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IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 22476/2022

DATE: 08-05-2025

(1) REPORTABLE: NO.

(2) OF INTEREST TO OTHER JUDGES: NO.

(3) REVISED.

DATE: 18 SEPTEMBER 2025

SIGNATURE

In the matter between

ADV M VAN ROOYEN OBO R A A MATHWAI

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

EX-TEMPORE J U D G M E N T

DAVIS, J:

[1] In this action the liability of the Road Accident Fund, hereafter referred to as the RAF, for the damages suffered by Mr Mathwai Junior, represented by a *curatrix ad litem*, is disputed. I shall for sake of clarity refer to Mr Mathwai

Junior hereafter as the patient.

[2] A previously accepted offer on merits has been withdrawn and counsel for the plaintiff assured the court that nothing turns on this withdrawal.

[3] By agreement between the parties the issue of merits and quantum were separated in terms of Rule 33.

[4] The patient, previously an apprentice auditor in the employ of the Auditor General, has suffered debilitating injuries and is wheelchair-bound with severe cognitive impairment.

[5] The occurrence of the motor vehicle accident in question has been admitted, but the crucial dispute is whether the patient had been the driver of the single vehicle involved in the accident or whether his father had been the driver and the patient merely the passenger.

[6] The resolution of this dispute is not only crucial for the determination of the RAF's liability, but also for the patient who would have no claim in the event that his own negligence as driver were to be found to have been the cause of the accident.

The undisputed facts.

[7] Before turning to the oral evidence it is apposite to detail those facts which are not in dispute.

[8] It is common cause that the motor vehicle accident occurred on the afternoon of 3 September 2016. The scene of the accident was on a straight sandy road. This road runs between what has been referred to by Mr Mathwai as a cattle kraal and what had been referred to in papers as a cattle outpost and the Tlakgameng Village. At the cattle kraal Mr Mathwai Senior kept cattle. The road links up with the tarred road which leads to the Tlakgameng Village in North West Province where Mr Mathwai has his residence. This residence is on a property adjacent to that of Mr Mathwai's brother.

[9] The evidence that the vehicle in question, being a Ford Ranger 3.0 TDi XLT with registration number HFL[...], had been purchased by Mr Mathwai on 26 June 2012 for R145 000 was also not placed in dispute.

[10] It is also not in dispute that the patient was found outside the vehicle in a semi-conscious state by an emergency medical response team who arrived on the scene

after the accident. There was no one else in the vicinity of the vehicle when the emergency medical response team arrived at the scene. They found the vehicle laying on its right-hand side, that is the driver's side, next to the road.

[11] The patient had been taken from the accident scene by ambulance to the Ganyesa Hospital and later on the same day to the Tshepong Hospital near Klerksdorp, also in the North West Province. So far the common cause facts.

The oral evidence

[12] Mr Mathwai testified that on the day in question the patient had accompanied him from his home to the cattle kraal. The patient had arrived the day before from Kimberley by taxi to visit for the weekend.

[13] The road running in front of Mr Mathwai's residence is tarred and from that road one turns to the left on the sandy road to get to the cattle kraal. Photographs of the sandy road indicated that it was in a good condition with verges on both sides. The total distance from the residence to the kraal was indicated as 11 kilometres.

[14] At the kraal the herdboy, Ernest, was met and the cattle were inspected. The herdboy has since returned to

Lesotho after his mother had passed away there. He was not called as a witness.

[15] On the return journey from the kraal, so Mr Mathwai testified, he was the driver and the patient the passenger. The speed he was driving at was 60 kilometres per hour.

[16] Plus-minus three kilometres from the kraal a swarm of bees entered the vehicle through the passenger side window and Mr Mathwai got stung. This caused him to veer from side to side and lose control over the vehicle after which the vehicle exited the road to the right-hand side and ended up on its right-hand side after having been overturned.

[17] Mr Mathwai felt his son on top of him and saw “a lot of blood.” The patient was unresponsive and Mr Mathwai feared that he had passed away.

[18] Mr Mathwai then clambered from under and over his son and got out of the vehicle. He could not locate a cell phone and went to the cattle kraal for help, leaving the patient inside the vehicle.

[19] Mr Mathwai could not find Ernest at the cattle kraal

and also not find anyone at the other eight homesteads in the adjacent area. He then returned to the vehicle after three hours, only to find the patient missing.

[20] Mr Mathwai then took a shortcut through the agricultural lands to his residence in Tlakgameng where he went to his brother's house. The brother, who had also since passed away, accompanied Mr Mathwai in the brother's old and unroadworthy car to the local clinic.

[21] At the clinic Mr Mathwai made enquiries about an accident-injured person. He was told no such person had arrived at the clinic, but the staff had observed an ambulance passing by.

[22] Armed with this knowledge, Mr Mathwai and his brother proceeded to the Ganyesa Community Hospital. There they were told that a critically injured person had come there by ambulance but had since been transferred to Tshepong Hospital some 300 kilometres away, on Mr Mathwai's estimation. In reality it is less.

[23] Mr Mathwai and his brother then went to the South African Police Service station in Tlakgameng to report the accident. Mr Mathwai, who is a local teacher and well-

known in the district, knew the police officer he encountered, namely Warrant Officer Molefe.

[24] Not only had Warrant Officer Molefe recorded the accident details in “a little book,” but he also completed the accident report in Mr Mathwai’s presence. The details of the accident and its cause were completed on the basis of Mr Mathwai’s version. Warrant Officer Molefe has also since passed away during the Covid pandemic.

[25] Mr Mathwai and his brother then returned home. The next day, being Sunday, they went to tow Mr Mathwai’s vehicle back home. In cross-examination and re-examination Mr Mathwai also testified that warrant officer Molefe came to his residence on that Sunday “to finish what he had started the previous day.”

[26] On Tuesday, 6 September 2016, Mr Mathwai travelled to Tshepong to see his son. The next week Mr Mathwai returned to the school to resume his work as a teacher.

[27] Save for “a little bit of pain” on his hip, Mr Mathwai was uninjured in the accident, but after a year or two he had some pain in his neck and consulted an undisclosed doctor.

[28] So far the evidence for the plaintiff in respect of merits. I shall deal with the cross-examination of Mr Mathwai when the evidence is evaluated hereinlater.

[29] The first witness for the RAF was the emergency medical response practitioner who had found the patient on the accident scene, Mr Mongwaketsi.

[30] He testified that after having received a notification from a callout centre in Vryburg, he proceeded to the accident scene.

[31] On the scene, after he and his partner had followed protocol and ascertained that it was safe for them to disembark, found a vehicle laying on its right-hand side. Outside the vehicle they found the patient. He was conscious but incoherent. Mr Mongwaketsi's report contained the followed inscriptions made by him:

*"Patient was involved in MVA, sustained?
spinal injury? femur #." and:*

*"Patient assisted and thereafter transferred
to Ganyesa Hospital for further
management."*

[32] The emergency medical response team also searched the vehicle's environs as sometimes occupants of vehicles are flung out when vehicles overturn, but could find no one else. Therefore, so Mr Mongwaketsi testified, he wrote "MVA (driver)" as part of his provisional observation. Notably his report detailed no lacerations, bleeding or blood loss as part of the 45 observations noted on his incident report.

[33] The second witness called by the RAF was the vice principal of the school at which Mr Mathwai had been teaching at the time. Her evidence was to the effect that their principal had informed her that the reason for Mr Mathwai's absence from school for a week was that Mr Mathwai had told the principal that Mr Mathwai's son had been involved in a serious motor vehicle accident over the previous weekend.

[34] That concluded the case on the merits for the RAF.

Evaluation

[35] Counsel for the plaintiff argued that as Mr Mathwai was the only witness who presented direct evidence of the motor vehicle accident, his version should

be accepted. He further argued that his version was corroborated by objective evidence.

[36] But the matter is not as simple as that. The only objective possible corroborating evidence was the occurrence of the motor vehicle accident and the fact that the patient had been an occupant of the vehicle which had landed up on its right-hand side. These latter two facts are however neutral and could also have been established after the fact by someone who had arrived on the scene after the motor vehicle accident, like the emergency medical response team had done.

[37] The fact that Mr Mathwai's version had not been contradicted by other direct evidence, such as by eyewitnesses, does not of necessity means that it should be accepted.

[38] In *Nelson v Marich* 1952 (3) SA 140 (A) to 149, at 149A-D the court said:

"The fact that there was no evidence to contradict the evidence given by the defendant does not mean that the court is bound to accept the defendant's evidence."

The question is whether it can be said that the defendant proved his defence. His story, as was pointed out by the magistrate, was an improbable story. The defendant's evidence read as a whole does not bear the imprint of truth and in these circumstances, it cannot be held that he succeeded in discharging the onus resting upon him."

[39] In *Kentz (Pty) Ltd v Power* 2002 [1] All SA 605 (W) at paragraphs 15 to 20 the full court reviewed these and other decisions as follows:

"15. There are other cases directly on point which deal with the principle that uncontradicted evidence is not necessarily sufficient to discharge an onus and it is to those cases which regard must be had in determining whether the trial court can be said to have been incorrect in deciding whether the plaintiff had discharged the onus of proving his case on those issues on which he bore the onus.

16. *Perhaps the most succinct statement of the position is to be found in Siffman v Kriel 1909 TS 538 where Innes, CJ said at 543:*

‘It does not follow, because the evidence is uncontradicted, that therefore it is true. The story told by the person upon whom the onus rests might be so improbable as to not discharge it.’ That statement of the law has been followed frequently since. Some examples will suffice.

17. *In Nelson v Marich 1952 (3) SA 140 (A) Centlivres JA said the following:*

‘The fact that there was no evidence to contradict the evidence given by the defendant does not mean that the court is bound to accept the defendant’s evidence.’”

[40] In *McDonald v Young* 2012 (3) SA 1 (SCA) the position was put beyond doubt by the Supreme Court of Appeal as follows:

“It is settled that uncontradicted evidence

is not necessarily acceptable or sufficient to discharge an onus. In Kentz (Pty) Ltd v Power, Cloete J undertook a careful review of relevant cases where this principle was endorsed and applied.” Reference was then again made to *Siffman v Kriel* (supra).

[41] To quote De Villiers, JP in *Union Market Agency Ltd vs Glick and Co* 1927 OPD 285 at 288, the evidence of Mr Mathwai must be “sufficiently substantial, detailed, reliable and satisfactory” for it to be accepted.

[42] I will start with Mr Mathwai’s demeanour. He avoided all eye contact when furnishing answers. Even when taking into account cultural practices relating to deference and humility, he refused to do so despite having been urged by counsel to answer directly to the court. His body language was also to turn away from the court even when questions were asked from the bench. In addition to this, he became agitated when Adv Mutato who appeared for the RAF, dared to question his version of the events.

[43] In order not to be unfair to Mr Mathwai, I shall not make credibility findings based on my observance of his manner of testifying alone, save to say that it left the court

with a feeling of unease.

[44] It is necessary to refer to both internal and external contradictions in his evidence and to weigh those up against general probabilities.

[45] I will start with Mr Mathwai's most recent statement being one deposed to on 23 April 2025 in support of an application in terms of Rule 38(2). Therein he stated that he had lodged a claim on behalf of his son directly with the RAF. When confronted in cross-examination by the fact that it was actually his daughter who had lodged a claim, he firstly tried to explain that due to the fact that his daughter was the one taking care of the patient, he "put her in my place." When pushed further, he could offer no explanation for the incorrect statement contained in his affidavit.

[46] In the above statement he also stated that the cattle kraal, described therein as a cattle post, was 20 kilometres from his home. Later he said 15 while in court he testified that it was 11 kilometres.

[47] In respect of the other homesteads that he had gone to seek help after the accident, in his affidavit he explained it as follows: "*The cattle post consist of a piece of land on*

which you are awarded roaming rights by the tribal leader and at the time there was, there were about eight individuals that had such rights". Whether this included himself and whether some of the others had grazing rights but, like him, lived in the village, was not explained.

[48] In court when testifying about why his vehicle had left the sandy road, he said he had been driving at 60 kilometres per hour while in his affidavit he said that it was "a gravel road which cannot be driven on fast."

[49] In his affidavit he maintained that he had found out that the police had come across the accident scene in his absence. In his evidence-in-chief this piece of evidence was absent.

[50] Despite providing a series of photographs and attaching them to his affidavit, there is no explanation either in the affidavit or in his evidence-in-chief how a forward moving vehicle alleged to have overturned, would end up on the right-hand side of the road on its right side. The laws of physics and logic indicate that this is an improbability. This remains unexplained however, despite the corroborating evidence of how the vehicle had been found.

[51] Regarding the information furnished to the South African Police, contrary to what Mr Mathwai had testified in court, Mr Mathwai had stated the following in his affidavit:

“I confirm that the following day the South African Police Services came to my place of residence to obtain information relating to the accident. The South African Police Services obviously knew where I stayed as my family and I are well-known in the area due to teaching at the local school. Most of the people that reside in the area have been taught by me. I confirm that I furnished the relevant details to the police which culminated in them completing the OAR. The OAR was completed on the day mentioned therein. This was completed by the police officer whose name I recognised as the officer that attended at my house on Sunday, being Officer Molefe. The information therein is true and correct and premised on the fact that this is the information I gave him on that Sunday.”

[52] Apart from the obvious differences between his statement and his evidence in court as to his interaction with Warrant Officer Molefe and about when he gave the accident-related information at the police office on Saturday, 3 September 2016, the OAR reflects that it was completed by Warrant Officer Molefe on 25 September 2016. That is three weeks later. Mr Mathwai could not explain any of these discrepancies during cross-examination.

[53] Irrespective of these discrepancies as to dates and the like, the discrepancies relating to the accident are even more relevant. Mr Mathwai had testified that the version of how the accident had occurred as contained in the accident report was the one he gave to Warrant Officer Molefe. Therein it was recorded that:

“The swarm of bees flew inside the LDV through the open passenger door window and as a result the passenger ducked to the driver and the driver lost control of the steering wheel and the LDV swayed off the road and overturned.”

[54] On the one hand, nothing was said in court about

the ducking manoeuvre of the patient having caused Mr Mathwai to lose control, and on the other hand, nothing had been said to Warrant Officer Molefe about a bee having stung Mr Mathwai as being the cause of the loss of control as he had testified in court.

[55] Getting closer to the actual accident and its aftermath, Mr Mongwaketsi had testified that all the windows in the vehicle including in particular the windscreen had been shattered in the accident. Mr Mathwai however, rather than exit through the front window, explained a more laborious process of climbing over the patient to exit via the passenger side window.

[56] I find it strange that a father could abandon his son for three hours while attempting to find help only three kilometres away. But this might be explained by Mr Mathwai having thought his son to be dead. Clearly the son was not and in Mr Mathwai's absence had been able to get out of the vehicle unaided.

[57] What is astounding to me however, is that when a father found out that his eldest son, which he had feared dead, was in fact not dead and was being attended to in a hospital, he did not rush to celebrate this and see this

miracle for himself, but waited three days before doing so. In the meantime, he recovered his vehicle. Upon questioning, Mr Mathwai disclosed that he had taken a taxi to Tshepong as his brother's vehicle was not roadworthy, but no explanation for this extraordinary time delay was furnished nor was it even hinted that the taxifare might have been a problem.

[58] There are other discrepancies surrounding the aftermath apparent from the documentary evidence canvassed with Mr Mathwai. In the accident register, not the accident report, where Warrant Officer Molefe had to record the particulars of the driver and all persons injured in the accident by a way of three items, he recorded Mr Mathwai's particulars as that of the driver, recorded that he was not injured, but strangely recorded that the EMR had transported the driver to Ganyesa.

[59] The other inexplicable feature was when Warrant Officer Molefe had recorded the particulars of the name of the hospital in relation to the patient, he only recorded Ganyesa and not Tshepong as one would have expected as by the time that Mr Mathwai gave the particulars to the police, he was aware of where his son was.

[60] The documents discovered were agreed at a pretrial conference to be what they purport to be. There is a series of annotations included in the patient's patient file at the Ganyesa Hospital which bears mention. They read as follows:

"Patient family want the patient to be taken to private. Called Vryburg private hospital. Do not take intubated patient. Wilmed Park and Anncron Clinic wanted Dr Botha, the neurosurgeon, to be called first. Dr Botha not answering phone. Tried activating chopper air ambulance, tried activating chopper, air ambulance delayed over 50 minutes. Patient ended up leaving hospital with ambulance (road) at 21:30."

[61] The above notes, particularly when one has regard to the detail thereof, are too extensive to be disregarded as false. The only explanation for a nurse having made these extensive notes is because they recorded factual happenings in the same detailed fashion as the examination and treatment of the patient had been noted in the same hospital files, which had been extremely detailed and extensive.

[62] This means that Mr Mathwai's version of what had happened at the Ganyesa Hospital was false. It would however answer the question as to why he waited three days before going to witness the miracle of his arisen son. He did not go to Tshepong earlier, because he had already witnessed the blessed event at Ganyesa and was satisfied that his son was properly taken care of, albeit not in a private hospital as requested.

[63] The various notes contained in the hospital record also indicate an absence of a laceration to the head or a bleeding headwound or, in fact, any other bleeding wound. This is despite the patient's skull having been palpated to determine the presence of any subcutaneous swelling. Mr Mathwai's version of there having been a lot of blood where neither he nor the patient had been bleeding, must then also be false.

[64] This begs the question why all these discrepancies and falsity. The probable inference is that it was done to cover up the fact that the patient had been the driver and the sole occupant of the vehicle.

[65] The objective facts on which the plaintiff's counsel

sought to rely, namely the existence of a collision, the overturned vehicle and the discovery of the patient by the EMR team, equality fit in with the scenario of the patient having been the driver and sole occupant, who had overturned the vehicle.

[66] I have, in conducting the above analysis, ignored the double hearsay evidence of the deputy principal.

[67] I am mindful of the dire consequences of an adverse finding on liability for the plaintiff, but in my view the evidence of Mr Mathwai is not “sufficiently substantial, detailed, reliable and satisfactory” to tilt the balance of probabilities in favour of the plaintiff.

[68] Even if the probabilities are evenly balanced, the plaintiff bore the onus. In such circumstances absolution from the instance should be the proper order. See *Koster Koöperatiewe Landboumaatskappy v SA Spoorweë en Hawens* 1974 (4) SA 420 (W) applying the principles enunciated in *National Employers Mutual General Insurance Association v Gany* 1931 AD 197 at 199.

[69] As to costs, the general rule is that costs should follow the event. This is however, an exceptional case

where the RAF had initially accepted liability only to retract that concession at a late stage. This must have caused further costs and delays. In the exercise of the court's discretion I find it fair that each party pay its own costs.

[70] The order is therefore as follows:

1. On the issue of liability, absolution from the instance is ordered.
2. Each party is ordered to pay its own costs.

N DAVIS
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA
DATE OF JUDGMENT DELIVERED: 8 MAY 2025

APPEARANCES:

For the Plaintiff: Adv P A Venter

Attorney for the Plaintiff: VZLR Inc., Pretoria

For the Defendant: Ms C Mothatha

Attorney for the Defendant: The State Attorney, Pretoria