IN THE HIGH COURT OF SOUTH AFRICA

(EASTERN CAPE DIVISION, EAST LONDON CIRCUIT COURT)

Reportable

CASE NO: 1779/2024

In the matter between:

NTSIKELELO SIGCAU Plaintiff

and

ROAD ACCIDENT FUND Defendant

JUDGMENT

RUSI J

[1] The plaintiff sued the Road Accident Fund (the Fund) for damages under several heads in the total sum of R37 061 278.00 (thirty-seven million and sixty-one thousand, two hundred and seventy-eight rands) for the injuries he sustained as a result of a motor vehicle accident that occurred on 29 June 2022 between his motor vehicle and an unidentified insured motor vehicle. The accident occurred near Igoda, East London, on a public road known as R72. He alleges that he was the driver of his motor vehicle at the time of the accident, and the accident was caused by the negligent driving of the unknown insured motor vehicle by the unknown insured driver.

[2] These are the material facts that the plaintiff pleaded in his particulars of claim as the basis for the Fund's liability for the damages he claims. On or about Wednesday, 29 June 2022, he was involved in a motor vehicle accident on the R72 Road at or near Igoda, East London. When the motor vehicle accident occurred, he was driving a white Isuzu bakkie, with registration letters and numbers J[...], travelling from Port Alfred towards East London. An unknown insured motor vehicle that was travelling on the opposite lane of the road suddenly encroached on his lane of travel as it was avoiding a collision with stray animals that were on the road.

[3] In order to avoid a head-on collision with the unknown insured motor vehicle, he swerved his motor vehicle to the left side of the road. He lost control of his motor vehicle, and it overturned. As a result of the accident, he sustained serious bodily injuries. The unknown insured driver was negligent on several grounds, including the fact that he failed to exercise due care and keep a proper lookout when it was appropriate to do so; and/or failed to give adequate precaution of his approach when by exercise of reasonable skill and care he could and should

have done so; and/or failed to steer his motor vehicle in a manner that did not endanger the lives of other drivers including the plaintiff.[1]

[4] In the course of time the Fund defended the plaintiff's claim. In defence of the claim on the issue of liability, it pleaded that it bore no knowledge of the allegations made by the plaintiff and put him to the proof thereof. It further alleged that the accident occurred as a result of the plaintiff's sole negligence on several grounds including the fact that he failed to keep his vehicle under proper control; failed to keep a proper lookout; and failed to avoid the accident when by exercise of reasonable skill and care he could and should have done so.[2]

[5] For reasons that will become clearer in the course of this judgment, it is necessary that I set out, at this early stage, a curtailed history of litigation in this matter. The plaintiff lodged his claim with the Fund on 28 May 2024, a month shy of two years from the time of the accident. On 30 September 2024 he issued the summons commencing this action, which were served on the Fund on 03 October 2024.

[6] After the defendant filed its plea and when the action reached *litis contestatio* (close of pleadings), each party made discovery on oath, of documents relating to the plaintiff's accident as envisaged in Rule 35 of the Uniform Rules of Court. From the pre-trial minute that the parties signed on 13 March 2025, it is apparent that as at that time, the Fund was disputing liability for the damages suffered by the plaintiff. This position prevailed on 14 July 2025 as gleaned from the parties' roll call preparation checklist. An intimation that appears from the parties' minutes of the pre-trial conference dated 14 July 2025 is that the Fund was

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[1] These grounds are set out in paraphs 6.1 to 6.7 of the plaintiff's amended particulars of claim.

[2] These facts are set out in paragraphs 3 and 4 of the defendant's plea dated 22 November 2024.

still assessing the question of its liability. Hence, the parties agreed that the matter was incapable of settlement at that stage.

[7] The matter served before me for trial on 04 August 2025. Ms *Da Silva* who, together with Ms *Booysen*, appeared for the plaintiff, applied for the separation of the merits of the claim from the quantum of damages. Mr *Gona* who appeared for the Fund supported the application and I granted it as envisaged in Uniform Rule 33(4). By agreement between the parties, the plaintiff's particulars of claim were amended during the plaintiff's evidence in chief, by the deletion of numbers '368' from the details of his motor vehicle and the insertion in their place, of numbers '386'.

The issues to be determined

[8] The central issue in the present case was whether a motor vehicle accident happened, and whether the plaintiff sustained in that motor vehicle accident serious bodily injuries which resulted from the negligent driving of another motor vehicle by the unknown insured driver. Common cause was made by the parties of the fact that R72 is a public Road.

[9] It is necessary to state that even though the Fund duly participated in the pre-trial procedures which, in terms of the Uniform Rules of Court are intended to facilitate the trial readiness of the matter, and despite the fact that the matter was properly set down for trial, Mr *Gona* submitted at the start of the trial that he would not be able to participate in the proceedings. He advanced two reasons for this stance, the first was that since the Fund's plea on the issue of liability was that of a bear denial, and in as much as it was still not in a position to accept liability for the plaintiff's claim, it had no version to advance, and it had not secured any evidence

in rebuttal of the plaintiff's claim should it be called upon to do so. The second reason, and perhaps a more disconcerting one at that hour of the proceedings, was that those who administer the Fund at the local level, held the view that the plaintiff's claim 'was fraudulent'. Unenviable as Mr *Gona*'s position was, this is a matter I intend reverting to when it is opportune to do so in this judgment.

The plaintiff's case

[10] The plaintiff was the only witness in support of his claim. He also relied on the documents that he discovered, which included the accident report number AR245/06/2022 which was compiled on the day of the accident by Sgt Nkukwana of the Fleet Street police station; a sworn statement that the plaintiff deposed to before Sgt Vacu of the same police station on 19 August 2023; and the medical records from the Life Beacon Bay Hospital, where he was admitted for medical attention immediately after the accident. It suffices, for the present, to state that according to the medical records, the plaintiff suffered a spinal injury which rendered him paralyzed.

[11] In the accident report which Sgt Nkukwana compiled around 22:00 on the night of the accident, the description of the accident is set out as follows:

"It is alleged that a motor vehicle with registration number J[...] was travelling at R72 Road from the direction of Port Alfred and he lost control of his vehicle when he was avoiding to be collided with a herd of cattles (sic) and his vehicle rolled dawn (sic) to the bushes."

[12] The accident report, which is among the contents of the police docket with CAS number 147/07/2023, bears the formal stamp of the SAPS and appears to have been checked and counter signed by a second police officer, Mbuba GL with this officer's force number, and it was further assigned occurrence book number 2203/06/2022. However, the sketch of the accident scene provided in the accident

report only entails what purports to be a two-way road with a broken middle line which delineates the two lanes. On the right side of the sketch, there are ragged lines. There is no explanatory key to the sketch which would provide an interpretation of these drawings. Notably, there is no mention of a second vehicle in the portion of the report that is designed for the details of another vehicle. Hence, as is apparent from the particulars of claim, the claim is that envisaged in section 17(1)*(b)* of the Act, which makes provision for instances where the offending motor vehicle is unidentified.

[13] The plaintiff's version of the accident was that he was travelling along the R72 Road from Port Alfred to East London in his Isuzu double cab bakkie bearing registration letters and numbers J[...]. The time was approximately 22h00 and it was dark. There were no adverse weather conditions. He was driving on his correct side of the road at 100 or 120 km/h with his seat belt fastened. As he was about to approach a curve near Igoda, he reduced the speed of his vehicle to less than 100km per hour in order to safely negotiate the curve. A motor vehicle suddenly approached with its headlights on bright and it encroached on his path of travel.

[14] In order to avoid colliding with the said vehicle, and while blinded by the glare of its bright headlights, he decided to veer to his left towards the yellow lane. Owing to being blinded by the glare of the bright lights of the encroaching vehicle, and as he moved to the left side of the road to avoid the collision, he 'miscalculated' his move, lost control of his vehicle which hit the wall of the road and rolled over to the bushes nearby. He explained that he considered veering to the left safer as it dawned on him that if the unknown insured driver was overtaking another vehicle, or he/she was avoiding some other object, veering to the right side of the road would lead to a collision between his vehicle and that other vehicle or object, as the case may have been.

[15] While he was trapped inside the vehicle as it landed on the bushy area, he alerted passersby to the accident by sounding its hooter and flashing its lights. He had begun losing energy when members of the neighbouring community ultimately arrived and attempted to assist him out of the vehicle. As the members of the community assembled around him, he could hear them mention stray cattle on the road as the possible cause of the accident. Around that same time an ambulance arrived, and the paramedics pulled him out of the vehicle, stabilized and carried him to the ambulance. As he was being carried to the ambulance, he could see that the police had also arrived and were controlling traffic. He did not speak to any police officer at that stage.

[16] From the scene of the accident, he was conveyed to the Life Beacon Bay Hospital where he was admitted for approximately three weeks. His examination by the doctors at the Hospital revealed that he sustained an injury to his spine and was further told by the examining doctor that he was paralyzed. He underwent surgery and after several weeks in hospital, he was transferred to a rehabilitation facility where he was admitted until December 2022. At the time of his testimony, the plaintiff was in a wheelchair.

[17] The Life Beacon Bay Hospital records that I was referred to indicate that the plaintiff was admitted in that hospital’s emergency unit on 29 June 2022 at 23:49 having been brought by Red Alert Ambulance with the history of having been involved in a motor vehicle accident. An entry in the record regarding his diagnosis was that he sustained a laceration on the forehead and a fracture of the spine which rendered him completely paraplegic.

[18] According to the plaintiff, he later heard from his siblings who had also come to the hospital upon his admission, that Sgt Nkukwana came to interview him regarding the accident. He explained that this must have been at a time when

he was attended to by the medical staff at the hospital. Hence, Sgt Nkukwana left a message with his siblings together with his contact details. Sometime in 2023, he received a phone call from a police officer who identified himself as Sgt Vacu who was the investigating officer in a case of reckless driving. Sgt Vacu requested to meet him in order to obtain his sworn statement. He agreed, and also providing Sgt Vacu with his residential address.

[19] When weeks passed by without hearing from Sgt Vacu, he contacted Sgt Nkukwana who requested to meet him and the meeting took place at his home. In the meeting, Sgt Nkukwana informed him that since he had not spoken with him regarding the accident he would require him to provide a sworn statement in order for him to finalize the accident report which had since been closed and archived. He subsequently made a sworn statement before Sgt Vacu on 19 August 2023. The plaintiff's sworn statement was filed in the docket with CAS 147/07/2023. In this statement, he narrated how the accident occurred in substantially the same manner that he narrated it in his evidence in chief which I have summarized above.

[20] Among the averments that are contained in the plaintiff's sworn statement was that he lost control of his vehicle when he tried to avoid colliding with the unknown vehicle when the latter vehicle was avoiding stray animals that were on the road. Asked to clarify this fact, the plaintiff explained that he informed Sgt Vacu that the presence of stray animals on the road was information he obtained from the community members who had gathered at the scene. He was also asked about the fact that the details of his motor vehicle as recorded in the accident report are at variance with the details he gave in his testimony. He explained that it must have been an error that Sgt Nkukwana made, of transposing the registration numbers of his vehicle. In the statement that he made to Sgt Vacu he corrected the details of his motor vehicle.

[21] The plaintiff's version regarding how the accident took place was not challenged, Mr *Gona* having indicated that he had no version to put to the plaintiff and no evidence in rebuttal of his version. The plaintiff closed his case. I interpose to state that it was indicated by Ms *Da Silva* and Mr *Gona* that Sgt Nkukwana has since passed away. At the end of the plaintiff's case, the Fund also closed its case without leading any evidence.

The parties' submissions

[22] Ms *Da Silva* submitted that the plaintiff discharged the onus that rested on him of proving, on a balance of probabilities, that an accident occurred which resulted from the negligent driving of the unknown insured driver and that he sustained bodily injuries as a result of that accident.

[23] On the issue of the alleged negligence on the part of the plaintiff, Ms *Da Silva* submitted that the emergency situation which he found himself in was not of his own making but as a result of the actions of the unknown insured driver who encroached on his path of travel. In making this submission, she relied on the dictum of Pakade AJ (as he then was) in *Ngxamani v RAF*[3] where it was held that a person who finds himself in danger cannot be guilty of negligence merely because on that emergency, he had not acted in the best way to avoid danger, if and when the sudden emergency in which he finds himself is not of his own doing.

[24] Ms *Da Silva* further submitted that the plaintiff's version demonstrates that there was fault on the part of the unknown insured driver, and that since his evidence stands uncontroverted, this Court must find that the negligence of the unknown insured driver was the sole cause of the accident.

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[3] 2002 (2) All SA 405 (TK), at para 24; see also, *Ntala and others v Mutual and Federal Insurance Co Ltd* 1996 (2) SA 184 (T).

[25] Dealing with the fact that none of the parties called Sgt Vacu to give evidence in these proceedings, Ms *Da Silva* submitted that Sgt Vacu, albeit available, would not elucidate any of the facts testified to by the plaintiff as he did not witness the accident and did not attend to its scene. Mr *Gona* made no submissions to counter those made on behalf of the plaintiff. This is in keeping with the indication he gave that he was in no position to participate in the trial of the matter.

The legal principles

[26] In order to succeed in her claim, the plaintiff had to establish on a balance of probabilities that her injury arose out of the negligent driving of a motor vehicle and that there is some connection between the driving of that motor vehicle and his injury.[4] This Court must be satisfied, on a preponderance of probabilities, that his version is true and accurate and therefore acceptable. It is trite that the estimate of the credibility of a witness will be inextricably bound up with a consideration of the probabilities of the case.[5] Such probabilities must be such that, on a preponderance, it is probable that the particular state of affairs existed.[6]

[27] In *Stacey v Kent*,[7] Kroon J wrote:

'The inquiry after the case remains whether the plaintiff has, on a balance of probabilities, discharged the onus of establishing that the collision was caused by negligence attributable to the defendant. . .'

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[4] *Grove v The Road Accident Fund* (74/10) [2011] ZASCA 55 (31 March 2011), at para 7; *Van Wyk v Lewis* 1924 AD 438 at 444; *Kemp v Santam Insurance Co Ltd* 1975(2) SA 329 (C) at 330F. See also, *Wells and Another v Shield Insurance Company Ltd and Others* 1965 (2) SA 865 (C), at 867H-868A.
[5] *National Employers' General Insurance Co Ltd v Jagers* [1984] 4 All SA 622 (E), at 624-5; *Santam Bpk v Biddulph* (105/2003) ZASCA (16 February 2004).
[6] Schwikkard PJ (*et al*), Principles of Evidence, 4th Ed, 2016, page 627, at 32.7.
[7] 1995 (3) SA 344 (ECD) at 352I-J.

[28] Since the motor vehicle accident on the basis of which the plaintiff lodged his claim with the Fund allegedly involved an unidentified motor vehicle, section 17(1)*(b)* of the Road Accident Fund Act (the Act) is of relevance. This section provides:

'17(1) The fund or an agent shall –

(a) . . .

(b) subject to any regulation made under section 26, in the case of a claim for compensation under this section arising from the driving of a motor vehicle where the identity of neither the owner nor the driver thereof has been established, be obliged to compensate any person (the third party) for any loss or damage which the third party has suffered as a result of any bodily injury to himself or herself or the death of or any bodily injury to any other person, caused by or arising from the driving of a motor vehicle by any person at any place within the Republic, if the injury or death is due to the negligence or other wrongful act of the driver or of the owner of the motor vehicle or of his or her employee in the performance of the employee's duties as employee . . .'

[29] The relevant regulation promulgated in terms of section 26 of the Act, which governs the Fund's liability is regulation 2, and it provides as follows:[8]

'**Further provision for liability of Fund in terms of section 17(1)(b)**

2(1) In the case of any claim for compensation referred to in section 17(1)*(b)* of the Act, the Fund shall not be liable to compensate any third party unless -

(a) the bodily injury or death concerned arose from the negligent or other wrongful driving of the motor vehicle concerned;

(b) the third party took all reasonable steps to establish the identity of the owner or the driver of the motor vehicle concerned;

[8] As published in the Government Gazette, by notice GG 31249 of 21 July 2008.

(c) the third party submitted, if reasonably possible, within 14 days after being in a position to do so an affidavit to the police in which particulars of the occurrence concerned were fully set out; and

(d) the motor vehicle concerned (including anything on, in or attached to it) came into physical contact with the injured or deceased person concerned or with any other person, vehicle or object which caused or contributed to the bodily injury or death concerned.

(2) The liability of the Fund in the case of any claim for compensation referred to in section 17(1)*(b)* of the Act shall not exceed the amount for which the Fund would have been liable had it been a claim for compensation referred to in section 17(1)*(a)* of the Act.

(3) A claim for compensation referred to in section 17(1)*(b)* of the Act shall be sent or delivered to the Fund, in accordance with the provisions of section 24 of the Act, within two years from the date upon which the claim arose, irrespective of any legal disability to which the third party concerned may be subject and notwithstanding anything to the contrary in any law.'

[30] In the discussion that follows, I consider, in the light of these legal principles, whether the plaintiff has established his claim against the defendant on a balance of probabilities.

Discussion

[31] The starting point is that the plaintiff was a single witness in his case. Section 16 of the Civil Proceedings Evidence Act 25 of 1965 provides that judgment may be given in any civil proceedings on the evidence of any single competent and credible witness. In other words, only credible evidence shall be sufficient to enable a Court to give a judgment. The court must be satisfied that the single witness has told the truth.

[32] There is of course no rule of thumb or formula to apply in determining the credibility of a single witness. The trial court will weigh the evidence of the single witness and consider its merits and demerits, and having done so, decide whether it is trustworthy and whether it is satisfied that the truth has been told despite the shortcomings or defects or contradictions in the witness's evidence.[9]

[33] Even though the Fund has not adduced any evidence to counter the plaintiff's case, I must still have regard to the pleadings as they stand in so far as the defence it posited is concerned, and the plaintiff's version, as part of the determination to be made, whether the plaintiff has discharged the onus that rests on him, of proving his claim against the Fund.

[34] From the plaintiff's version as pleaded and as he testified, the sum total of the material facts that have been asserted pertaining to the cause of the accident are that the unknown insured driver encroached in the plaintiff's correct path of travel with the headlights of the unknown insured vehicle on bright, thus blinding the plaintiff with the glare of the bright lights.

[35] As regards the occurrence of the accident, the Fund indeed pleaded a bare denial. Concerning the issue of negligence, it pleaded that the accident occurred as a result of the sole negligence of the plaintiff on the grounds which include those enumerated elsewhere in this judgment. As it often is the case, the Fund did not participate in the trial of this matter even though it had filed its plea and the matter was properly set down for trial.

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[9] *S v Sauls* 1981 (3) SA 172 (A) at 180E–G. Even though this principle was laid down in a criminal case, it holds true for the assessment of the evidence of a single witness in a civil trial.

[36] In determining, as against the probabilities, whether the plaintiff's version is true and accurate, and therefore acceptable, this Court must apply the approach as laid down in *Stellenbosch Farmers' Winery Group Ltd. and Another v Martell & Cie SA and Others,*[10] where the Court held:

'[t]he court's finding on the credibility of a particular witness will depend on its impression about the veracity of the witness. That in turn will depend on a variety of subsidiary factors, not necessarily in order of importance, such as (i) the witness's candour and demeanour in the 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 extra curial statements or actions, (v) the probability or improbability of particular aspects of his version, (vi) the calibre and cogency of his performance compared to that of other witnesses testifying about the same incident or events. . .'[11]

[37] The only version before this Court, that of the plaintiff, was not challenged in the sense that he was not cross-examined by Mr *Gona*. It is a settled principle of the law that a failure to cross-examine is considered to be an indication that the party who had the opportunity to cross-examine did not wish to dispute the version or aspects of the version of the particular witness who was available for cross-examination during the course of the trial.[12]

[38] However, the fact that the plaintiff's version was not rebutted by the Fund does not mean that it must be accepted without further ado. For the single version that is before court, must still be measured against the entire body of evidence and probabilities. In the end, this Court must be satisfied that the facts that have been set forth by the plaintiff reflect the probability of what took place on 29 June 2022

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[10] *Stellenbosch Farmers' Winery Group Ltd and Another v Martell & Cie SA and Others* 2003 (1) SA 11 SCA.
[11] Ibid, para 5.
[12] *President of the Republic of South Africa and Others v South African rugby Football Union and Others* 2000 (1) SA 1 (CC). para 61.

at the time and place that he alleges he lost control of his vehicle resulting in him sustaining serious bodily injury.

[39] I must state as the first point, that the difficulty that this case presents me with emanates from the less than satisfactory job that the police officers did in compiling the necessary records pertaining to the accident and in investigating it. In *Senwamadi v Road Accident Fund*[13] Fisher J observed that the accident report form is a staple requirement in the realm of the law relating to motor vehicle accidents – which includes the law of delict, insurance law and criminal law. Its recording is a matter of public interest. The form was designed by its draftspersons so as to solicit information describing all aspects of the accident which would be relevant to any interest or inquiry such as may be needed in a court case of this nature. I am in respectful agreement with the sentiments of the learned Judge.

[40] Despite the importance of the accident report, the courts continue to grapple the issue of the perfunctory compilation of this document and other official records of the accident, oftentimes to the prejudice of the claimants in motor vehicle accident-related claims. This case is regrettably one of such cases. In the extreme situations, claimants are forced to engage services of road accident scene reconstruction experts at a high cost, to meet the exigencies of a given case.

[41] In this case, the plaintiff pointed to a sworn statement that he made before Sgt Vacu in which he detailed how the accident took place. I am alive to the general rule against self-corroboration. The essence of this rule is that a party is not allowed to make evidence for himself. One of the exceptions to the rule is where a previous consistent statement is relied on to rebut an attack on a witness's

[13] Unreported judgment in *Senwamadi v Road Accident Fund* (2022/2719) [2025] ZAGPJHC 129 (14 February 2025), para 11, 12 and 16.

credibility, not that it serves as proof of the truthfulness of the witness's testimony.[14]

[42] The perfunctory compilation of the sketch of the accident whose description I gave elsewhere in this judgment is bothersome. Save for this disconcerting feature of the accident report, I have no reason to doubt its legitimacy in so far as it is a formal record of the accident in which the plaintiff was involved. It stands to reason that the accident report per se, stands as corroborative evidence to the plaintiff's assertion that an accident occurred on 29 June 2022 in which he sustained serious bodily injuries. Not only that, but the information as can be gleaned from the hospital records, further confirms that the plaintiff was brought to the hospital with a history of being involved in an accident.

[43] What remains is whether, on the conspectus of the evidence, it can be said, on a balance of probabilities, that the accident in which the plaintiff sustained his injuries resulted from the negligent driving of another motor vehicle, a question to which I turn immediately below.

[44] There is indeed a discrepancy between the details of the accident as set out in the accident report that Sgt Nkukwana compiled, and what the plaintiff later narrated in his sworn statement to Sgt Vacu, on 19 august 2023, which he repeated in his evidence in court. According to the accident report, the accident occurred when the plaintiff was avoiding a collision with stray cattle that were on the road. An aspect of the plaintiff's testimony that warrants specific mention in this regard is the fact that it was on 19 August 2023 that he had the first opportunity to speak to a member of the SAPS regarding the accident, even though the police arrived at the accident scene soon after the accident. His evidence on this score was that he

[14] Schwikkard, footnote 6 supra, page 112.

was hospitalized for two to three weeks, and for a further period of approximately six months at a rehabilitation facility. This finds confirmation from the records of the Life Beacon Bay Hospital.

[45] It was the plaintiff's uncontroverted evidence that at the scene of the accident he did not speak to a member of the SAPS since he was removed from the scene by the paramedics and conveyed to hospital. Before he ultimately made a statement to Sgt Vacu, he made a follow up with Sgt Nkukwana when he saw that time was passing by without any member of the SAPS speaking with him regarding the accident.

[46] On the plaintiff's version, the accident occurred at night in an area that was dark. The emergence of the encroaching vehicle occurred suddenly when he had reduced the speed of his motor vehicle to below 100km/h in order to negotiate the curve he was approaching. The encroaching vehicle had its lights on bright. He suddenly swerved to the left and as he did so, the glare of the encroaching vehicle's light had blinded him. In his words, he 'miscalculated the move to the left' because of the glare of the bright lights, resulting in his vehicle hitting the wall of the road and overturning.

[47] The impression that the plaintiff gave was that save for the what the community members who converged at the scene speculated, he did not himself see what the unknown driver was avoiding or that he was indeed overtaking. He surmised that he was either avoiding some object, or he was overtaking another vehicle. What is of importance, though, is the fact that on his version, it is the glare of the bright lights of the encroaching unknown vehicle that blinded him and caused him to miscalculate the move he was forced to make to the left. This caused him to lose control of his vehicle.

[48] It is indeed so, that in the light of the fact that the accident is alleged to have occurred as a result of the negligent driving of an unidentified vehicle, this Court is enjoined to carefully assess the plaintiff's evidence, it being that of a single witness. The reasons for the need for circumspection are not far to seek – the risk of fraud and fabrication in cases of motor vehicle accidents where the offending vehicle has not been identified, is greater.[15]

[49] This is perhaps an opportune moment for me to interpose and deal with the submission that Mr *Gona* made, that the Fund believes that the plaintiff's claim is fraudulent. This case is by no means the first where the court must deal with the Fund's unconventional conduct of litigation in personal injury claims, and until such time as the Fund turns the tide of its litigation is these claims, it will not be the last one.

[50] The plaintiff's claim was lodged a little less than a year after he made his statement to Sgt Vacu, and a month shy of two years after the accident. Section 24(5) of the Act provides that if the Fund or the agent does not; within 60 days from the date on which a claim was sent by registered post or delivered by hand to the Fund or such agent, object to the validity thereof, the claim shall be deemed to be valid in in all respects. The plaintiff would have been enjoined by section 24(6) of the Act to wait a period of 120 days before issuing summons against Fund. This is the period within which the Fund should undertake the assessment, evaluation and monitoring of claims, in keeping with its duty to properly, competently evaluate the plaintiff's claim with the necessary promptitude. In the present case, this clearly did not happen.

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[15] *Jones v RAF* 2020 (2) SA 83 (SCA), para 22; *Mbatha v MMVAF* 1997 (3) SA 713 (SCA), para 11*; Bezuidenhout v Road Accident Fund* [2003] 3 All SA 249 (SCA) para 12.

[51] The Fund is an organ of State which exercises public power. It performs a public function which entails the administration of public funds. Its main object is the compensation of victims who have been rendered vulnerable by motor vehicle accidents on the country's public roads. It is also seized with the task of endeavouring to expeditiously settle claims where this is possible.

[52] However, once summons is issued against the Fund, matters are no longer left in its hands for it to handle the claim in any way it wishes. Regard ought to be had, uppermost, to the Rules of Court regulating court processes, in particular, the fundamental principle that disputed claims are determined through the adversarial system of litigation. Worse still for the Fund, in terms of the Practice Directives governing judicial case management in this Division, all damages claims against it, among others, are subject to judicial case management as envisaged in Uniform Rule 37A.[16]

[53] For the present, I need not deal with the entire extent of the powers of a judicial case management judge under Uniform Rule 37A, save to state that such powers include making any directives that would facilitate the trial readiness of the case. The Rule also entitles the parties to request the intervention of the judicial case management judge where its trial readiness is, in one way or the other, hindered by the other litigant. All of this, to ensure the expeditious disposal of litigation in such matters, among others.

[54] To my mind, had the Fund been serious about investigating possible fraud surrounding the plaintiff's claim, at worst for it, an appropriate application would have been made, far in advance of the date of trial, for the postponement of the

[16] This is in terms of Practice Directive 3.2 of the Eastern Cape Practice Directions, by the Judge President, dated 25 June 2019.

matter pending its investigation of the suspected fraud, or on such other terms as would meet the exigencies of the case. This was not done.

[55] The Rules of Court that govern process and procedure are binding on every litigant, with no exception. The Fund, as any other litigant, has an obligation to scrupulously observe them. It simply cannot be that in almost all the cases that appear in court after the issue of summons, the Fund attempts to arrogate unto itself the powers to design its own rules to regulate the conduct of the action proceedings against it to suit its own exigencies. Were this to be allowed it would render nugatory the very existence of the Rules of Court and the claimants' rights of the access to justice and equality before the law. The stance that the Fund seems to have generally adopted in litigation, of availing itself of a free rein in how the victims' claims are processed once they are in court, amounts to abusive litigation and it should not be countenanced.

[56] There is, no doubt, a need for the Fund to put in place within its internal systems measures to curb fraudulent personal injury claims against it. Furthermore, Regulation 2 which I have quoted in the preceding portion of this judgment is meant to protect the Fund against fraudulent claims where the offending vehicle has not bee identified. However, those measures are no legitimate reason for it to disregard the processes of court and the claimant's procedural rights as provided by of the Rules. I have already alluded to the fact that there was no objection by the fund, within the period prescribed by the Act for such an objection, as to the validity of the plaintiff's claim, and no issue was raised regarding the plaintiff's non-compliance with the afore quoted regulation.

[57] Once the plaintiff had properly set the present matter down for trial as he did, he earned a right to have the case heard in court. I have already mentioned that during the trial of the case, the Fund was appropriately represented. It was

therefore afforded an opportunity to appropriately defend the action if so advised, but it elected not to put forward any defence.

[58] It is not available to the Fund to refuse to participate in the proceedings even though it filed is plea, merely because, for one reason or another, it does not believe in the genuineness of the plaintiff's claim. Even though the onus rested squarely on the plaintiff to establish that the Fund is liable for the damages he suffered as a result of the accident, it behoved Fund, in the circumstances of the present case, if it wished, to contest the claim by placing before this Court, substantial facts that would disturb a prima facie case as may be presented by the plaintiff.

[59] As held in *Galante v Dickson*,[17] where the plaintiff alleges that an accident was caused by the negligent driving of a vehicle by the defendant, it is fair to say that the court is entitled, in the absence of evidence from the defendant, to select out of the two alternative explanations of the cause of the accident which are more or less equally open on the evidence, that one which favours the plaintiff as opposed to the defendant.

[60] In the final analysis, I make the finding that on the body of the evidence adduced in these proceedings, the facts pleaded by both parties in their respective pleadings, and the documents filed of record relating to the accident, the version of the plaintiff is not implausible. This, coupled to the fact that no evidence in rebuttal was adduced by the defendant, must necessarily lead to its acceptance as the true version of how the accident happened. The views that Fund's members hold that the claim is fraudulent, cannot, without substantial facts pointing to such fraud,

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[17] 1950 (2) SA 460 (A) at 465.

alter this position. The merits of the plaintiff's claim must be determined in his favour.

Costs

[61] Ms *Da Silva* sought Costs on Scale C referred to in Rule 67A, stating that the matter is not one of the run-of-the-mill personal injury claims owing to its inherent difficulties. Chief among those difficulties is that the members of the SAPS who were responsible for the collection and recording of information pertaining to the accident and its further investigation, portrayed an inaccurate picture that required clarification in these proceedings. That inaccurate picture was that no other motor vehicle was involved in the injury causing accident. For this reason, Ms *Da Silva* submitted that this is not a clear case, it involves complex issues of fact. Based on the same reasons, she further asked that I allow costs of two counsel.

[62] The test regarding costs consequent upon the employment of two counsel is trite – it is whether the employment of two counsel was a wise and reasonable precaution on the part of the litigant. [18] There is merit in the submissions made by Ms *Da Silva*. I make the finding that in this case, it was a wise and reasonable precaution for the plaintiff to employ two counsel.

[63] For all the foregoing reasons, I make the following order:

1. The defendant is held liable for 100% of the plaintiff's damages as may be proven or agreed, resulting from the motor vehicle accident that occurred on 29 June 2022, at or near Igoda, on the R72 Road, in East London.

[18] *De Klerk v Steven-Lee Properties* (297/12) [2013] ZASCA 54 (04 April 2013), at paragraph 21.

2. The defendant shall pay the plaintiff's costs on scale C referred to in Uniform Rule 67A, and such costs shall include costs of two counsel where so employed.

3. The determination of the quantum of the plaintiff's damages shall stand over for determination at a later date.

L. RUSI

JUDGE OF THE HIGH COURT

Appearances:

For the plaintiff	:	Adv. *A M Da Silva SC*
		Adv. *R Booysen*
Instructed by	:	Phillip and Partners Attorneys INC., East London
For the defendant	:	Mr *S Gona*
		The Office of the State Attorney, East London
Date heard	:	04 August 2025
Date delivered	:	02 September 2025