



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not reportable

Case no: 2434/2023

In the matter between

THAMSANQA GOLIATH

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

Neutral citation: *Goliath v Road Accident Fund* (2434/2023) [2025] ZAFSHC 319 (10 October 2025)

Coram: Daniso, J

Heard: 29 and 30 April 2025. Written heads of argument delivered on 13, 20 & 27 May 2025.

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 14H00 on 10 October 2025.

Summary: Liability – motor-vehicle collision – negligence – evaluation of evidence – contradictory evidence presented – plaintiff failed to discharge the onus of proving the defendant's liability.

ORDER

The plaintiff's claim is dismissed with costs.

JUDGMENT

Daniso J

[1] On 13 March 2022 the plaintiff sustained serious head injuries when he lost control of his Opel Corsa with registration numbers and letters F[...].

[2] In the pleadings the plaintiff alleges that at the time of the accident he was driving on Meadows Road in Bergman, Bloemfontein, when an unidentified vehicle, a Corolla encroached on his lane of travel and collided with his motor vehicle, causing him to lose control and collide into a nearby shack. As a result of the collision, the plaintiff sustained head injuries. The plaintiff attributes the sole cause of the collision to the negligent driving of the driver of the unidentified vehicle. It is in that regard that he instituted these proceedings against the defendant seeking damages in the amount of R5 899 000 together with interest and costs comprising of past and future medical expenses, past and future loss of earnings and general damages.

[3] Liability is disputed on the grounds that the injuries sustained by the plaintiff arose from a single vehicle collision caused by the plaintiff's exclusive negligence. It is the defendant's case that the plaintiff was driving at an excessive speed with the result that he lost control and collided into a shack alternatively, his negligence contributed to the collision.

[4] By agreement between the parties, merits and quantum were separated as provided for in Uniform rule 33 (4). The only issue that I have to adjudicate is the defendant's liability for the plaintiff's damages arising from the negligence of the driver of an unidentified vehicle and contributory negligence (if any).

[5] The following factors are common cause. Meadows Road is a dual carriage way situated in a residential area. It consists of two lanes on each side of the road and a speed hump. The applicable speed limit on the road is 60 kilometers per hour, the collision occurred on a Sunday morning around 08h00, visibility was good and the sun was shining. The plaintiff's vehicle left skid marks on the road surface moving from the left to the right lane and from the right lane back to the left lane ending up at the pavement.

[6] The plaintiff gave evidence in support of his claim. Pastor Sechaba Joseph Thahube, Mr. Bongani Nathaniel Mashibini and constable Prince Lehlohonolo Motejane testified for the defendant's case.

[7] The plaintiff is a police officer. He testified that he has been employed as a police officer since 2009. Immediately before the collision he was driving on the left lane of Meadows Road. The road has two lanes on either side separated by a pavement. It also has a 25 centimeters high speed hump. Upon reaching the stop sign which was about four or five kilometers away from U-Save he observed an unidentified vehicle from his rear mirror approaching at a high speed behind him. He proceeded towards a speed hump where he changed lanes and drove on the right lane to avoid being collided into by the unidentified vehicle. At this stage the unidentified vehicle was about one to two kilometers away. Upon reaching the speed hump the unidentified vehicle also changed lanes and drove on the right lane. The plaintiff moved back to the left lane and it was then that the unidentified vehicle also went back to the left lane and collided into the right side of his vehicle. The impact caused him to lose control of his vehicle and he was subsequently rendered unconscious. He was later informed that after impact his vehicle landed next to someone's house. The driver or owner of the other vehicle has not been identified because the vehicle drove away after the collision.

[8] It was his testimony that due to the speed hump, he was driving below 60 kilometers per hour. The point of impact occurred on the left lane of the road about seven meters away from speed hump.

[9] During cross-examination he stated that, except to change lanes, there was nothing more he could have done to avoid the collision for instance, he could not swerve to the left or right of the road as there is a pavement between the two lanes and on both sides of the road.

[10] It was his testimony that on 26 October 2022, Mr. Mxolisi Schalk deposed to a statement corroborating his version regarding the cause of the collision. Mr. Schalk had approached and informed him that he (Mr. Schalk) saw how the collision occurred. He signed and commissioned the statement and thereafter handed it over to his attorneys.

When asked about the irregularity pertaining to him commissioning a statement which is related to his personal matter, his response was that the officer on duty was busy. Regarding his decision to hand it over to his attorneys instead of the investigating officer of the case, he said the investigating officer had told him that he was going to close the docket.

[11] The plaintiff confirmed the veracity of the statement he made to the police on 21 April 2022, approximately a month after the collision (Exhibit 'A13'), where he stated the following:

'... I just went over a speed bump and a car came at a high speed in the right lane. He hit the speed bump and lost control. I was watching this car in my mirror as I heard him coming. When he lost control he came to the left that is my side. I went to the right to try and avoid the accident. He then came to the right hand side and hit me and I hit the pavement and lost control ...'

[12] When it was put to him that his testimony differs materially to the written statement he made to the police on 21 April 2022 regarding the manner in which the collision occurred, including the point of impact (Exhibit 'A13'), he conceded the discrepancies and submitted that his testimony was mistaken. The version that must be accepted by the court is the version he proffered in the written statement.

[13] The plaintiff could not confirm the defendant's version that the distance between the speed hump and the point of impact was approximately 84 meters and that his vehicle landed 112 meters away from the point of impact. His response was that he does not know the distances as he did not measure them.

[14] With regard to his state of sobriety and the defendant's version that when he was extracted from his vehicle he reeked of alcohol and there were liquor bottles inside his vehicle, he first responded by questioning the relevance of the question. He then explained that he only drank alcohol the night before until 21h00. Regarding the remainder of the defendant's allegations, he said he had nothing to say.

[15] Pastor Thahube testified that before the collision, he was standing outside his church, the Greater Grace Chapel situated along Meadows Road when he heard a car's braking sounds. When he looked up the road he saw the plaintiff's vehicle approaching at a high speed on the left lane. It had already went past the speed hump. The vehicle changed lanes and moved to the right lane and back to the left lane, lost control, hit the pavement and capsized landing on top of a shack nearby. He called a neighbour and they went to assist the driver. Other people also came out to assist.

[16] Under cross-examination, he disputed the plaintiff's version that the point of impact was seven meters away from the speed hump and averred that it occurred about 80 to 100 meters away. He was adamant that the plaintiff was driving at a very high speed. The fact that the plaintiff's vehicle landed on top of Mr. Mashibini's two-meter-high home is an indicator that the plaintiff was driving at a high-speed including the skid marks on the road. At the time of the accident, there was no other vehicle on the road except the plaintiff's vehicle.

[17] Mr. Mashibini is the owner of the shack the plaintiff collided with. He testified that he was in the bedroom when he heard brakes 'sounds followed by the sound of impact and something falling. People called out to him to come outside. When he went outside he saw the plaintiff's vehicle lying on top of his devil fork and shack. He (Mr. Mashibini) was worried that the plaintiff may die as he was seriously injured. The devil fork had pierced the back of his neck. An ambulance was called. While they were

removing the plaintiff from his vehicle they saw sealed bottles of Savanna liquor and an opened bottle of Castle Lite beer. The plaintiff was also smelling of alcohol. The plaintiff's wife and relatives arrived later, they were also drunk. After the plaintiff was taken away by an ambulance his father-in-law took the vehicle away and told him that the plaintiff will discuss the matter with him upon being discharged from hospital. The police advised him to go to the small claims court regarding his damaged shack.

[18] During cross-examination it was his testimony that he did not see the collision when it occurred. However, due to the fact that the plaintiff's vehicle landed on the roof of his shack, he concluded that the plaintiff must have been driving negligently.

[19] The last witness called by the defendant was constable Motejane. He attended the scene of the accident shortly after it occurred. He first went to Mr. Mashibini's home and found the plaintiff's vehicle still under the corrugated iron sheets. The plaintiff was inside the ambulance and due to the seriousness of his injuries he was unable to speak to him. In the Accident Report (Exhibit 'A2') dictated and signed by him it is recorded that the collision involved a single vehicle. The accompanying sketch plan indicates that on the road surface there were tyre skid marks of a single vehicle moving in a curving line from the left lane of the road towards the pavement.

[20] That was, in short, the evidence tendered by the respective parties' witnesses. In addition thereto, documentary evidence was also handed in by concurrence of the parties as exhibits 'A' and 'B'.

[21] Mr. Nongqotho, for the plaintiff, argued that the plaintiff's version that the collision was caused by the negligence of an unidentified vehicle is incontrovertible, therefore, it must be accepted as the truth, whereas Pastor Thahube, who testified as the defendant's eye witness did not see what caused the plaintiff to attempt to brake. He only heard the sound of the vehicle braking. His evidence that after impact the plaintiff's vehicle landed on top of Mr. Mashibini's shack was contradicted by Mr. Mashibini who told the court that the plaintiff's vehicle landed next to his shack. He further contended that Constable Motejane's evidence must be disregarded because he was seated in court during the testimony of the other witnesses, his evidence is thus tainted.

[22] For the defendant, Ms. Banda argued that the plaintiff's evidence ought to be treated with caution as he was a single witness whose testimony contradicts his written statement. His evidence is also uncorroborated as the plaintiff did not call the witness who allegedly saw the collision occurred. Inexplicably, the plaintiff also did not provide the witness's statement to the investigating officer who was investigating the collision.

[23] Ms. Banda submitted that the facts of this matter and the evidence relayed by the defendant's witnesses support the defendant's contention that the plaintiff was injured as a result of driving his vehicle at a high speed with the result that he lost control of his vehicle and collided into Mr. Mashibini's shack. There was no other vehicle involved in the collision, his claim must accordingly be dismissed with costs.

[24] In terms of s 17(1)(b) of the Road Accident Fund Act 56 of 1996 (the RAF Act), the defendant's obligation to compensate a victim for loss or damage resulting from bodily injuries sustained in a motor vehicle collision arises from any loss or damage caused by or arising from the driving of a motor vehicle by any person if the injury is due to the negligence or other wrongful act of the driver or the owner of an unidentified motor vehicle. The onus rests squarely on the plaintiff to prove on a preponderance of probabilities that the injuries he sustained in the collision arose from the negligence of the driver of an unidentified vehicle.

[25] The parties have presented mutually destructive versions regarding the circumstances under which the plaintiff was injured. The principles governing the evaluation of evidence of this nature are trite:

'... 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 extra curial 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.¹

[26] It is trite that only one of the conflicting versions can be true. It was stated in *National Employers' General Insurance Co Ltd v Jagers*² that where conflicting versions are proffered the plaintiff can only succeed if he adduces credible evidence and satisfy the Court on a preponderance of probabilities that his version is true and accurate and therefore acceptable and that the other version advanced by the defendant is therefore false or mistaken and falls to be rejected.

[27] The plaintiff has rendered an implausible and materially contradictory version regarding the real cause of the collision. His concession in this regard is fatal to his case. His attempt to recant his oral testimony to fall back on his written statement does not assist his case. Oral evidence carries greater weight than a version proffered in a written statement as it can be tested under cross-examination to determine its veracity. The version relayed by the plaintiff in the statement is in any event nonsensical. It does not make sense why he would have changed lanes from left to the right lane where the unidentified vehicle was travelling if the purpose of changing lanes was to avoid a collision with the unidentified vehicle. Evidence is either probable or not.

[28] The plaintiff's demeanour on the stand was also not convincing. He became evasive and argumentative when his version was tested under cross-examination. In his direct evidence he was adamant that the distance from the speed hump to the point of impact was seven meters however when it was put to him during cross-examination that the distance was about 84 meters his response was that he did not measure the distance. Similarly, when asked about the state of his sobriety and the discovery of liquor bottles in his vehicle he questioned the relevance of the question.

[29] There is no evidence of the plaintiff's attempt to trace the unidentified vehicle. In terms of regulation 2(1)(b) of the RAF Act, in the case of any compensation or any

¹ *Stellenbosch Farmers Winery Group Ltd and Another v Martell et Cie and Others* 2003 (1) SA 11 SCA para 5.

² *National Employers' General Insurance Co Ltd v Jagers* 1984 (4) SA 437 (E) at 440D-F.

claim for compensation involving unidentified vehicles as contemplated in s 17(1)(b) of the RAF Act, the Fund shall not be liable to compensate any third party unless the third party took all reasonable steps to establish the identity of the owner or the driver of the motor vehicle concerned. His failure to call the witness who, according to him saw the unidentified vehicle colliding into the plaintiff's vehicle also puts paid to his contention that there was another vehicle involved in the accident. It was said in *Jones v RAF*³ that '... the regulation serves a legitimate government purpose, which is to eliminate fraud and to facilitate proof, because the possibility of fraud is greater with unidentified vehicles since it is usually difficult for the RAF to find evidence to controvert the claimant's allegations.'⁴

[30] The discrepancies and improbabilities in the plaintiff's evidence affected his credibility. His evidence did not make sense it is clearly a fabrication. I cannot rely on such evidence.

[31] The defendant's witnesses impressed this Court with their concise and succinct account of what they observed. Pastor Thahube was an independent witness. I have found no reason why he would tell the court that he saw how the collision unfolded and that there was no other vehicle involved if that did not happen. His version was corroborated by the observations of constable Motejane who investigated the scene after the accident and the accident report which indicates a single vehicle collision.

[32] Mr. Mashibini also struck me as an honest witness. He admitted that he did not see the plaintiff's vehicle until he was called to come out after the impact. The contradiction between his evidence and that of pastor Thahube regarding whether the plaintiff's vehicle landed on top or next to his shack is not material to the issue of whether the collision was caused by an unidentified vehicle or not.

[33] There is no merit to the plaintiff's contention that constable Motojane's evidence should be rejected simply on the basis that he was seated in court when the other witnesses testified. Ms. Banda explained that she was not aware that constable Motojane was present in court as she had not been able to contact him on that day. Nonetheless, a witness who has been sitting in court during the testimonies of other

³ *Jones v RAF* 2020 (2) SA 83 (SCA).

⁴ *Ibid* para 22.

witnesses is not prohibited from giving evidence. His evidence is not automatically inadmissible. The purpose of requiring a witness to leave the court until his evidence is required is to prevent the pollution of his testimony with the other witnesses' testimony thereby ensuring its integrity therefore what is affected is only the weight to be attached to that evidence taking into consideration the circumstances of the case including the nature of constable Motojane's evidence and whether by sitting in court the plaintiff was prejudiced in the conduct of his case.⁵

[34] In *casu*, except to argue that constable Motojane's evidence is tainted, not even an attempt was made to explain on what basis the plaintiff was prejudiced by constable Motojane's testimony in the conduct of his case.

[35] The plaintiff has not discharged the onus resting upon him to prove on a balance of probabilities the presence of an unidentified vehicle on the road at the time of the collision. The accident scene speaks for itself (*res ipsa loquitur*) because in the ordinary course of events, a motor vehicle driven in a straight road, under proper control and with due care, does not capsize unless the driver was negligent.

[36] On the accepted evidence, the plaintiff lost control of his vehicle and collided into Mr. Mashibini's home because he was driving at an excessive speed. A driver has a duty to keep a proper lookout and drive his vehicle at a reasonable speed to be able to stop his vehicle so as to avoid a collision.⁶

[37] Based on all these reasons above, I am satisfied that the plaintiff was the proximate cause of the collision. The damages he sustained as a result of being injured in this collision are thus not attributable to the defendant. Accordingly, the defendant is not liable to compensate the plaintiff for the damages he claims.

Order

[38] I make the following order:

⁵ *S v Ntanjana* 1972 (4) SA 635 (E).

⁶ *W E Cooper Delictual Liability in Motor Law* 1996 at 101 para c and 139 -140 and the authorities there cited.

The plaintiff's claim is dismissed with costs.

NS DANISO
JUDGE OF THE HIGH COURT

Appearances

Counsel on behalf of the plaintiff:

Instructed by:

SP Nongqotho

Makhubalo Attorneys

BLOEMFONTEIN

Counsel on behalf of the defendant:

Instructed by:

NP Banda

Office of the State Attorney

BLOEMFONTEIN