



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

Case No: 82559/2019

(1) REPORTABLE: <i>No</i>	
(2) OF INTEREST TO OTHER JUDGES: <i>No</i>	
(3) REVISED: <i>/</i>	
 _____ SIGNATURE	17 JUNE 2025 _____ DATE

In the matter between:

MOSIMANEOTSILE LAWRENCE MAKOMPE

Plaintiff

and

THE ROAD ACCIDENT FUND

Defendant

This judgment is prepared and authored by the Judge whose name is reflected as such 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 handing down is deemed to be 17 June 2025.

JUDGMENT

RETIEF J

INTRODUCTION

[1] The Plaintiff instituted an action against the Defendant for compensation for the injuries he sustained as a direct result of a hit and run incident which occurred on the 1st of October 2018 whilst he was a pedestrian and was struck down by an unidentified motor vehicle [collision]. His claim and action are in terms of section 17(1)(b) of the Road Accident Fund Act, 56 of 1996, as amended and the regulations [the Act].

[2] The Trial Court was seized with the matter on the 25 July 2024. The defendant defended the action, filed a plea and special plea, the latter relating to its obligation to pay the Plaintiff non-pecuniary loss. The Defendant received a notice of set down served by hand on the 2 May 2024 and elected not to participate in the trial. The last pre-trial that was held appears to be 27 February 2020. It however was only filed on the 24 April 2024. It is unclear how the matter became trial ready with such an historical pre-trial minute. Notwithstanding, the Plaintiff's Counsel when the matter was called insisted that at the Plaintiff was ready to proceed trial on both the aspects of liability and quantum.

[3] The weight of this submission quickly changed when the Plaintiff's Counsel changing during the course of the trial and after the Plaintiff testified, moved for a separation of issues in terms of uniform rule 33(4). He requested the Court to separate the aspect of liability from the quantum in issue, a convenient request under the circumstances, such to be dealt with below. The Court ordered the separation, and the trial commenced on the issue of the Defendant's liability only, quantum to be postponed *sine die*.

[4] According to the pleadings, this Court possessed the requisite jurisdiction in that the Defendant carried on business in the area of the Court's jurisdiction, notwithstanding the fact that the motor vehicle collision occurred in Mothibstad and Promised Land Road, Wrenchville, Kuruman, in the Northern Cape Province.

[5] According to the pleadings, the plaintiff alleged that the collision occurred on the 1 October 2018 Mothibistad and Promised Land Road, Wrenchville, Kuruman, in the Northern Cape Province, when an unknown vehicle lost control whilst trying to overtake another unknown vehicle and collided with the plaintiff. The defendant admitted that a collision occurred but denied all the remaining material allegations. The defendant too pleaded that the plaintiff contributed to the occurrence of the collision setting out such grounds upon which it relied.

COMMENCEMENT OF TRIAL - 25 JULY 2024

[6] The Plaintiff opened its case by Counsel providing a very brief opening address. He confirmed that the Plaintiff was a 36 year old man at the time that the collision occurred and he is now 41 years old. He confirmed that the plaintiff's claim was lodged with the Defendant on the 21 February 2019 and that the summons was issued on the 4 November 2019. According to his oral address including his written heads of argument, the Plaintiff was going to testify to the fact that on the 1 October 2028 at about 00h40 he was walking on the pavement when an unidentified insured vehicle, lost control while trying to overtake another vehicle. He stated that the Plaintiff's evidence would be that the unidentified insured vehicle was forced to swerve out of the road to avoid a head on collision with the vehicle which was performing the overtaking manoeuvre. In so doing, the unidentified insured vehicle collided with the Plaintiff from behind and was the sole cause of the collision. In consequence, he therefore stated that after the evidence of the Plaintiff the Court should award 100% of the Plaintiff's proven or agreed damages.

[7] For the Plaintiff to discharge his onus, Plaintiff's Counsel addressed the Court stating that the Plaintiff would provide *viva voce* evidence with the assistance of an interpreter, and that no other witnesses would be called by the Plaintiff to give evidence regarding the issue of the Defendant's liability.

[8] The Plaintiff, in short, testified that he was walking on the pavement of the road when all of a sudden, a vehicle which he did not see, came from behind him

and collided with him. To expand his evidence his Counsel asked him whether he had signed an affidavit setting out the events to which he testified to, his answer was simply that he could not say. The Plaintiff's was then referred to Exhibit 2 [Caselines 003-], being his statutory affidavit in terms of section 19(f) of the Act. The affidavit was drafted in English, and the contents thereof accorded with the pleaded facts.

[9] The Plaintiff testified that he did not understand English and that the signature shown to him, which appeared at the end of the affidavit, was not his signature. He failed to confirm the content of the section 19(f) affidavit. In consequence, the Plaintiff did not confirm the facts in his own pleadings. The Plaintiff too, was then referred to Exhibit 1 [Caselines 003-12], being the duly completed statutory RAF1 lodgement form. He was asked to verify his signature, this he struggled to do. The content of Exhibit 1 in respect of date, place and time of the collision accorded with the pleaded facts and the section 19(f) affidavit.

[10] The Plaintiff was then referred to Exhibit 3 [CaseLines 003-17] which was the duly completed accident report. The Court and the Plaintiff were shown that it was completed on the 1 October 2018 at 01h30. Exhibit 3 contained the Plaintiff's details, and the date, time and place accorded with the pleaded facts and the section 19(f) affidavit. Notwithstanding, the Plaintiff could not confirm the details reflected in Exhibit 3, but did however testify that he did report the collision to the South African Police but could not recall the exact date. The Plaintiff's testimony in support of that fact does speak to his affidavit which appeared in the docket, but the Plaintiff was not taken thereto during his testimony.

[11] The Plaintiff's evidence which followed did not support his version nor that he himself instructed an attorney to lodge a claim against the Defendant himself. He testified to the fact that after the collision and whilst being treated in the Kuruman hospital for a head, left shoulder blade, back, pelvic area and right lower leg injuries [injuries] a nursing sister encouraged him to do it and that she would take him to the attorney. He did not remember the attorney's name, he was not even sure of the purpose of any meeting he had with the attorney. However, he did testify that they sent him to certain medical experts, the purpose of which was not unclear to him.

When prompted by Counsel the Plaintiff stated that he could not recall anything at that stage.

[12] At this point in the proceedings, the Plaintiff Counsel simply closed the Plaintiff's case. No postponement nor a stand down was sought and therefore not entertained and thus not granted. The Court then requested Counsel to provide closing argument in written heads of argument addressing, *inter alia*, the disconnect between the Plaintiff's evidence and the allegations set out in the pleadings and documentary evidence.

[13] Judgment was reserved to allow an opportunity for Plaintiff's Counsel to supplement his heads of argument so that the Court could consider such submissions before it handed down judgment.

[14] However, instead of filing supplemented heads of argument addressing the disconnect as directed, the Plaintiff's attorney filed an application to reopen the plaintiff's case, requesting leave to lead further evidence which was material in that it was stated that:

- "5.5 *During the trial the Plaintiff was giving evidence in chief he appeared to be confused and was unable to give evidence on issues that we assumed to be common cause between the parties.*
- 5.6 *The Plaintiff could not give evidence on chronological events that happened prior to the accident and what transpired after the accident.*
- 5.7 *The Plaintiff could not answer questions that the Court posed to him seeking clarity on how the accident occurred.*
- 5.8 *The Plaintiff's legal representatives were taken by surprise when the Plaintiff appeared to be confused and unable to give evidence and answer the questions posed by the Court for clarity purposes. This could not have been reasonably foreseen and anticipated.*

5.9 *The Plaintiff's legal representative bona fide assumed that the accident was not in dispute and Plaintiff was to give evidence on how and where the accident occurred to establish negligence on the part of the unidentified insured vehicle and insured driver."*

[15] In consequence, the Plaintiff sought leave to lead further evidence out of necessity, such necessity it submitted was not foreseen at the time by the Plaintiff's attorney. The further evidence to be lead on behalf of the Plaintiff would now be the expert testimony of a psychiatrist to speak to the Plaintiff's sudden cognitive ability and whether it is accident related and the testimony of the police officer who attended the scene of the accident and completed Exhibit 3.

[16] Leave was duly granted. The Plaintiff's attorney filed a report obtained by a specialist psychiatrist, Dr R.T.H Lekalakala who expressed his opinion on the Plaintiff's mental state and capacity. The report was filed together with an affidavit deposed to by Dr R.T.H Lekalakala. The affidavit was dated 29 April 2025. The content of the affidavit dictated its purpose, namely; to confirm the content and correctness of his report. It was a confirmatory affidavit and not a damages affidavit as referred to.

TRIAL RE-OPENED ON THE 5TH MAY 2025

[17] On the 5 May 2025 and at the Court's insistence the matter was placed on the roll to be heard as a part-heard matter. On the date of the commencement of the part-heard matter, the Defendant remained a party, and its attorney had not withdrawn but, the Defendant had not received notice of this date.

[18] Counsel from the bar informed the Court that the Plaintiff was found not to have any psychiatric *sequelae* resulting from the collision which could have impacted and/or influenced his evidence in the manner it did. On this basis the Court would accept the *viva voce* evidence of the Plaintiff.

[19] Notwithstanding Counsel informed the Court that Plaintiff still wished to persist with the trial and would call one further witness as indicated in their application to reopen, namely a police officer stationed at Wrenchville, Constable Monica Saleka (previously Lebanang) who completed Exhibit 3. The matter was postponed to give the Defendant's notice of the part-heard matter and the aspect of wasted costs, if any, was reserved. The Court postponed the re-commencement of the trial to the 9 June 2025 when the Court again, was seized with a civil trial roll.

COMMENCEMENT OF THE TRIAL ON THE 9TH JUNE 2025

[20] The Defendant received due notice as directed but again elected not to be present. The Plaintiff's Counsel called one witness, the police officer to whom they previously referred, Constable Monica Saleka [the Constable].

[21] The nub of Constable evidence was that she had been working as a police officer at the Wrenchville Police Station for the past 17 (seventeen) years and that at the material time, being the 1 March 2018, she was using her married name Lebanang, and as such all documents referring to Monica Lebanang in the docket was reference to her. She testified that on the 1 October 2018 and at 00h41 in the morning she attended a scene of what appeared to be the scene where a collision had occurred near Mothibistad and Promised Land Road.

[22] She described the scene as dark, being the early hours of the morning and there she found a seriously injured African male lying on the pavement to the left of the road, in other words to the left of her (i.e. the direction from which she was coming). She observed that because of the injuries he was unable to communicate with her when she first spoke to him. At that time, medical assistance arrived to take the injured male to the nearest hospital, the Kuruman hospital. She further testified that whilst the injured male was being loaded into the ambulance, he stated that his name was Mr Makompe residing at Castle Village.

[23] She furthermore testified to finding broken pieces of glass of a car and a mirror [debris]. The debris was collected and placed into evidence marked (SAP13

160/2018). The Constable indicated to the Court that the debris was found behind the injured male person. When she indicated it on the sketch found on Exhibit 3, she marked it with an 'X'. 'X' was pencilled more or less in the vicinity of where the depicted injured male was lying but marked above his head.

[24] The Constable also confirmed that the photograph she was referred to in Bundle 004(e)-1 on Caselines did depict the place where the injured male was found by her, being, on the paved area next to the road. She was only referred to one picture, a photograph which she confirmed she did not take by her, it was taken recently and in her presence at the scene by the Plaintiff's attorney.

[25] The Constable testified that she returned to the station and completed Exhibit 3 and deposed to an affidavit. At this stage, the Constable was referred to Exhibit 3. On page 003-20, she confirmed her married name as Lebanang and her service number as 71137726-6. She testified that she completed the accident report on the 1 October 2018 at 01h30 in the morning. When referred to the rudimentary sketch on the police report the injured person is depicted on the left-hand side of the road if one was driving from south to north, in other words, in the direction from the police station to the scene.

[26] The Constable was then taken to the case docket which is found at 003-34 on Caselines. No exhibit reference was given to the docket at this stage. The case number looked like 02-10-2018. The Court noted that the "02" of the 02-10-2018, was first an '03," which appeared to have been changed. This change was evident throughout the docket. The Constable was not asked to explain how that occurred. She did however confirm that the case number was 02/10/2018. However, what does appear clear, on the cover sheet of the docket was that it's contents should have contained documents pertaining to an accident which occurred on the 1 October 2018 at 00h40, a hit and run in which "*somebody was injured.*"

[27] The Constable was then taken to her statement deposed to under oath which was referred to as A1 in the docket. A1 was to be found at 003-34 on Caselines, Again, the case number appeared to be changed. The content of the statement accorded with her evidence verifying the date, time and place as pleaded in the

particulars of claim. However, when she was asked to confirm her signature, she was referred to page 003-35 on Caselines. Although this is not unusual, as it the very next page which follows the commencement of her statement, the pages in the docket were not in sequence. She none the less confirmed her signature on page 00-35 and even read into the record that her statement was commissioned by Captain Malela who was a detective at the time. Yet page 003-35 could not have been her signature because at the top right-hand corner of that page 00-35, this page did not belong to a document referred to as A1 but , to a document marked A3(2). Furthermore, the case number referred to on that page was not 02-10-2018. Whose ever signature that was, it was commissioned by Captain Malela at 11h03 on the 13 of November 2018 and not as testified to by the Constable. The signature could never have been that of the Constable for the reasons explained and for yet another reason. If one had perused the docket filed, as one would have expected the Constable and the Counsel to do, one would notice that page 003-38 was also marked A1 and that it was a second page from a statement. The Constable's statement, it clearly resembled the same changes made to the case number and the name of the Constable was written on the first line. Furthermore, the signature on this statement differed from the one verified by the Constable on 003-35, it was commissioned on the 1 October 2018 at 01h50 by Sergeant Alda Moncho not Captain Malela.

[28] Statement A3(1) commissioned by Captain Malela at 11h03 on the 13 of November 2018 is the second page to the Plaintiff's affidavit which is found in the docket. At 003-37 on Caselines, the first page of the Plaintiff's statement is marked A(3)(1). The case number is clearly marked and has not been changed in any way. It clearly states 02/10/2018. The Plaintiff states under oath that he was knocked down on the 1 October 2018 at 19h30 whilst he was walking next to the road facing Kuruman from direction Promised Land. He states that: *"I saw a car coming from Kuruman town, i.e. in front of me, overtaking another one and the next thing the car hit him"*. Of further pertinent interest he states: *"After a very long time the ambulance came and took me to Kuruman Hospital."*. As he testified in chief he did report it to the police sometime later. This testimony accords with 003-35 which is dated later at 11h03 on the 13 November 2018. The signature which appears on this page does

not accord with the signature found at Exhibit 1 nor 2. This is why the Plaintiff did not recognise the signatures and would not confirm the documents under oath.

[29] The Plaintiff was never taken to A(3) at page 00-37 or 00-35 during his evidence. Of significance further is that the Kuruman hospital records confirm that the Plaintiff at 19h46 was received at casualty at the Kuruman Hospital on the 1 October 2018. This time and timeline accords with the Plaintiff's statement at A(3) in the docket and not with the Constables evidence.

[30] The docket does not contain the SAP 13 referred to by the Constable but also contains a report of a medico-legal examination performed by a healthcare practitioner whose name does not appear to be clear. He signed the certificate in terms of section 213 of the Criminal Procedure Act, 51 of 1977. The medical practitioner signed the J88 on the 30 September 2018 at 19h00 in which he confirmed that on the 24 September 2018 at 09h00 and at the Kuruman Hospital, he examined a person whose details appear on page 2 of the J88 form and he certified the content thereof as being true and to the best of his knowledge and belief. The Plaintiff's details appear on the J88. The relevance is that the date of the examination and the date of the signature in terms of section 212 all occurred prior to the date of the collision which indicates that the Plaintiff was assaulted prior to the collision occurring. The relevance and *lis* with the hit and run claim lodged with the Defendant remains unexplained.

[31] The statement made to the police by the Plaintiff, does not accord with his evidence in chief nor with that of the Constable who stated that the accident happened in the early hours at 00h40 on the 1 October 2018 when it was still dark and that the ambulance arrived immediately whilst she was at the scene. The evidence in this affidavit is in direct contrast to the 19(f) affidavit which is lodged in terms of the Act.

[32] The RAF1 statutory medical report was completed by the Road Accident and Assessment and Medico-Legal Clinic, Premier Medical Centre, which does not appear to be the first treating doctor of the Kuruman Hospital. This is not explained. The content furthermore indicates that the Plaintiff attended the Kuruman Hospital on the 30 September 2018, a date which accords with the J88 but not with the

pleaded case and is in direct contrast to the remaining allegations made in the RAF1 claim form in support of the Plaintiff's claim.

ANALYSIS

[33] The Plaintiff pleads that the accident occurred on the 1 October 2018 and at or near Mothibistad and Promised Land Road in Wrenchville, Kuruman and sets out the basis of negligence, causation of such negligence, his bodily injuries sustained (pelvic fracture, testicular-epididymal core disease, three abrasions of the scalp and ankle and mechanical back pain in lumbar spine), all being as a direct result of the negligent driving of an unknown vehicle, but fails to plead that the Defendant is indeed in terms of the Act liable to compensate him. This was not argued.

[34] The Plaintiff's claim falls under section 17(1)(b) of the Act and the regulations thereto. Section 24(2)(a) provides that the medical report shall be completed by the medical practitioner who treated the injured person for the bodily injuries sustained in the accident or by the superintendent (or his or her representative) of the hospital where the injured person was treated for the bodily injuries relied on. In circumstances where it appears that such cannot be completed in time and prescription is looming, the provision of the Act states that it may be completed by another medical practitioner who has fully satisfied himself or herself regarding the cause and nature and treatment of such injury in respect of the claim made.

[35] In terms of section 24(5), if the Defendant did not within 60 (sixty) days from the date of the claim object to the validity, the claim should be deemed to be valid in law in all respects. In subsection (6)(b), the Act states that notwithstanding the validity of a claim it is not enforceable by legal proceedings by summons unless all the requirements contemplated in section 19(f) have been complied with. Section 19(f) states that the Plaintiff should not refuse or fail to submit, within a prescribed or reasonable period an affidavit in which particulars of the accident that gave rise to the claim concerned are fully set out or, not fail or refuse to give copies of all statements and documents relating to the accident that gave rise to the claim concerned.

[36] The Plaintiff was referred to his 19(f) affidavit in chief which he did not confirm signing. There is no evidence that he was not of his full senses at the time he, in the record, did not deny confirming it. In the circumstances it would appear that a 19(f) affidavit was submitted with the claim form but that such affidavit does not confirm the particulars of the accident that gave rise to the claim by the plaintiff. In consequence, non-compliance of 19(f)(i). As too, 19(f)(ii), it is unclear whether the remaining statements in the docket deposed to by the Constable or the Plaintiff were ever provided to the Defendant on the 21 February 2019 when the claim was lodged. The documents which were attached for the Defendant's attention and in paragraph 2 of the lodgement letter do not include the docket but, only the 19(f) affidavit.

[37] The difficulty that the Plaintiff attracts is insurmountable, being:

- 37.1. Evidence to sustain the enforceability of the claim lodged in terms of the Act. No evidence was led that the docket indeed, other than the 19(f) affidavit, which the Plaintiff himself rejected, was provided to the Defendant triggering the enforceability of the claim let alone absent the allegation in the particulars of claim that the Defendant is indeed liable in terms of the Act;
- 37.2. The time of the accident as pleaded, and as stated in the RAF1 form and as provided in the evidence by Constable, does not accord with the time given by the Plaintiff in his statement to the South African Police. The time of the admittance to the Kuruman Hospital, according to the hospital records being 19h36 on 1 October 2018 does not accord with the evidence of Constable nor with the pleaded case.
- 37.3. The J88 is unexplained and forms part of the docket tendered into evidence.
- 37.4. Too many inconsistencies exist as previously reasoned.

[38] In consequence other than the Defendant admitting that a collision occurred, the Plaintiff has failed to prove the remaining pleaded facts and failed to plead nor proof that the Defendant is liable in terms of the Act. As such his claim is not enforceable merely by the institution of this action.

[39] As to costs, albeit, the wasted costs of the 5th of May 2025, the Defendant did not participate and as such no costs were sought by it and accordingly not granted.

[40] The following order:

1. The Plaintiff's claim is dismissed.



L.A. RETIEF

Judge of the High Court
Gauteng Division

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