

**IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION
MBOMBELA (MAIN SEAT)**

CASE NUMBER 297/2017

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED.

DATE: 12 August 2025

SIGNATURE :

ALPHEOS NTIMANE

PLAINTIFF

And

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

SHAI AJ

Introduction

- [1] This is a claim for damages arising from a motor vehicle accident on 6 December 2015.
- [2] When the matter came before court, both merits and quantum were still in dispute.
- [3] The defendant disputes that there was an accident as pleaded and/or testified to by the plaintiff. The court is called upon to make a determination on

compensation for past and future loss of earnings, in the event that the merits are determined in favour of the plaintiff

[4] *Viva voce* evidence was given by the following witnesses:

4.1 Alpheos Ntimane ("Plaintiff")

4.2 Gopolang Simon Mashego ("Gopolang"), and

4.3 Msase Eve Mageza-Mokgethi, an Industrial Psychologist

[5] Plaintiff made an application for evidence to be placed before the court in accordance with the provisions of Rule 38 (2). The application was granted.

[6] Plaintiff then filed reports, together with affidavits, by the following experts:

6.1 Occupational Therapist;

6.2 an actuary.

[7] The report by the Industrial Psychologist was also admitted as an exhibit for ease of reference.

[8] Defendant did not call any witnesses; thus, its case closed without adducing any evidence.

[9] Counsel for both parties filed extensive heads for which I express my sincere appreciation. It is worth mentioning on the outset that an investigative report filed by P AND P Investigations ("the investigators"), was referred to extensively in the cross-examination of witnesses.

Merits

[10] The evidence can be summarised as follows:

10.1 Plaintiff testified as follows:

10.1.1 He was on 6 December 2015 the driver of a motor vehicle, a White Corsa Lite car, with registration letters and number D[...] (the vehicle is stated in the particulars of claim as being a white VW Polo with registration letters and number D[...]).

- 10.1.2 He was driving from Acornhoek to Bushbuckridge, with four passengers, including his uncle, Gopolang Simon Mashego.
- 10.1.3 As he was negotiating a bend by a bridge after a place named Matsikitsane, he saw an oncoming vehicle which he identified as a VW Polo.
- 10.1.4 The oncoming vehicle was travelling on plaintiff's lane. He swerved to the left to avoid a collision but the vehicle fell into a ditch which was outside the road.
- 10.1.5 He sustained injuries and was taken to hospital.
- 10.1.6 He was at the time of the accident employed as a driver by Khutoane Spares. After the accident, he could only return to work after 6 months but was no longer used as a driver as his left arm could not perform the required functions.
- 10.1.7 His salary was reduced. He later could not cope with the demands of his work and he quit. He was at the time of giving evidence unemployed and he now receives a disability grant from SASSA.
- 10.1.8 He has an N5 certificate in electrical engineering and pre-accident he was earning R2500.

Contradictions/Discrepancies

- [11] In cross-examination, various discrepancies were highlighted. It is stated in the Particulars of Claim ("POC") that the vehicle which was driven by the plaintiff was a VW Polo with registration letters and number D[...] whereas his testimony in court is that it was a Corsa Lite with registration letters and number D[...]. In his section 19(f) affidavit¹, he confirms what is given in the POC, namely, that he was driving a VW Polo with registration letters and number D[...].
- [12] The investigators state in their report that the plaintiff stated to them that he personally did not manage to identify the model, make, colour or even the registration letters and number of the unidentified insured vehicle which was

¹ Page 187 of the bundle

travelling in the opposite direction.² This version is contained in an affidavit³ obtained on 1 March 2023. In his oral evidence, the testified that he identified the vehicle as a VW Polo.

- [13] It is not fathomable as to how the plaintiff came to know that the vehicle was a VW Polo after stating in his affidavit that he could not identify it.

Gopolang

- [14] Gopolang testified as follows:

- 14.1 He was a passenger on the vehicle driven by the Plaintiff Acornhoek
- 14.2 At a curve in Matsikitsane an oncoming vehicle drove onto their lane of travel. In trying to avoid a collision, the plaintiff swerved to the left, left the road and landed in a ditch.
- 14.3 A police van came and the police called an ambulance.
- 14.4 He confirmed that the investigators obtained a statement from him.
- 14.5 In cross-examination, he stated the following:
 - 14.5.1 after being referred to an affidavit⁴ wherein he stated that the vehicle that encroached onto their lane of travel was a marked police van, he stated that when he made the statement he was confused as the accident caused him a lot of pain. This affidavit was obtained on 1 March 2023.

- [15] Masase Eve Mageza-Mokgethi testified as follows:

- 15.1 The accident had a negative impact on the Plaintiff. The injuries affected his post-morbid career path.

- [16] Various expert reports were handed in by the plaintiff in terms of provisions of rule 38 (2).

Issue

² Bundle, page 203

³ Bundle, pages 227-230

⁴ Bundle page 231

[17] The issue for determination is whether the accident was caused by the negligent driving of an unidentified vehicle.

Onus

[18] The Plaintiff should discharge the onus resting upon him on both merits and quantum.

The law

[19] In this case, the evidence to be assessed is that of the plaintiff. Owing to the nature of the defence raised by the defendant, the court should first be satisfied that there was indeed an unidentified vehicle encountered by the plaintiff.

[20] Should this court find that there was no other vehicle involved, the defendant must be absolved from liability.

[21] It was held in *Siffman v Kriel 1909 TS (1) 538* at 543 that:
“It does not follow because evidence is uncontradicted, that therefore it is true. Otherwise, the court, in cases where the defendant is in default, would be bound to accept evidence the plaintiff might tender. The story told by the person on whom the onus rests may be so improbable as not to discharge it”.

[22] The court should therefore, in assessing evidence where there is no evidence led by the defendant, weigh such evidence against objective facts and relevant surrounding circumstances.

Contradictions

[23] There are contradictions between the plaintiff and Gopolang and within the testimony of each of them as highlighted above. These contradictions have an impact on the credibility of the evidence presented.

[24] The court in *Segalo v S*⁵ emphasised that the approach to contradictions between witnesses and within the same witness's testimony is fundamentally the same, aiming to assess the witness's reliability, not necessarily to determine which version is correct.

Evaluation

[25] In cross-examination, defendant highlighted various discrepancies in the evidence of the plaintiff.

[26] The description of plaintiff's vehicle stated in the POC differs from the description of the vehicle given by plaintiff in court. The POC is the document upon which the action or claim is founded and the plaintiff is expected to confirm, when giving oral evidence, the allegations made in the POC. The plaintiff failed in this regard. Instead of confirming the identity of the vehicle as stated on the POC, he gave a different description.

[27] The description of the vehicle as reflected on the POC is also given by the plaintiff in his section 19(f) affidavit. His oral testimony is, therefore, at odds with the POC and the section 19 (f) affidavit. This is a material contradiction.

[28] The POC outlines the plaintiff's case by presenting the facts and legal grounds upon which the claim. The plaintiff is not expected to give testimony which is different from the facts in the POC.

[29] Gopolang also contradicts himself on the identity of the unidentified vehicle. He initially described it as a marked police vehicle but in his oral testimony, same is described as a VW Polo.

[30] The contradictions are such that I cannot make a proper finding as to whether there was an unidentified vehicle involved in the accident or not. In other words, the credibility of the evidence is affected.

⁵ (A543/2010) ZAGPPHC 41

[31] I see no need to look at the issue of quantum, owing to my finding on merits.

Conclusion

[32] In the premise, I am inclined not to dismiss the claim but instead order an absolution from the instance.

[33] There shall be no order as to costs.

SHAI AJ

DATE OF HEARING: : 9 April 2025

DATE OF JUDGMENT : 12 August 2025

This judgment was handed down electronically by circulation to the parties' representatives by email. The date and time for hand-down is deemed to be **11h00** on **12 August 2025**.

**THE NAMES, TELEPHONE NUMBERS AND EMAIL ADDRESSES OF THE
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