



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

Case No: 8975/2021

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES / NO
(3)	REVISED: YES / NO
29 MAY 2025	 _____ SIGNATURE
DATE	

In the matter between:

THIATHU GOODWIN MAMAFHA

Plaintiff

and

TS MAKHUBELA INCORPORATED

First Defendant

THULANI SONNETH MAKHUBELA

Second Defendant

JUDGMENT

WINDELL J

Introduction

[1] This is an action instituted by the plaintiff against the first and second defendants (the defendants). He claims damages from the defendants arising from their failure to lodge a claim timeously with the Road Accident Fund ('the Fund'), which resulted in the claim prescribing.

[2] In terms of Rule 33(4) of the Uniform Rules of Court, the issues of merits and quantum were separated. The defendant's negligence in allowing the plaintiff's claim to prescribe is not in dispute. The only issue for determination is whether the motor vehicle accident in which the plaintiff sustained injuries was caused by the negligence of the unidentified insured driver and, if so, whether the plaintiff would have been successful in a claim against the Fund for the amount now claimed. The defendants dispute the plaintiff's prospects of success in such a claim and accordingly deny any liability to compensate him.

[3] It is common cause that on 15 January 2015, the plaintiff instructed the defendants to institute a claim against the Fund arising from a motor vehicle accident that occurred on 19 October 2013, in which the plaintiff sustained serious injuries. In the summons and particulars of claim issued by the plaintiff's current attorneys, Katlego Ralikhuvhana Inc., on 23 February 2021, the plaintiff alleged that the accident occurred **at the corner of Olifantsfontein Road and Potgieter Road**, Glen Austin, Gauteng Province, when **he collided with a pole in an attempt to avoid a truck approaching at high speed with its bright lights on**. (Emphasis added.)

The Evidence

[4] Only the plaintiff testified, whereafter he closed his case. The defendant elected not to call any witnesses and similarly closed its case.

[5] The plaintiff's evidence can be summarised as follows: On 19 October 2013, at approximately 18:30, he was driving a white Volkswagen Polo along Olifantsfontein Road in Midrand, Gauteng. He turned right into Potgieter Road, heading towards Glen Austin. It was drizzling at the time, and the streetlights were on. The road consisted of a single lane in each direction.

[6] The plaintiff testified that he was driving at a moderate speed of approximately 63 km/h when he entered a dip in the road. As he ascended from the dip, a truck approached from the opposite direction. The truck was encroaching onto the plaintiff's lane and its headlights were on bright. The plaintiff attempted to signal his presence by flickering his own headlights.

[7] As the truck passed, the plaintiff heard an impact at the rear of his vehicle. He testified that the trailer of the truck had struck the back right-hand side of his Polo, causing it to spin and roll. The vehicle came to rest on the right-hand side of the road. The plaintiff lost consciousness and later awoke in hospital.

[8] According to his evidence, he sustained serious injuries as a result of the collision. Two days later, a police officer visited him in hospital and took a statement from him regarding the incident.

[9] During the pre-trial conference, the parties agreed that all discovered documents would be accepted as being what they purported to be, subject to either party's right to dispute the authenticity of any such document upon reasonable notice. The plaintiff subsequently and belatedly discovered the police docket as part of the documents intended to be used at trial. In response, the defendant filed a notice indicating that it did not admit the contents of the police docket referred to in the plaintiff's notice in terms of Rule 36(10), dated 6 May 2025.

[10] During his testimony, the plaintiff made reference to the statement he gave to the police. During cross-examination, he was confronted with this statement as well as several other documents contained in the police docket. The plaintiff raised no objection to the use of the contents of the docket and permitted the defendant's counsel to question the plaintiff on the contents of his statement, the accident report, and the accompanying sketch plan.

[11] According to the docket, a police officer, Constable Randima Nonhuwa, arrived at the scene of the accident at approximately 21:45. In his affidavit, the officer recorded that he had spoken to the plaintiff, who reportedly stated that a truck with bright lights and high speed had approached from the opposite direction, causing him to lose control of his vehicle and collide with a pole.

[12] The plaintiff, however, denied giving any such version to the police and disputed the accuracy of the sketch plan, which indicated that the accident occurred at the corner of Olifantsfontein Road and Potgieter Road, and that his vehicle came to rest after colliding with a lamp pole on the left-hand side of the road. He testified that he had no

recollection of the events following the collision and only regained consciousness in hospital.

[13] The plaintiff maintained that the accident took place in Potgieter Road, not Olifantsfontein Road, and denied that he had collided with a lamp pole. Reference was made to the warning statement in which he stated that the truck had approached with its bright lights on and that he had attempted to “run away from the truck,” after which he awoke in hospital. When confronted with this statement, he denied having made it.

[14] He was further confronted with the version he advanced for the first time during his testimony, namely, that the trailer of the truck had struck the rear of his vehicle. His explanation was that he had only recalled the events leading up to the accident years after the incident. He was then referred to the version provided to his current attorneys in 2021, as set out in the particulars of claim, which differs from his testimony in court but aligns with the accident report. He was unable to provide a satisfactory explanation for the discrepancies between these various accounts.

[15] After the close of the plaintiff’s case, he applied to amend his particulars of claim to align with his oral testimony, specifically to allege that the accident occurred in Potgieter Road and that his vehicle had been struck by a truck. The amendment was granted.

[16] Counsel for the plaintiff submitted that the only version before the Court was that of the plaintiff, and that his version was not meaningfully contested by the defendant. It was contended that the accident was caused solely by the negligence of the unidentified insured driver, and that the plaintiff sustained bodily injuries as a direct consequence thereof.

[17] Counsel for the defendant submitted that the plaintiff had failed to discharge the onus of proving that he would have been successful in a claim against the Fund.

Evaluation

[18] In view of the separation of issues granted by this Court, the plaintiff was required to demonstrate, on a balance of probabilities, that he would have been successful in proving liability against the Fund.

[19] The plaintiff's shifting accounts of how the accident occurred raise serious concerns about the reliability of his evidence. Although some allowance may be made for his loss of consciousness and the severity of his injuries, his denial of contemporaneous statements recorded in official documents—including the police affidavit, warning statement, and accident report—undermines his credibility. The version he presented in court differs materially from those earlier accounts, including the one pleaded, suggesting either a reconstruction of events over time or a lack of clear recollection. His inability to explain these contradictions further diminishes the probative value of his testimony.

[20] While the amendment to the pleadings aligned them with his testimony, it did not resolve the inconsistencies in his earlier versions, nor did it address the fact that the amendment was sought only after the close of his case. The timing of the amendment, combined with the unresolved discrepancies between his oral evidence, original pleadings, and documentary records, weakens the overall credibility of his claim.

[21] The original particulars of claim made no mention of negligence on the part of the unidentified truck driver or of his role in causing the accident. This omission is significant, as it suggests that the plaintiff's current version emerged only as the litigation progressed. This further undermines the reliability of his account and casts doubt on whether his present version was ever the true basis of his claim.

[22] The documents used during cross-examination—including the warning statement, accident report, and sketch plan—were discovered by the plaintiff himself. No objection was raised to their use by the defence. Even if they were excluded, the plaintiff has failed to explain why he changed his version on the day of trial. It is notable that in 2021, eight years after the accident, he gave his attorneys a version that was included in the particulars of claim, only to present a materially different version in court. This sudden and uncorroborated change, without a plausible explanation, renders his testimony unreliable.

[23] The plaintiff was not a credible witness, and his version cannot be accepted. On the evidence presented, the Court is not satisfied that he has discharged the onus of proving, on a balance of probabilities, that the accident was caused by the negligence of the unidentified insured driver.

[24] It follows that the plaintiff has failed to establish that he would have succeeded in a claim against the Fund. Accordingly, his claim for damages against the defendants must fail.

Order

[25] In the result, the following order is made:

1. The plaintiff's claim is dismissed with costs.
2. The plaintiff is ordered to pay the defendants' costs.



L. WINDELL

JUDGE OF THE HIGH COURT

GAUTENG LOCAL DIVISION, JOHANNESBURG

Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 29 May 2025.

APPEARANCES

For the applicant:	Mr N. Ralikhuvhana
Instructed by:	Katlego Ralikhuvhana Mokgola Inc
For the respondent:	Ms L. Maite
Instructed by:	Ngwane Mamod Incorporated
Date of hearing:	12 May 2025
Date of judgment:	29 May 2025

