

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: 15034/2020

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: YES
(3)	REVISED: NO

DATE

SIGNATURE

In the matter between:

OSCAR MASHENGANI

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by e-mail and by uploading it to the electronic file of this matter on Caselines. The date for hand-down is deemed to be 18 November 2025.

Flynote: Where the evidence, holistically considered, demonstrates that the motor vehicle collision occurred where the driver had the intention to harm and injure – the RAF is not statutorily obliged to compensate the injured or harmed person. The liability of the RAF arises only in instances where the driving of the motor vehicle was negligent. If intentional collisions are to be covered by the RAF, then a case of intention must be pleaded and cannot be advanced only in

evidence during a trial. Intentional collisions do not amount to an *accident* – mishap that is unlooked-for. Where negligence is pleaded, the pleader is required to prove negligence on the part of an insured driver through evidence. Failure to do so is a failure to discharge the onus of proof and the plaintiff must fail.

Held: (1) The RAF is absolved from the instance. Held: (2) There is no order as to costs.

JUDGMENT

MOSHOANA, J

Introduction

[1] Section 3 of the Road Accident Fund Act (RAFA)¹ states that the object of the Road Accident Fund (RAF) shall be the payment of compensation in accordance with the RAFA for loss or damage wrongfully caused by the driving of motor vehicles. It is perspicuous from the provisions of this section that payment of compensation is only possible in accordance with the provisions of the RAFA. At common law, a delictual claim arises if a party suffers damages as a result of the wrongful conduct of another party. The present action agitates the legal question whether the RAF attracts liability in an instance where the delictual act was intentionally committed by the driving of a motor vehicle.

[2] Section 17 of RAFA deals with the question of the liability of the RAF. Importantly, the RAF shall be obliged to compensate any person (third party) for any loss or damage which the third party has suffered as a result of any bodily injury to himself or herself caused by or arising from the driving of a motor vehicle by any person at any place, if the injury is due to the negligence or other wrongful act of the driver or of the owner of the motor vehicle.

¹ Act 56 of 1996 as amended.

[3] The above said, before Court is a delictual action against the RAF, instituted by the plaintiff, Mr Oscar Mashengani. The action came before this Court as a default judgment request. For reasons unnecessary to canvass in this judgment, the RAF was in default. Regarding the issues that came up for determination, the merits and quantum of the plaintiff's claim remained in dispute.

[4] It is needful, at this embryonic stage, to record in this judgment that when counsel for the plaintiff was outlining the merits of the present action, he drew the attention of this Court to a sworn witness statement occurring in a criminal docket opened for a criminal charge of attempted murder as against the alleged insured driver. From that statement, it emerged that the alleged insured driver actually used the motor vehicle to intentionally injure the plaintiff. This Court raised concerns regarding the liability of the RAF where the wrongful act was committed intentionally and requested counsel for the plaintiff to address the concerns.

[5] The initial stance taken by counsel for the plaintiff was that section 26 of the RAFA renders the RAF liable in such an instance. This turned out to be a wrong submission in law, since section 26 deals with regulations. As a fall-back position, counsel submitted that section 17(1) of the RAFA caters for both negligent and intentional driving of a motor vehicle. This submission was, appropriately so, in my considered view, later jettisoned. Given the debate around the liability of the RAF, this Court suggested to counsel that it might be necessary to receive oral evidence from the plaintiff, in order to establish what actually transpired on the day in question. It later turned out that this suggestion had presented a golden opportunity for a *volte face*. When the plaintiff took the stand to testify, he painted a completely different case to that set out by the sworn statements in the attempted murder docket. This Court later understood why the *volte face* was made, when during oral submissions, counsel correctly conceded that where the wrongful act is intentional, the liability of the RAF is statutorily excluded. Such would leave the plaintiff with a common law delictual claim against the alleged insured driver or the owner of the motor vehicle.

Background facts and evidence

[6] On the New Year's Day – 01 January 2019, the plaintiff and his two friends, like many other people, enjoyed the festivities that come with the ushering of a new year. They, ultimately, found themselves at a place known as the Fish Point Tavern, situated in the Vleifontein area at the town of Louis Trichardt. In the early hours of the morning, the Tavern owner implored the plaintiff and his friends to leave. He eventually switched off the music and asked the plaintiff and his friends to leave the premises. The plaintiff then asked the Tavern owner to lend him a bucket in order to contain the liquor that was remaining at the time they were requested to leave. The Tavern owner acceded to the request.

[7] One Tendani Edwin Ramunenyiwa, the alleged insured driver, was apparently opposed to the idea of the plaintiff taking a bucket belonging to the Tavern. As a result, an argument ensued between the plaintiff and Mr Ramunenyiwa over the removal of the bucket. This argument culminated in a physical scuffle between the two. Both assaulted each other until other patrons of the Tavern separated them. In order to continue with the fight, Mr Ramunenyiwa proceeded to his motor vehicle, drove it and aimed it at the plaintiff and his friends. Indeed, out of that action of aiming his motor vehicle at the plaintiff and his friends, he ran over the plaintiff. When he wanted to run him over for the second time, he was prevented from doing so by the people around the scene. As a result of the acts of Mr Ramunenyiwa, as described above, the plaintiff sustained bodily injuries and received medical attention at Vleifontein clinic.

[8] As a sequel, an attempted murder case was registered at the Bandelierkop SAPS under CAS 08/01/2019. Of significance for the purposes of this action, is that on 03 January 2019, at around 16h00, the plaintiff, under oath, stated, amongst other things, the following:

"I did not give anyone *permission to hit me with the vehicle*. I would like further police investigation into this matter."

[9] Further, the plaintiff stated the following:

“After I had slapped him with my open hand he had let go of the bucket, while I was on the gravel road with my friends, I noticed that there was a white private car that was *running towards me and my friends. The vehicle came straight at me*, and I was walking from the side of the road.”

[10] Mr Kgaugelo Machete, one of the plaintiff’s friends, who was present and had observed the scuffle, stated the following under oath:

“The two started fighting people separated them. *The accused went to his car and got inside and followed us behind* and we tried to get out of the road to the grass, and *he came straight to the grass and hit Oscar with the car and he fell down.*

The car went pass Oscar and make (sic) a U-turn and *wanted to come back* but people came to stop the car because Oscar the complainant was still on the ground and he reversed the car and drove off...”

[11] Mr Sidzani Caswell Mukwevho, another friend who was present and witnessed the scuffle, stated under oath as follows:

“He started clapping the complainant with his right hand and the complainant wanted to defend himself and I held him and took the complainant outside the yard telling him to go home. *While on the way the suspect came driving his car towards us and I run (sic) away from the road, and the complainant fell down the suspect over run (sic) him with his car* and stopped at the distance.

He made a U-turn and *drove back to the complainant.* While driving back he noticed a crowd of people standing on the road he then drove back and speed (sic) off...”

[12] Based on the recordal made on the police docket, the case of attempted murder was still being processed in the criminal Court. The last recordal was made on 05 August 2019. As at the hearing of this action, the details appertaining the attempted murder case were not revealed to this Court. On 21 September 2020, the plaintiff deposed to a section 19(f) affidavit. Tellingly, he did not disclose the fight between him and the alleged insured driver. Contrary to his and his friends’ sworn statements in the police docket, he stated the following:

*“On or about 1 January 2019 at approximately 5h30 I was involved in a **hit and run whilst walking back from Fish Point Tavern, on a gravel road.***

*The **accident** occurred when a **white private motor vehicle coming from behind hit my left leg and I rolled on the ground.**”*

[13] This Court must interpose. Section 19(f)(i) requires that an affidavit in which the particulars of the accident that gave rise to the claim concerned are fully set out, must be submitted to the RAF. When the section 19(f) affidavit is compared to the sworn statements referenced earlier, it is clear that the particulars of the alleged accident were not fully set out.

[14] Before this Court, the plaintiff, without tendering the evidence of his friends, testified as a single witness in his case. Briefly, his testimony was that on the day in question, he was at the Tavern. Whilst there, he bought liquor and put it in a bucket. Later, he asked the Tavern owner, who happens to be his friend, to lend him a bucket to carry his liquor. When he wanted to leave with the bucket, Mr Ramunenyiwa prevented him to do so. They started arguing. Ultimately, a fight broke between them and people separated them. Whilst he was about 30 meters away from the Tavern premises, walking with his friends outside the gravel road on the right-hand side, facing the on-coming traffic, he heard people shouting “hey” and he looked back. As he looked back, a vehicle came driving fast and knocked him on the left foot, he fell down and rolled. He could do nothing to avoid being collided with. He described the gravel road as a two-way carriage road.

[15] He continued and testified that he does not know why he was knocked. The driver of the vehicle moved away from his lane of travel and came to the side where he was walking with his friends. He was told at the hospital that the name of the driver was one Edwin. From the clarity seeking questions of the Court, he testified that he and Edwin were fighting. He came to the Tavern at 12h00 on 31 December 2018 (New Year’s Eve) and left for the park, where other festivities with some music artists were happening, at around 12h30. He left a bucket with liquor in it. He returned to the Tavern from the park at 05h30 with a view to collect the bucket of liquor, and that is when the fight broke. He disagreed with the versions stated by his friends that they left after the

Tavern owner switched off the music. He was not under the influence of alcohol, although he had been drinking liquor from 12h00 midday until 05h30 the following morning.

Analysis

[16] The pleaded case (*facta probanda*) of the plaintiff is outlined as follows in the amended particulars of claim:

“4.1 On 01 January 2019 the Plaintiff was a pedestrian when he was involved in a motor vehicle collision when he was struck from behind by a motor vehicle bearing a registration number unknown to him, which was there and then driven by Edwin Ramunenyiwa (hereinafter referred to as the “insured driver”).

4.2 The accident occurred at the Gravel Road near Fish Point Tavern, Vleifontein.”

[17] Notably, contrary to the section 19(f) affidavit, the pleaded case is not one of “hit and run”. No allegation is made that he was walking outside the right-hand side of the two-way gravel road facing the on-coming traffic. Other than alleging that he was struck from behind, he does not allege where exactly near the gravel road did the motor vehicle struck him. Like most litigants do, he made the usual and oft-recited allegations of imputing negligence on an insured driver in a pleading. This Court must pause and mention that it is inappropriate for litigants to throw every allegation of negligence, even those that did not occur in a particular case. For an example, in a passenger’s claim, it is inappropriate to allege a failure to take cognisance of a pedestrian as a road user. As it shall be demonstrated later, pleading requires clarity and particularity. A catch-all approach is not awaited from a pleader. Similarly, a spaghetti approach should not be adopted by a pleader, since it also disaccords with particularity and clarity. Significantly, it was not alleged, as one of the negligent acts, that Edwin moved from his normal lane of travel and directed the vehicle towards the plaintiff. It is by now settled law that a party cannot plead one case and testify to a different case at the trial.

[18] It is also rested law that the onus of proof, where negligence against the insured driver is alleged, lies with the plaintiff.² In terms of section 16 of the Civil Proceedings Evidence Act,³ judgment may be given in any civil proceedings on the evidence of any single competent and credible witness. Credible evidence entails a believable one. Generally, a trier of facts must take into account the totality of the evidence and should not adopt a selective approach. Part of the conspectus of the evidence in this action is the sworn statements in the police docket and the section 19(f) affidavit. Regard being had to the totality of the evidence, this Court is not satisfied with the credibility of the plaintiff's evidence. Firstly, his oral evidence is inconsistent with his own version given under oath in the statement and the section 19(f) affidavit. Secondly, his oral evidence is diametrically opposed to the sworn statements by his friends, who were with him at all material times.

[19] Clearly, his friends were competent witnesses and must have been available to elucidate the facts, but they were not called. An adverse inference capable of being drawn is that their evidence would have contradicted, and not corroborated that of the plaintiff,⁴ particularly on the manner in which the collision happened. Such inference is already laid bare by having regard to their sworn statements. Another factor which this Court finds difficult to ignore is the state of sobriety of the plaintiff on the day in question. Although before Court he testified that he was not drunk, this Court finds it hard to believe his evidence on this score.

[20] He spent a considerable amount of time at the park where he enjoyed the festivities whilst drinking liquor. He, on his own version, returned to the tavern almost 18 hours later, having been drinking at the park. When his evidence on this score is compared to the versions in the sworn statements, he and his friends were at the Tavern the whole time, hence the owner asked them to leave and switched off the music. That he only returned at 05h30 to collect his bucket of liquor is nothing but a recent fabrication. His account of the events on the day in question ought to be carefully considered, taking into account what his state of sobriety was. There is a

² See *Goodenough NO v RAF* [2003] ZASCA 81.

³ Act 25 of 1965 as amended.

⁴ See *Munster Estates (Pty) Ltd v Killarney Hills (Pty) Ltd* 1979 (1) SA 621 AD.

greater possibility of artifice and misstatements in his oral testimony almost six years later.

[21] On the full conspectus of the material placed before this Court, it cannot be doubted that the alleged insured driver used the motor vehicle as a weapon in a fight. There was no accident. It is not surprising that a case of attempted murder as opposed to that of reckless and negligent driving was, in this instance, registered. The registration of such a case snugly fits with the happenings of that fateful morning. The plaintiff himself stated under oath that he did not give any person permission to hit him with a motor vehicle. It is only in an assault or attempted murder situations that such statements are stated in order to unsettle a possible defence of consent being given. In a negligence situation, the issue of consent does not feature. This is a clear case of intentional wrongful act as opposed to negligent wrongful act. In the witnesses' stand, the plaintiff attempted a negligent wrongful act case. Metaphorically, this attempt became a square pack in the round hole because the water was already muddied by the submissions made by counsel regarding the sworn statements made by the two friends. The fact that an attempted murder case was registered, investigated and presented to Court for prosecution and adjudication is in of itself an inadvertent revelation that the alleged insured driver intended to hit the plaintiff with a motor-vehicle.

[22] On the totality of the evidence, inclusive of the sworn statements availed to this Court, the alleged insured driver, in the course of the undisputed fight, intentionally drove straight towards the plaintiff in order to injure him and had he not been stopped by the crowd, he would have ran the plaintiff over again. These actions of the alleged insured driver are incapable of being categorised as a mistake. They are adorned with some measure of calculation. They appear to be premeditated. On these facts, there can be no case of negligence. The alleged insured driver used the motor vehicle as a weapon in a fight that had ensued between him and the plaintiff. This is no different from a situation where two people who are engaged in a physical fight and one of them enters a house, for instance, and picks up a weapon, be it a knife, gun or baseball bat, in order to win the fight. Counsel for the plaintiff submitted that in order to show intention, it was required of the insured driver to testify that he acted with an intention.

I disagree. The insured driver, like the RAF, do not bear any onus to prove liability. Nevertheless, in law, an intention, also known as *dolus*, is nothing but the state of mind. There are various forms of *dolus*. *Dolus eventualis* is one of them. Such form of intention operates on the basis of the foreseeable possibility. Where the wrongful act is intentional, the RAF does not attract liability. In *Garnier v Kilkenny and ICBC*⁵, the following submission, which should, in my considered view, apply with equal vigour under the RAFA, was made:

“Where there is an intentional act with intent to bring about the loss or damage, as in the case at bar, public policy precludes recovery under automobile liability coverage. The incident giving rise to this claim did not involve an “accident”...”⁶

[23] The Court in *Garnier*, accepted the submission only in an instance where the intentional criminal act was committed by the insured.⁷ In *S v Desai*,⁸ it was held that a motor vehicle can certainly be used as a “weapon of death”. In *R v Riddell*,⁹ a situation arose where a vehicle was used as a weapon in an alleged self-defence. Briefly, the facts in *Riddell* were as follows. The injured mini-cab driver having driven the accused from a particular address to her home, he was told to wait while the accused went into the house to collect the fare money. For a while, the accused did not emerge from the house. Later she emerged with changed clothes, got into a VW Polo vehicle and drove off. The mini-cab driver followed her, and after failing to get her to stop using flash lights and hooter, he stopped his vehicle in front of hers. He came out of his vehicle and stopped in front of the Polo. The Polo then slowly edged forward, hitting the mini-cab driver several times on his knees, as he retreated backwards. At some point he sat on the bonnet of the Polo. The Polo accelerated causing the mini-cab driver to fall off the bonnet as the Polo drove away. At her criminal trial the Polo driver raised self-defence. In other words, she used the Polo as a weapon to ward off what she believed to be an attack on her. Similarly, the actions of the alleged insured

⁵ 2006 BCPC 357 (CanLII)

⁶ Para 15.3 of *Garnier*.

⁷ Para 35 of *Garnier*.

⁸ 1983 (4) SA 415 (N)

⁹ [2018] 1 All ER 62; [2017] EWCA Crim 413.

driver are no different from those of the Polo driver. They are all intentional and criminal in nature.

[24] Undoubtedly, the RAF operates more like an insurance. There is a school of thought that holds that the term “accident” in the insuring agreements of occurrence and accident-based liability policies requires that the act causing the complained-of injurious effects be fortuitous. The guiding rule adopted by this school is that intentional acts cannot be accidents.¹⁰ As the name of the defendant suggests, it is a fund purposed for accidents and not for intentional acts.¹¹ Therefore, accidents involve fortuity and not intention.¹² So, where, as it was the case in *Motladile v Road Accident Fund*,¹³ negligence is not proven by the plaintiff, the liability of the RAF does not arise. Counsel for the plaintiff correctly conceded that in an instance where the wrongful act is intentional, the RAF does not attract liability in terms of section 17(1) of the RAFA. However, counsel persisted with an argument that the alleged insured driver was negligent in that he failed to take cognisance of the rights of other road users, more specifically that of the plaintiff.

[25] In that regard, it is of importance to be mindful of the distinction between *facta probanda* or primary factual allegations which a pleader must make, and *facta probantia*, which are secondary allegations or evidence upon which the pleader will rely to prove the primary allegations. The evidence of the plaintiff, taken together with the sworn statements, proves that the alleged insured driver did not simply fail to take cognisance of the plaintiff. On the probabilities, he did take cognisance of him and in order to perpetuate the fight, he decided to drive straight at him with only one frame of mind, to injure the plaintiff using his car. Therefore, the *facta probantia* do not support the *facta probanda*. It must axiomatically follow that the plaintiff has failed to discharge

¹⁰ Scheuermann “Intentional acts cannot be accidents – a critique of a legal error” (2016) 12 *UC Law Business Journal* 301.

¹¹ See *Messersmith v American Fidelity Co.* 133 N.E 432 (N.Y. C.t Apps. 1921) with regard to the meaning of ‘accident’.

¹² See *Kvaerner Metals Div. of Kvaerner U.S Inc v Commercial Union Ins Co.* 908 A.2d 888, 898.

¹³ [2025] ZAGPPHC 229. See also *McQueen v Village Deep G.M. Co Ltd* 1914 TPD 344 at 347, where De Villiers JP commented that the most difficult question which arises in the present case is whether the facts as stated by the magistrate can be said to constitute an ‘accident’ within the meaning of the law.

his onus of proof.¹⁴ The word ‘accident’ presupposes negligence as demonstrated above. In a situation involving an intention, there is no accident involved.

[26] In a Canadian case of *Downer v The Personal Insurance Company*,¹⁵ the Court of appeal concluded that the physical assault involved in that case did not amount to an accident. In *casu*, the fact that the alleged insured driver used a vehicle to assault and almost attempting murder on the plaintiff does not mean that the plaintiff was involved in an accident. In *Canadian Indemnity Co v Walkem Machinery & Equipment Ltd*,¹⁶ the Supreme Court of Canada defined the word ‘accident’ as “any unlooked-for mishap or occurrence”. The conduct of the alleged insured driver is not one suggestive of an unlooked-for mishap or occurrence. The Canada Criminal Code, section 267(a) thereof, provides that assaulting using a motor vehicle as a weapon is punishable by law.¹⁷

[27] This Court has no doubt in its mind that the alleged insured driver perspicuously used his motor vehicle as a weapon in a fight. When he collided with the plaintiff, no mishap or unlooked-for occurrence took place. In law, negligence is the failure to exercise the degree of care that a reasonable person would use in similar circumstances, which results in harm to another. It is not intentional wrongdoing, but a careless act or omission. In order for the acts of the alleged insured driver to snugly fit an accident and negligence, the above must be conspicuous. As indicated at the dawn of this judgment, on proper consideration of section 17(1) of the RAFA, the liability of the RAF only arises in instances where the injury arose from the negligent driving of a motor vehicle.

[28] Where, as in this case, negligence is not present, the RAF is not liable. Negligence must not only be alleged, it must also be proven. It is not sufficient for a plaintiff to interpret perspicuous intentional acts of a driver of a motor vehicle to mean

¹⁴ Regarding onus see *National Employers' General Insurance Co Ltd v Jagers* 1984 (4) SA 437 (ECD), *Selamolele v Makhado* 1988 (2) SA 372 (V) and *Grove v RAF* [2011] ZASCA 55.

¹⁵ 2012 ONCA 302 (CanLII).

¹⁶ [1976] 1 S.C.R. 309 at 316.

¹⁷ See *R v Gosse* 2016 BCSC 812 (CanLII) where a Toyota Highlander was used as an assault weapon.

negligence. Section 17(1) refers to 'or other wrongful act' of the driver or the owner of the motor vehicle or his or her employees in the performance of their duties. Is intentional driving over of a pedestrian a wrongful act? In my view, it is indeed a wrongful act. In law, a wrongful act is an action, error, or omission that is considered illegal, immoral, or unjust and causes harm to another person. In South African law, there are five elements of a delict; namely, (a) conduct; (b) wrongfulness; (c) fault; (d) causation; and (e) damage.¹⁸ Undoubtedly, claims for a loss or damage against the RAF are delictual claims.

[29] Regarding the element of fault, two main forms are recognised, namely; intention (*dolus*) and negligence (*culpa*). As to what negligence means, this Court can do no better than what Holmes JA did in the *locus classicus* case of *Kruger v Coetzee*.¹⁹ The fact that fault involves negligence and intention; the legislature is well aware. If intention was contemplated, the legislature would have expressly stated so, as it did with negligence. Therefore, it cannot be so that where reference is made to other wrongful acts, such could be referring to intention as submitted by the plaintiff's counsel. The legislature must have been aware that a wrongful act would require an element of fault in order to be a delict. Where the word 'or' is employed in a statute, it may mean either one or the other. It can also mean one, the other or both. Applying the *Endumeni*²⁰ principle, the word 'or' must mean both. It is a business-like and sensible interpretation to read negligence as a form of fault and the other wrongful act both as inclusive of each other. It would be absurd to read the other wrongful act disjunctive from the word negligence. The wrongful act of a driver or the owner must be one that is negligent and not an intentional one. Some of the possible wrongful acts seem to arise from section 20(2) of the RAFA. Deemed driving means moving of a vehicle from a place it is left, as a result of gravity. It implies negligence for a vehicle to be left at a place where it may move as a result of gravity. A wrongful act does not mean fault. Given the fact that the RAFA is a social legislation, it could not have been the intention of the legislature to accept liability in instances where the insured driver

¹⁸ See *VM and Another v MEC for Education, Eastern Cape Provincial Department and Others* [2020] ZAECHC 32 at para 6.

¹⁹ 1966 2 SA 428 (A).

²⁰ *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA).

has acted intentionally. The indemnity arising from section 21(1)(a) and (b) of the RAFA must be referring to a negligent driving mentioned in section 17(1).

[30] Assuming that the phrase “or wrongful act” introduced an act of intention as another form of fault, the pertinent question in this matter is that the pleaded case of the plaintiff is that of negligence as opposed to intention. Since intention has not been pleaded, that is the end of the enquiry regarding intention as a form of fault. Pleading intention is the be-all and end-all. In *Trope and Others v South African Reserve Bank*,²¹ Grosskopf JA made the following observation:

“It is trite that a party has to plead – with *sufficient clarity and particularity* – the material facts upon which he relied for the conclusion of law he wishes the Court to draw from those facts. It is not sufficient, therefore, to plead a conclusion of law without pleading the material facts giving rise to it.” (references omitted)

[31] That there is intention, like there is negligence, is a conclusion of law, which requires material facts to support it. Even if the other wrongful act equates an intention, the plaintiff’s pleaded case relies on the other leg of fault, being, negligence. Supposedly, this was done in order to bring the RAF into the liability fold. Unfortunately, as indicated earlier, the other unpleaded leg of fault was, on the available evidence, properly considered, shown. Negligence is not shown by the conspectus of the evidence before this Court. To my mind, the other leg of intention implicates the alleged insured driver in a delictual claim. Because he would have acted intentionally, the indemnity in section 20(2) would not, in my considered view, operate in his favour.

[32] Accordingly, in my considered view, the plaintiff has failed to discharge his onus to prove negligence on the part of the alleged insured driver. Only intention was shown, and as such, the RAF is not liable to compensate. The evidence presented demonstrates that the alleged insured driver intentionally collided with the plaintiff, thereby causing him bodily injuries. Even if intentional driving creates liability for the RAF, this Court takes a view that the plaintiff failed to plead a case of intention. On

²¹ 1993 (3) SA 264 (A) at 273A-B.

application of the trite principle that a party is prevented from pleading a particular case and advance a different case at the trial, the plaintiff must still fail.

[33] Because of all the above reasons, I make the following order:

Order

1. The RAF is absolved from the instance.
2. There is no order as to costs.

G N MOSHOANA
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

APPEARANCES:

For the Plaintiff:	T I Ngwana
Instructed by:	Gildenhuys Malatji Inc, Pretoria.
For the Defendant:	No appearance.
Date of Hearing:	5 November 2025
Date of judgment:	18 November 2025