

**IN THE HIGH COURT OF SOUTH AFRICA
NORTHERN CAPE DIVISION, KIMBERLEY**

Case No:	739/2023
Reportable:	YES / NO
Circulate to Judges:	YES / NO
Circulate to Magistrates:	YES / NO
Circulate to Regional Magistrates:	YES / NO

In the matter between:

DENZIL EGON WORTMANN

Plaintiff

and

THE ROAD ACCIDENT FUND

Defendant

Heard on: 29/04/2025 & 30/04/2025

Delivered on: 15/08/2025

Summary: Action for damages. Claim against the Road Accident Fund – Bodily injuries. Plaintiff claiming damages for past medical expenses, loss of earnings or earning capacity and general damages. Liability and quantum separated. Failure to observe safe following distance. Failure to call relevant and available witnesses – adverse inference drawn.

ORDER

In the result, the following order is made:

1. The plaintiff's claim is dismissed with costs.

JUDGMENT

MAMOSEBO ADJP

- [1] The plaintiff, Mr Denzil Egon Wortmann, claims damages to the tune of R9,254,703.00 against the Road Accident Fund (RAF) arising from a collision which occurred on 01 September 2021 on the N12 Highway between Kimberley and Modderivier between a Volkswagen Kombi with registration numbers and letters K[...] driven by the plaintiff and a Toyota Land Cruiser bakkie with registration numbers and letters C[...] driven by Mr Ivan Jacobs (the insured driver). The merits were separated from the quantum as contemplated in Rule 33(4) of the Uniform Rules of Court.
- [2] The issue that stands for determination is whether the RAF should be held liable for the collision which the plaintiff contends was caused by the sole negligence of the insured driver.

The plaintiff's evidence

- [3] The plaintiff is an employee of OUTsurance insurance company in Centurion. On 01 September 2021 he was the driver of one of three Volkswagen Kombis from Pretoria on a business trip to attend an executive conference in the Northern Cape. He had three passengers. He drove at a speed of 120 km/h. He had followed the Land Cruiser for a while and without warning or apparent reason the Land Cruiser unexpectedly braked. He heard screeching tyres like an emergency stop and swerved right towards the oncoming lane assuming that it would be safe to overtake the Land Cruiser which he estimated to have been 100 meters ahead of him. As he drew closer, the plaintiff slammed on his brakes and veered to the left. His Kombi knocked the Land Cruiser at the left rear. The insured vehicle did not give an indication or warning that it was turning right. Plaintiff did not notice the indicator light of the insured vehicle flickering. After the accident medical personnel arrived and he was conveyed to hospital. He denies not having observed a safe following distance.

- [4] The plaintiff called Mr Barry Grobbelaar, a forensic engineer at Forensys Engineering Dynamics (Pty) Ltd, who holds an MEng (Mechanical), MSAE, MSAGMJ, as the accident reconstruction expert for the reconstruction of the accident. His qualifications and expertise were not disputed. He compiled a report dated 11 May 2023. He relied on a copy of the Accident Report (AR) form furnished by the South African Police Services (SAPS), colour copies of photographs of the accident site and damaged vehicles attached to the papers as Annexure C, as well as copies of the warning statements of Messrs Ivan Jacobs and Gift Simphiwe Mkabiti. He also inspected Google Earth images to obtain a plan view and aerial view of the accident site. Mr Grobbelaar further physically inspected the accident site on 29 September 2022, a year later. There were no brake marks on the scene.
- [5] Grobbelaar testified that he measured the width of each lane. Photo 3 in Appendix B taken in the direction of travel of the Kombi and the Land Cruiser shows the width between the centre line and the emergency line of the left lane to be 3.8m. The shoulder of the road from the emergency line to the edge of the road is 2.1m. From the centre of the road to the emergency line of the oncoming lane is 3.8m and from the emergency line to the edge of the road 2m. The surface of the road is tarred, and the road markings and visibility were reportedly good. The road signs were clearly visible and in good condition. The road is straight and flat. The N12 is a national road with the speed limit of 120km/h.
- [6] According to Grobbelaar and as depicted at photos C16 and C17 the impact damage to the Kombi was more on the right front which was entirely forced rearwards. The right A-pillar was buckled but the left A-pillar is still intact. After the collision the plaintiff's vehicle rested at the extreme left and off the tarmac. The Land Cruiser rotated clockwise and rolled and came to rest on its left side at an angle across the northbound lane in the emergency lane opposite the entrance to an Eskom substation and facing more or less northeast towards Hopetown on the tarmac as depicted on photo C19. The Kombi rested completely off the road on the left hand side towards

Hopetown. The impact damage to the Land Cruiser was to its rear leaving the spare wheel at an angle to the left pushed inwards and forward.

- [7] On the explanation proffered by the plaintiff, Grobbelaar opined that the Kombi must have swerved to the right due to the sudden skidding (braking) marks of the Land Cruiser which half-mooned to the right; and that plaintiff must have swerved left to pass the Land Cruiser, but the collision occurred. According to Grobbelaar, there are tyre marks in the lane towards Kimberley with a curve to the left crossing the dotted centre line caused by the Kombi. This indicated a discontinuity (also known as a kink) just across the broken centre line where the curvature of the marks changes abruptly. The inference is that an external force caused the kink. In other words, the collision with the rear of the Land Cruiser slowed the Kombi down causing the sudden change in curvature of the tyre marks. The point of impact was on the right wheel just to the centre line. The Land Cruiser was at an angle in the process of turning to the right when the collision occurred. According to Grobbelaar the presence of a gouge mark in the tarred surface of the road just forward of the kink confirms the area of collision just to the left of the broken centre line. The Land Cruiser's left rear was on the left hand side of the broken centre line whilst the right rear was on the right hand side.

- [8] This is what Grobbelaar recorded at clause 9.4 of his report:

'It is clear that there was some distance between the end of the dark tyre marks (and lighter marks curving to the right) deposited by the Landcruiser, and the area where the collision occurred as can be seen in photograph C21 and can also be seen in the aerial view of Appendix A3. This confirms that the Landcruiser was probably turning to the right when the collision occurred, with the front of the vehicle then being in or mostly in the northbound lane (towards Kimberley) due to the Landcruiser being at an angle to its right whilst turning. A rough indication of the distance between the end of the dark tyre marks of the Landcruiser and the area where the collision occurred is that it was approximately 6m when considering that the space between two white lines of the broken centre line was measured to be approximately 7m

at the accident site during the inspection. This distance can be seen in the aerial view of appendix A3.'

Grobbelaar could not establish whether the right indicator light of the Land Cruiser could have been on or off prior to the vehicle turning to the right and left that aspect for evidence as he was not an eye-witness.

- [9] In as far as the distance between the Kombi and the Land Cruiser is concerned taken from the version of the plaintiff who had indicated that he was approximately 100m away from the Land Cruiser when he suddenly saw the smoke from the skidding tyres of the Land Cruiser, Grobbelaar, opined that for a vehicle traveling at 110km/h to 120km/h the driver would have required a distance of approximately 61m to 81m to brake his vehicle to a stop. He factored in the reaction time. Grobbelaar further said at clause 14.1 that it was not possible for him to calculate with accuracy the speed of the Kombi prior to the collision due to there being insufficient accurate information available to do so.

Plaintiff closed his case.

Defendant's case

- [10] Mr Jacobs was the driver of the Land Cruiser that was involved in the collision with the plaintiff's Kombi. He is an employee of Eskom and has been for the past 16 years and currently occupies the position of Senior Technical Official. He has been a licensed driver for more than 20 years. He was driving from Kimberley to the Ritchie Eskom substation. He is familiar with the N12 as he visits the substation at least six times per month to conduct inspections.
- [11] On 01 September 2021 he was in the company of Mr Mkabiti. He was aware of other vehicles that were following him. The plaintiff's Kombi was following another Kombi that was immediately behind his vehicle. In other words, the plaintiff was the second vehicle from the Land Cruiser. As he approached the turn-off road, he signalled his intention to turn right towards the Eskom substation. He was driving on the correct side, the left side. He observed a

Kombi approaching from behind him at a high speed and remarked '*here comes trouble*'. The Kombi was driving on the right, incorrect side of the road. The overtaking Kombi bumped the Land Cruiser on its left rear. The Land Cruiser went airborne and came to rest on the substation entrance facing oncoming traffic. Jacobs said he was travelling at a reduced speed of between 80 – 90km/h but just before the turn off he had reduced the speed to 20 km/h. He denies applying brakes abruptly in front of the plaintiff's Kombi. He further denies that he could have missed the turn off to the substation, as suggested to him, which could have caused him to abruptly apply his brakes. He maintained his stance that this was a road well-travelled by him. The stepladder that was at the back of the Land Cruiser did not, as was suggested, obstruct his rear view when using the central console mirror. The accident happened between 12:00 and 13:00, in broad, clear daylight.

- [12] Mr Mkabiti is a Senior Technical Officer at Eskom and was a passenger in the Land Cruiser. His testimony corroborates Jacobs and that of Cst Mohau Innocent Setlhatse in material respects, particularly in respect of the Land Cruiser reducing speed in preparation to turn right, that the indicator was switched on and the averments by his colleague overall. He heard the screeching of tyres and felt the impact from behind. Their Land Cruiser went airborne and came to rest on its side. The driver's door was forced open and they both exited the vehicle through it. Mkabiti took pictures of the scene and the Land Cruiser. There was a Kombi besides the plaintiff's which had also stopped at the scene. He observed through their interactions that they were travelling together. The two Kombis had been following the Land Cruiser from the flyover intersection towards Jacobsdal. The collision occurred as the second Kombi behind them was overtaking. The Kombi that was immediately behind the Land Cruiser managed to avoid the accident by coming to a halt while the one behind it was overtaking. His colleague had already started to execute a turn. He denies that he slammed the brakes abruptly. The police and paramedics arrived at the scene and the injured were conveyed to Gariep Hospital. He was interviewed by the police officer who compiled the accident report form, the said Cst Mohau Innocent Setlhatse, attached to the Modderivier police.

[13] Cst Setlhatse was doing patrol duty in the Ritchie area when he received a call reporting the accident. Upon his arrival he observed the Eskom vehicle (Land Cruiser) lying on its side and the Volkswagen Kombi was off the road. The passengers inside the Kombi were injured. Paramedics were summoned. He obtained the injured people's names and addresses and attended to the Land Cruiser occupants.

[14] Cst Setlhatse took the statement of Mr Gift Simphiwe Mkabiti because the driver of the Land Cruiser, Mr Ivan Jacobs, was also injured. Mr Mkabiti explained how the accident had taken place. Setlhatse and Mkabiti communicated in Setswana, and he wrote the statement in English. He is Setswana speaking but is proficient in English. The explanation made to him regarding the indicator of the Land Cruiser was that it was switched on while the vehicle was still traveling straight, thus before the driver executed the right turn. This statement was elicited under cross-examination, and therefore not hearsay.

The defendant closed its case.

[15] Mr van Onselen, for the plaintiff, attacked the credibility of the defendant's witnesses mainly because their *viva voce* evidence in certain instances somewhat differed from their police statements. The principle regarding contradictions in these kinds of circumstances was dealt with in *S v Mafaladiso*¹ where the court enunciated:

'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*

¹ 2003 (1) SACR 583 (SCA) at 593i – 594h (English version quoted from the headnote)

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. In this regard the adjudicator of fact must keep in mind that a previous statement is not taken down by means of cross-examination, that there may be language and cultural differences between the witness and the person taking down the statement which can stand in the way of what precisely was meant, and that the person giving the statement is seldom, if ever, asked by the police officer to explain their statement in detail. 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. Non-material deviations are not necessarily relevant. Thirdly, the contradictory versions must be considered and evaluated on a holistic basis. The circumstances under which the versions were made, the proven reasons for the contradictions, the actual effect of the contradictions with regard to the reliability and credibility of the witness, the question whether the witness was given a sufficient opportunity to explain the contradictions - and the quality of the explanations - and the connection between the contradictions and the rest of the witness' evidence, amongst other factors, to be taken into consideration and weighed up. Lastly, there is the final task of the 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. (At 593e – 594h.)' (emphasis added)

- [16] As alluded to earlier, Cst Setlhatse compiled the accident report sourcing the information from Mkabiti, the Land Cruiser passenger. He wrote:

'Driver 'A' alleged that while he was driving from Modderrivier to Hopetown direction and he tried to indicate ...and he suddenly saw Driver 'B' with VW motor vehicle and bumped on the Eskom vehicle from the back and the vehicle got multiple damages and passengers were all traumatised and sustained severe injuries and were taken to Hospital for further medical assistance.'

- 16.1 The *viva voce* evidence of Mkabiti clarified that he was a passenger and was the one who gave the information to Cst Setlhatse and not his colleague who was the driver.
- 16.2 His colleague did not '*try to indicate*' as captured by Cst Setlhatse but indicated and reduced speed in preparation to turn to the right.
- 16.3 The discrepancy or inconsistency whether the vehicle was still straight or had turned slightly to the right at the time of the collision is of no consequence considering that the collision occurred from behind.
- [17] The plaintiff's version differed from that of the defendant in several important respects. He testified that Jacobs gave no signal of his intention to turn to the right; that his vehicle was the only one following the Land Cruiser and that there was no other Kombi between his vehicle and the Land Cruiser; that Jacobs applied his brakes abruptly giving him no safe options to avoid the collision; that he drove at the permissible speed of between 110 km/h and 120 km/h and that he had maintained a safe and reasonable following distance.
- [18] Plaintiff was a single witness in as far as direct evidence is concerned. The trite principle was enunciated by the Supreme Court of Appeal (SCA) in *Elgin Fireclays Ltd v Webb*² that if a party fails to place the evidence of a witness, who is available and able to elucidate the facts, before the trial Court this failure leads naturally to the inference that he fears that such evidence will expose facts unfavourable to him. But the inference is only a proper one if the evidence is available and if it will elucidate the facts. Plaintiff had three witnesses in his own vehicle and colleagues from the other Kombi but failed to call any of them to corroborate his evidence, particularly on whether the Land Cruiser had applied brakes abruptly before turning right; on whether the indicator was flickering; and whether there was a Kombi between the plaintiff's Kombi and the Land Cruiser. No explanation was proffered why they were not called.

² 1947 (4) SA 744 (A)

- [19] The plaintiff's and defendant's versions are mutually irreconcilable. The correct approach enunciated by the SCA where a court is faced with diametrically opposed versions is to be found in *Stellenbosch Farmers' Winery Group Ltd and Another v Martell Et Cie and Others*³.

'The technique generally employed by courts in resolving factual disputes where there are two irreconcilable versions before it may be summarised as follows. To come to a conclusion on the disputed issues the 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 of the veracity of the witness. That in turn will depend on a variety of subsidiary factors such as (i) the witness' candour and demeanour in witness-box, (ii) his bias, latent and blatant, (iii) internal contradictions in his evidence, (iv) external contradictions with what was pleaded or put on his behalf, or with established fact or with his own extracurial statements or actions, (v) the probability or improbability of particular aspects of his version, and (vi) the calibre and cogency of his performance compared to that of other witnesses testifying about same incident or events. As to (b), a witness' reliability will depend, apart from the factors mentioned under (a)(ii), (iv) and (v), on (i) the opportunities he had to experience and observe the event in question and (ii) the quality, integrity and independence of his recall thereof. As to (c), this necessitates an analysis and evaluation of the probability or improbability of each party's version on each of the disputed issues. In the light of its assessment of (a), (b) and (c) the court will then, as a final step, determine whether the party burdened with the onus of proof has succeeded in discharging it.'

- [20] The plaintiff was the only factual witness in his own cause and augmented his evidence with the evidence of the collision reconstruction expert, Mr Grobbelaar. The Supreme Court of Appeal in *Representative of Lloyds and*

³ 2003 (1) SA 11 (SCA) para 5

*Others v Classic Sailing Adventures (Pty) Ltd*⁴ made these instructive remarks:

‘Where there is eyewitness or direct evidence of an occurrence, this may render the reconstructions of experts less relevant or even irrelevant: see *Parity Insurance Co Ltd v Van den Bergh* [1966 (4) SA 463 (A) at 476B – H] and *Van Eck v Santam Insurance Co Ltd* [1996 (4) SA 1226 (C) at 1229H - 1230B see also the cases cited at 1229I – 1231H], where the court said that while it was not unusual for parties to tender expert evidence to determine the cause of a collision, the expert's evidence is 'inevitably based on reconstruction and cannot conceivably bear the same weight as direct, eye-witness testimony of the event in question'. See also *Michael and Another v Linksfield Park Clinic (Pty) Ltd and Another* [2001 (3) SA 1188 (SCA) [2002 (1) All SA 384) para 40].’

- [21] The plaintiff's version is that the driver of the Land Cruiser abruptly slammed on his brakes forcing him to immediately swerve to the right on to the oncoming lane because he thought it was safe to do so. He says he was about 100 meters behind the Land Cruiser. He was narrowing the distance between himself and the Land Cruiser which was in the process of turning right and swerved to the left which resulted in the collision.
- [22] Mr van Onselen, relying on *Bata Shoe Company*⁵ submitted that before turning right Jacobs failed to clearly and timeously signal his intention to turn right to warn the following traffic of his intention to turn, and to ensure that it was opportune for him to do so without endangering others. He submitted that, therefore, should the court find the indicator of the Land Cruiser to have been on then the Court is urged to find contributory negligence.
- [23] Miller J referred to Cooper's duties of the driver turning right in *S v Olivier*⁶ and remarked:

⁴ 2010 (5) SA 90 (SCA) para 60 at 107F – H

⁵ *Bata Shoe Co. Ltd. (South Africa) v Moss* 1977 (4) SA 16 (WLD)

⁶ 1969 (4) SA 78 (NPD) at 83H – 84B

'The driver intending to turn to the right, across a route which may be taken by other traffic, must necessarily bear in mind that he will be undertaking a potentially dangerous operation ...and he must therefore be careful to 'choose an opportune moment to cross ... and do so in a reasonable manner'. (Per VAN WINSEN, A.J.A., in *Sierborger v South African Railways and Harbours*, 1961 (1) SA 498 (AD) at p. 504).

This seems to me to be the ultimate test to apply in deciding whether a right-hand turn of the kind now under consideration was legitimately or culpably undertaken; the inquiry is: was it opportune and safe to attempt the turn at that particular moment and in those particular circumstances? Whether it was opportune and safe, or not, will depend upon whether a *diligens paterfamilias* in the position of the driver at that time and in the circumstances then prevailing would have regarded it as safe. (Cf. *Kruger v Coetzee*, 1966 (2) SA 428 (AD) at p. 430). In that inquiry, assumptions which may have been made by the driver and the extent to which the driver kept under observation other vehicles, are together with other incidents relevant to the occasion, factors to be taken very much into account, but no one of these factors will necessarily or even probably provide the answer to the ultimate question.'

See also: Cooper, Delictual Liability in Motor Law.⁷

[24] Regulation 308: General duties of driver or passenger of vehicle on public road provides:⁸

- (1) No person driving or having a vehicle on a public road shall—
 - (b) follow another vehicle more closely than is reasonable and prudent having regard to the speed of such other vehicle and the traffic on and the condition of the roadway, or more closely than is prescribed in these regulations;...

⁷ W E Cooper, 1996 at 168

⁸ National Road Traffic Act, 93 of 1996

[25] I am in agreement with the remarks by Van der Linde J in *Intercape Ferreira Mainliner (Pty) Limited v Pro-Haul Transport Africa CC and Another*⁹ that:

‘It seems reasonably clear then that the following driver must keep such a distance as would enable him/her either to stop, or to swerve, but at all events to avoid, colliding with the leading vehicle if the leading vehicle were to stop immediately as a result of a sudden emergency.’

The plaintiff’s duty was to keep a sufficient distance that would enable him to stop in time to avoid a collision with the leading vehicle, the Land Cruiser.

[26] Based on the evidence set out above, I am satisfied that:

26.1 The eyewitness testimony of Mr Ivan Jacobs, the driver of the Land Cruiser, as corroborated on all material respects, by that of Mr Gift Simphiwe Mkabiti, the passenger in the Land Cruiser, was reliable and that they were honest and credible witnesses;

26.2 According to them Mr Jacobs signalled his intention to turn right by switching on his indicator and had reduced speed markedly. To the suggestion for the defendant that Jacobs sped and had almost overshot the turn-off to the Ritchie Eskom power station Mr Jacobs countered that he would not have done so because he has been visiting the station almost six times per month for inspection, over the past several years.

26.3 That Jacobs, through his rear-view mirror, observed plaintiff driving at high speed, overtaking the Kombi in front of him and was thus driving on the incorrect side of the road, facing oncoming traffic. That act, according to Jacobs and Mkabiti, led to the collision.

26.4 It was common cause that the accident took place during broad daylight (around 12:00) on a sunny day. The surface of the road was good and dry.

⁹ (44350/2012 [2016 ZAGPJHC 134 (3 June 2016) para 28

26.5 The evidence on both sides, plaintiff and defence, from the mouths of Jacobs, Mkabiti, the plaintiff, (Mr Denzil Egon Wortmann) and his expert witness, Mr Grobbelaar, is compelling in that had plaintiff used a safe following distance, not driven at an excessive speed under the circumstances, kept a proper look out to notice the Land Cruiser he could and should have stopped his vehicle in time and avoided the accident.

26.6 Whereas not much criticism can be imputed to the evidence of Mr Grobbelaar in doing his best, his evidence was not sufficient to rescue the extremely poor evidence of the plaintiff. On the contrary, to Mr Grobbelaar's credit, his evidence on the measured marked distances and the time estimates demonstrates that, having regard also to plaintiff's explanation, there was ample opportunity for him to have stopped timeously and safely had he observed a safe following distance.

26.7 The fact that the plaintiff, who bore the onus to prove his case on a balance of probabilities, did not call any of his several colleagues who were on the scene to testify, did not advance his cause at all.

[27] Regard being had to the conspectus of evidence I cannot find that the plaintiff has discharged his onus of proving that the insured driver was negligent. In short, he gave the signal to turn right timeously and did not slam his brakes abruptly before turning right. I find that the plaintiff was solely to blame for the collision and was therefore 100% negligent.

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

1. The plaintiff's claim is dismissed with costs.

**MAMOSEBO ADJP
JUDGE OF THE HIGH COURT
NORTHERN CAPE DIVISION**

For the plaintiff: Adv. C.R. Van Onselen
Instructed by: Adams & Adams
c/o Stefan Greyling Inc

For the defendant: Mr A. Mogano
Instructed by: The State Attorney