dated 22 July 2021, sought to withdraw its previous admission contained in the pre-trial conference minute dated 28 October 2019, thereby disputing the date, place and time of accident and reserving its rights, this defence was not pursued during trial. During cross-examination of Mlondolozzi, the issue of whether or not the accident occurred never arose for Mlondolozzi to respond. His testimony that the said accident did occur remained unchallenged.

- [25] The court *a quo* was constrained to adjudicate the issues the parties have raised for decision only according to the pleadings and evidence presented before it. RAF is statutorily empowered to conduct its own investigation and make a determination regarding claims brought against it. The hospital records had not been placed before the court *a quo*, and their authenticity was not proven. Further, no witness from the hospital was called to testify on their authenticity and veracity.

- [26] The appellant had no duty to adduce any evidence to contradict assertions emanating from the hospital records' notes that the deceased's injuries were due to an assault, not a car accident, he smelled of liquor, had defaulted on his chronic medication and was aggressive, as such evidence was inadmissible due to the status of the hospital records. It was therefore not justified to consider, assess and rely on same, thereby discrediting Mlondolozzi's evidence as well as that of the deceased in determining the appellant's claim.

- [27] The court *a quo* also rejected Mlondolozzi's evidence regarding his presence at the time the deceased was injured on the basis that his [Mlondolozzi] affidavit made no reference to such.

- [28] In Schwikkard PJ (*et al.*), *Principles of Evidence*,⁷ the learned writers observed that: 'In civil cases the burden of proof is discharged as a matter of probability. The standard is often expressed as requiring proof on a "balance of probabilities" but that should not be understood as requiring that the probabilities should do no more than favour one party in preference to the other. What is required is that the probabilities in the case be such that, on a preponderance, it is probable that the particular state of affairs existed.'
- [29] The court *a quo*'s finding was that since Mlondolozzi's testimony is inconsistent with the deceased's statement and hospital records with regard to who transported the deceased to the hospital after he was injured, such inconsistency means that Mlondolozzi was not present when the deceased was injured.
- [30] Mlondolozzi's testimony regarding how the deceased was struck by the unidentified motor vehicle and what injuries he suffered as a result of the collision remained uncontroverted and consistent with the deceased's affidavit. The deceased's affidavit was not entirely different from Mlondolozzi's since only concerning the transportation of the deceased to the hospital do they differ.
- [31] The court *a quo* was required to weigh the evidence, assess its merits and demerits, and determine whether it is credible and reliable. Even where shortcomings, defects, or contradictions exist, the court must decide whether, despite these, the truth has been established.⁸ In my respectful view, the contradiction regarding the mode of transport was not material to the extent that it warranted rejection of the evidence of Mlondolozzi and the deceased when all evidence is considered.
- [32] In conclusion, for the purposes of liability, though there were contradictions with respect to who and by what the deceased was conveyed to the hospital, the appellant discharged its duty to prove causal negligence of the

⁷ 4th Ed, 2016, ch32-p 628.

⁸ *S v Sauls & Others* 1981 (3) SA 172 (A) at 180E–F; *Sekoala v The State* (579/2022) [2024] ZASCA 18 (21 February 2024).

unidentified motor vehicle as well as the fact that the injuries sustained by the deceased were as a result of the said motor vehicle accident. The evidence adduced by the appellant regarding RAF's liability concerning the motor vehicle collision was reliable and credible, and uncontroverted. In my respectful view, the trial court ought not have rejected it. Further, it should not have considered the hospital records as they had not been placed before the court.

- [33] The court *a quo* erred in its findings. For this reason, this court is at liberty to interfere with the court *a quo*'s conclusions. It follows then that the appeal ought to succeed.

COSTS

- [34] The matter is of importance to the parties, and both elected to engage the services of two counsel. The costs will follow the result. Accordingly, such costs will include the costs consequent upon the engagement of two counsel, including senior counsel.

- [35] In the circumstances, I propose the following order:

ORDER:

- [35.1] The appeal is upheld.

- [35.2] The order of the court *a quo* is set aside and replaced with the following order:

- [35.2.1] The respondent is liable for the proven or agreed damages arising from the injuries sustained by the late Mr Zibuyise Romualo Mazeka in the motor vehicle accident which occurred on 24 December 2016.

- [35.2.2] The issue of quantum is postponed *sine die*.

- [35.2.3] The defendant is ordered to pay the costs of the action, insofar as it pertains to the establishment of liability, such costs to include the costs of the trial in the court *a quo*.

[35.2.4] The defendant is ordered to pay the costs of the appeal, including that occasioned by the employment of counsel awarded at Scale B.



NGM MAZIBUKO

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

I AGREE, AND IT IS SO ORDERED,

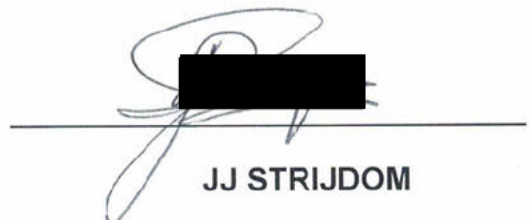


SELBY BAQWA

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

I AGREE,



JJ STRIJDOM

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

HEARD ON: 13 MARCH 2025

JUDGEMENT DELIVERED ON: 12 MAY 2025

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