



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

Not reportable

Case no: 3901/2024

In the matter between:

VELAPHI CASPER FASO

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

Neutral citation: *Faso v RAF* (3901/2024) [2025] ZAFSHC 380 (27 November 2025)

Coram: Daffue J

Heard: 27 August 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 16h00 on 27 November 2025.

Summary: Motor vehicle collision – negligence by the insured driver who executed a U-turn in front of the plaintiff's vehicle – plaintiff the only witness to testify about the collision – bearing in mind the circumstances, the court was not prepared to find that the insured driver's sole negligence caused the collision – contributory negligence found by the plaintiff – apportionment of 80/20% ordered in favour of the plaintiff.

ORDER

- 1 The defendant is liable to pay 80% of the plaintiff's proven or agreed damages.
 - 2 The defendant shall pay the plaintiff's agreed or taxed costs of the merits trial, inclusive of counsel's fees on scale B.
-

JUDGMENT

Daffue J

Introduction

[1] This is yet again one of those numerous cases on the High Court rolls throughout the country where trials proceed effectively unopposed and default judgments are sought. The following *dictum* of the Supreme Court of Appeal in *MMK obo MK v RAF*¹ is apposite: 'When the RAF does not participate in the process of adjudicating matters to finality, the courts seized with the case are placed in an invidious position. They are required to bring special care to bear, lest an order is made which compels the RAF to pay damages not proved. It is simply not in the interests of justice that this should occur. It is to be hoped that the RAF, as an organ of state managing public funds, will take reasonable steps to avoid recurrences of what occurred here.'²

The parties

[2] The plaintiff is Mr VC Faso, an adult male taxi driver, residing in Phelindaba, Bloemfontein.

[3] The defendant is the Road Accident Fund (the RAF), a juristic person constituted as such by virtue of the provisions of s 2 of the Road Accident Fund Act 56 of 1996 as amended (the Act).

¹ *MMK obo MK v RAF* [2025] ZASCA 136.

² *Ibid* para 34.

The plaintiff's claim

[4] The plaintiff alleged in his particulars of claim that a motor vehicle collision occurred on 14 November 2020 in Kellner Street at or near Mimosa Mall, Bloemfontein. At the time, he was driving a taxi. The insured driver that was involved in the collision was one Edmund Charles Deane. The plaintiff alleged that the insured driver made an illegal U-turn and collided with the rear of his vehicle which resulted in him losing control and colliding with the wall of the Mimosa Mall. As a result of the collision, he suffered severe injuries.

[5] The RAF denied that a collision occurred as alleged, but in the alternative pleaded the usual defences, *ie* in the case of the court finding that the collision has occurred and that the insured driver was negligent, the plaintiff was also negligent and that his claim should be reduced in accordance with the provisions of the Apportionment of Damages Act 34 of 1956 based on his contributory negligence.

Separation of issues

[6] During the pre-trial conference, the parties agreed to the adjudication of the special pleas as well as the merits of the plaintiff's claim and that the quantum of the plaintiff's claim should stand over for later adjudication if required. A separation of issues was ordered in terms of rule 33(4) of the Uniform Rules of Court.

Special pleas

[7] *In casu*, the RAF amended its pleadings to rely on three special pleas. The first two are about the alleged failure to substantially comply with s 24(4) of the Act and the alleged premature issue of the summons in the circumstances. It is the RAF's case that it formally objected to the validity of the claim on 12 June 2023 on the grounds that the plaintiff failed to substantially comply with the provisions of s 24(5) of the Act. Also, that the plaintiff failed to cure the objection to the validity and proceeded to issue summons notwithstanding the fact that he failed to lodge a substantially compliant, valid and enforceable claim. Finally, the effect of the first two special pleas is that the claim has prescribed because the plaintiff has failed to cure the objection to the validity of his claim before the expiry of the three-year period set out in s 23(1) of the Act.

[8] No stated case was agreed upon by the parties in order to adjudicate the special pleas. However, I was informed that the contents of the following documents could be considered in order to come to a conclusion:

- a. the plaintiff's submission bundle, containing all the documents filed with the RAF, consisting of 172 pages, the contents of which shall be regarded as admissible and considered as agreed to by the parties; and
- b. the RAF's objection letter dated 12 June 2023, read with the special pleas.

Consequently, the parties agreed that no oral evidence would be led. After hearing argument by both parties, I made the following order:

- '1. All three special pleas are dismissed.
2. The defendant shall pay the costs of preparation for and appearance in respect of the special pleas including drafting of the heads of argument, such costs to include counsel's fees on scale B.
3. Reasons shall [be] submitted as soon as possible.'

These are my reasons.

[9] It is important to note that the plaintiff did not attack the lawfulness of the Board Notice 271 of 2002 published in Government Gazette number 46322 dated 6 May 2022. Therefore, I adjudicated the special pleas on the assumption that the Board Notice is a lawful document. The Supreme Court of Appeal will hopefully pronounce, rather sooner than later, on its legality. I may just say that, if this case had to be postponed awaiting the outcome of the judgment of the Supreme Court of Appeal and possibly a further appeal to the Constitutional Court, it would cause an undesirable delay. Thousands of cases are apparently pending before the courts and cannot proceed due to the uncertainty created by the RAF's new stance. It is necessary to provide reasons for my order, particularly bearing in mind the apparent differences of opinion amongst the judges of this Division. On the one hand, colleagues such as Van Rhyn J, Naidoo J and Reinders ADJP have postponed third-party claims in the face of special pleas having been filed as *in casu*, instead of adjudicating the special pleas. I am not prepared to follow suit. My colleagues, Loubser J and Mhlambi J, have already dismissed similar special pleas and provided detailed reasons for their conclusions. I agree with their approach and reasoning.

[10] I had a problem with the case presented to me by the RAF. In my view, it either had to lead evidence to substantiate the facts averred in the special pleas, the onus which was cast on it to prove the defences, or it should have agreed to a stated case as provided for in rule 33 of the Uniform Rules of Court. It did not act accordingly. It pleaded the *facta probanda in casu*, but no *facta probantia* have been presented and placed on record. I accept that once the RAF objected to the validity of the claim, no further documents were lodged by the plaintiff. It was therefore my task to consider whether the claim as lodged was in substantial compliance with the requirements of the Act.

[11] It is trite that although the requirement relating to the submission of the RAF 1 claim form is peremptory, the prescribed requirements concerning the completeness of the form are merely directory, meaning that substantial compliance with such requirements suffices. The test for substantial compliance is an objective one.³

[12] Contrary to the clarity provided by the Supreme Court of Appeal in *Road Accident Fund v Busuku*⁴ (*Busuku*), Ms Bornman submitted on behalf of the RAF that detailed medical information should have been provided by the plaintiff. She submitted that the report of Dr JJ Schutte, forming part of the RAF4 form, was insufficient. According to her, the plaintiff was called upon to produce all relevant expert reports and to file same with the RAF 1 claim form. This is a wrong approach. If that was the case, the legislator should have amended the Uniform Rules of Court to stipulate that rule 36(9) relating to expert reports and when these should be produced – after the close of pleadings in a trial action – does not apply to the RAF. Such a deviation from the approach in litigation does not make sense at all.

[13] In *Busuku* the court specifically stated the following:

[16] The RAF 1 form does not call for detailed information. It is not intended, of itself, to enable the Fund to assess the quantum of the plaintiff's claim. It seeks to enable it to investigate the impact of the injuries sustained. In order to do so the RAF 1 form requires the disclosure of information to guide and facilitate the investigation. On the first page of the 'medical report' section of the form it seeks particulars of any emergency transport which had been required; whether the plaintiff had been hospitalized, and if so, whether he was in ICU. All of this was contained in the

³ *Pithey v Road Accident Fund* [2014] ZASCA 55; 2014 (4) SA 112 (SCA); [2014] 3 All SA 324 (SCA) para 19; approved in *Road Accident Fund v Busuku* [2020] ZASCA 158; 2023 (4) SA 507 (SCA) para 14.

⁴ *Road Accident Fund v Busuku* [2020] ZASCA 158; 2023 (4) SA 507 (SCA) para 16.

hospital records. The third page of the report requires the provision of particulars of the medical facilities where treatment was received and the identity of practitioners who treated the plaintiff. This, too, was recorded in the hospital records.'

[14] *In casu*, the submission bundle provides detailed and sufficient information and there is in my mind no doubt that all prescribed requirements have been met. At best for the RAF, there was objectively speaking substantial compliance as set out in *S A Eagle Insurance Company Ltd v Pretorius*,⁵ quoted with approval in *Busuku* at paragraph 14.

[15] In *Maarman and Others v Road Accident Fund*⁶ the parties presented the court with a stated case, whereafter the court found on the facts presented to it that the various plaintiffs substantially complied with the procedural requirements for validly lodged claims in terms of s 24 of the Act.

[16] I have referred to the judgments of Loubser J and Mhlambi J. These two judgments are respectively *Jeje v Road Accident Fund*⁷ and *Moeketsi v Road Accident Fund*.⁸ I do not intend to deal with these judgments, save to say that I fully agree with my learned colleagues.

[17] Dr JJ Schutte's serious injury assessment report contained in the RAF 4 form is part of the submission bundle as mentioned. The plaintiff's claim with supporting documents were lodged with the RAF on 9 June 2023. It is quite surprising that a mere three days thereafter, on 12 June 2023, the RAF rejected the claim. Without being cynical, I wonder how carefully whoever received the claim could have considered. The plaintiff did not respond to the objection and issued its summons, which was served on 18 July 2024. On 13 September 2024, the RAF filed the aforesaid three special pleas and pleaded over on the merits.

[18] It is one thing to allege certain facts, but a different matter to prove those facts. As mentioned, the *facta probantia* to be relied upon by the RAF are missing. The three

⁵ *SA Eagle Insurance Company Ltd v Pretorius* [1997] ZASCA 107; 1998 (2) SA 656 (SCA); [1998] 1 All SA 131 (A).

⁶ *Maarman and Others v Road Accident Fund* (993/2023) [2025] ZAWCHC 106 (12 March 2025).

⁷ *Jeje v Road Accident Fund* (4628/2023) [2024] ZAFSHC 265 (27 August 2024).

⁸ *Moeketsi v Road Accident Fund* (959/2023) [2024] ZAFSHC 411 (24 December 2024).

special pleas were dismissed for the reasons advanced herein.

Evaluation of the evidence

[19] Once I dismissed the special pleas, Ms Bornman asked to be excused from further attendance as she did not have any instructions to represent the RAF in the merits trial. I adhered to her request.

[20] Once Mr Steenkamp has led the evidence of the plaintiff, Mr Velaphi Casper Faso, he sought an order in terms of the rule 38(2) application. I was not prepared to grant the application in the form presented to me, but admitted into evidence the following which I quote *verbatim*:

'2.1 Merits documentation consisting of *inter alia* the following:-

- 2.1.1 Accident Report Form;
- 2.1.2 Police Case Docket – 687/11/2020;
- 2.1.3 19(f) Affidavit by the Claimant;
- 2.1.4 Claimant's Identity Document & Drivers License;
- 2.1.7 Sketch Plan and Key;
- 2.1.8 Photographs of the Scene.'

I ordered that the costs of the application shall be costs in the cause.

[21] Mr Faso was the only witness to testify in respect of the merits of the claim. On Saturday afternoon 14 November 2020 at approximately 13h30, he was the driver of his taxi in Kellner Street adjacent to the Mimosa Mall in Bloemfontein. Kellner Street is a two-lane carriageway with a straight trajectory with two lanes for traffic in an eastern direction and two lanes in a western direction. A solid white line in the middle of the street divides the lanes in opposite directions. He offloaded two passengers at the bus stop across the street from Mimosa Mall. At a stage, the vehicle driven by the insured driver, stopped in front of the main entrance of the Mimosa Mall for the driver to offload a female person. It should be mentioned that during his initial evidence Mr Faso did not refer to two U-turns made by the insured driver. It was only after being questioned by the court to clarify issues that he stated that the insured driver did in fact make two U-turns.

[22] The plaintiff testified that the insured driver made his first U-turn after he had offloaded his female passenger in front of the Mimosa Mall. He continued in an eastern

direction whilst driving in the left lane. Mr Faso also proceeded in an eastern direction in Kellner Steet after he had offloaded his passengers but was travelling in the right-hand lane. According to him the two vehicles were travelling parallel to each other at a stage.

[23] As they were travelling and in proximity of the veterinary shop situated to the north of Kellner Street and thus diagonally across the street from the Mimosa Mall, the insured driver suddenly attempted to make a second U-turn at a stage when he was holding a cellphone, apparently speaking with someone. Mr Faso swerved to his right to avoid a collision but failed. His taxi eventually collided with the wall of the Mimosa Mall. In the process, he crossed the two opposite lanes and mounted the pavement.

[24] He was asked more than once by his counsel where exactly was the point of impact between the two vehicles but avoided the question. It is therefore uncertain whether there was a collision in the right-hand lane as he was travelling, or in any of the two opposite lanes, or only on the pavement and/or at the wall of the Mimosa Mall. The photographs forming part of the merits bundle have been accepted as part of the admitted evidence, but Mr Faso was not referred thereto during his evidence. The photographs placed before the court are not clear and it is not possible to establish where the point of impact, marked with a pen, is. The sketch plan on page 41 of the merits bundle was not dealt with in evidence. This shows the point of impact in Mr Faso's lane, but as said, he failed to present *viva voce* evidence to confirm this. Mr Faso testified about the sketch plan on page 63 of the submission bundle which reflects only the point of impact against the aforesaid wall.

[25] Contrary to his pleaded case, the insured vehicle did not collide with the rear of his taxi. He testified that his taxi was damaged at the front and at the left-hand door thereof. The obvious inference to be made from the particulars of claim is that his taxi had already partially overtaken the insured vehicle when the driver thereof executed his U-turn which, on the pleaded case, caused the plaintiff to lose control of his taxi. Clearly, this is not the picture sketched by the plaintiff in his evidence. This aspect will be considered again later herein.

[26] In *AA Mutual Insurance Association Ltd v Nomeka*⁹ (*Nomeka*) the Court confirmed that turning across the line of oncoming traffic, whether from the front or the rear, is an inherently dangerous manoeuvre, placing a stringent duty upon the driver who intends to execute such a manoeuvre. Such drivers must satisfy themselves that it is safe to do so and choose the opportune moment to turn. In *Nomeka* the court held on appeal that the plaintiff, riding a motorcycle, was also to be blamed for the collision. He was travelling straight down the street when the insured driver executed a right-hand turn in front of him. A 60/40% apportionment in favour of the plaintiff (the respondent on appeal) was made.

[27] I do not doubt Mr Faso's version that the insured driver tried to execute a U-turn which caused the collision. The question is whether the insured driver is solely responsible for the collision. I shall now turn to the possibility that Mr Faso's own negligence contributed to the collision.

[28] Drivers of motor vehicles have a duty to scan the road ahead continuously for potential obstructions and/or danger. Driving 'with blinkers on' is inconsistent with the standard of a reasonable driver. This trite principle has been confirmed in *Nogude v Union and South-West Africa Insurance Co Ltd*¹⁰ (*Nogude*).

[29] Mr Faso testified that he was travelling at a speed of 30 km/h. This is a strangely slow speed, bearing in mind he was in the right-hand lane and apparently in the process of getting closer and/or overtaking the insured vehicle. I am satisfied that logic dictates that he must have driven at a much faster pace, bearing in mind that he crossed the two opposite lanes whereafter he mounted the pavement and crashed into the wall of the Mimosa Mall.

[30] After proper forensic and expert analysis, vehicle braking efficiency was recorded by the author, W E Cooper, in his handbook, *Delictual Liability in Motor Law*, an analysis often used by the courts.¹¹ *In casu*, there is no evidence that the road is up- or downhill and it should be accepted that the gradient did not have any effect. There was also no evidence of rain on the specific day and/or a wet road. I accept that no evidence was

⁹ *AA Mutual Insurance Association Ltd v Nomeka* 1976 (3) SA 45 (A) at p 52E-F.

¹⁰ *Nogude v Union and South-West Africa Insurance Co Ltd* 1975 (3) SA 685 (A) at 688D.

¹¹ W E Cooper *Delictual Liability in Motor Law* revised ed of *Motor Law* vol 2, *Principles of Liability* 1996 ed at 495 and further and particularly on 499.

presented in respect of the coefficient of friction, *ie* whether the plaintiff's taxi was fitted with new or smooth tyres. There is also no evidence of the condition of the road's surface, save that we know that it is a tarmac surface. Cooper's table pertaining to speed in kilometers via the stopping distance in meters based on a smooth tarmac in dry conditions and smooth tires indicates that it is possible to stop within 5.9 meters at a speed of 30 km/h. I also accept that one must make provision for reaction time that can be anything between 1 second and 1.5 seconds, which means that at a speed of 30 km/h a vehicle will travel at anything between 8 and 12 meters before the driver reacts.¹²

[31] Mr Faso's version is the only version before the court. Although I accept that the insured driver tried to make a second U-turn and caused the collision in the process, I find it improbable that Mr Faso, who was driving at a mere 30 km/h, could not also apply his brakes in the process of swerving to his right in order to avoid crossing the two oncoming lanes to eventually land on the pavement and against the wall of the Mimosa Mall. I am not prepared to accept his version in totality.

[32] A litigant who fails to adduce evidence about a fact in issue, whether by not giving evidence or by failing to call witnesses, runs the risk of the opponent's version being believed.¹³ However, the fact that the one party fails to adduce evidence to contradict the other party's version does not necessarily mean that that version should be accepted. It will always depend on the probative strength of such version, *ie* whether it was strong enough to cast an evidential burden on the party failing to present evidence.

[33] *In casu*, Mr Faso had a passenger on board when the collision occurred, but this person was not called to testify. Bearing in mind that his legal team knew that the defendant would not adduce evidence to contradict his version, I am not prepared to make a negative inference pertaining to the failure to call this witness. However, I must weigh the probabilities as they arise from the evidence and the evidential material as well as the circumstances of the case. It is trite as held long ago in *Maitland and Kensington Bus Co (Pty) Ltd v Jennings*,¹⁴ that for judgment to be given in favour of a plaintiff, the court must

¹² *Ibid* 492; in *V.L obo herself and Others v Road Accident Fund* [2023] ZAGPPHC 2038 the expert mentioned a normal reaction time of 1.6 seconds.

¹³ *Brand v Minister of Justice* 1959 (4) SA 712 (AD) at 715D-716H and the authorities referred to by Schmidt and Rademeyer, *The Law of Evidence* para 3.2.4.1 issue 23.

¹⁴ *Maitland and Kensington Bus Co (Pty) Ltd v Jennings* 1940 CPD 489 at 492.

be satisfied that sufficient reliance can be placed on such version and that a strong probability exists that this version is correct in all aspects.

[34] I mentioned earlier that Mr Faso's evidence deviated from the pleaded version in the particulars of claim. No attempt was made to amend the particulars of claim before the hearing or to seek clarity from the witness during his evidence. There is no need to repeat the differences. Mr Faso contradicted his pleaded version, and no explanation was forthcoming. Another aspect that did not escape my mind is the apparent contradiction between the evidence and the first ground of negligence relied upon in the particulars of claim, *ie* that the insured driver drove at an excessive speed in the prevailing circumstances. Mr Faso did not testify about the speed of the insured vehicle but if he was driving at 30km/h, that vehicle's speed must have been much slower. In any event, bearing in mind the U-turn that the insured driver tried to execute, his vehicle's pace could not be described as excessive in those circumstances. In any event, Mr Faso did not testify that the insured vehicle was driven at an excessive speed.

[35] I am satisfied that Mr Faso was travelling much faster than testified. If he was really travelling at only 30km/h, logic dictates that he would not end up against the wall of the Mimosa Mall. He also failed to explain why he did not apply his brakes. He had time to swerve, and no reason exists why he could not simultaneously apply his brakes. This would have prevented him from travelling the vast distance till he eventually crashed against the wall on the opposite side of the street. If he scanned the road ahead of him, he should have been more cautious. He was aware of the slow-moving vehicle whose driver was speaking on his cellphone but did not consider giving a wider berth between their vehicles. Mr Faso's contributory negligence is apparent from the evaluation of the evidence. An appropriate order shall be made.

[36] I considered whether Mr Faso experienced a sudden emergency and that even if he took the wrong option, he cannot be found to be contributory negligent.¹⁵ If he had time to swerve, there was time to apply his brakes. He did not do so which in my view would be the reasonable driver's immediate reaction. I am satisfied that he acted negligently.

¹⁵ *Ntsala and Others v Mutual & Federal Insurance Co Ltd* 1996 (2) SA 184 (T) at 192F-H.

Order

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

- 1 The defendant is liable to pay 80% of the plaintiff's proven or agreed damages.
- 2 The defendant shall pay the plaintiff's agreed or taxed costs of the merits trial, inclusive of counsel's fees on scale B.

A black rectangular box redacting the signature of the judge.

J P DAFFUE

JUDGE OF THE HIGH COURT

Appearances

For the Plaintiff: GC Steenkamp
Instructed by: Venter Inc, Bloemfontein

For the Defendant: C Bornman
Instructed by: Road Accident Fund, Bloemfontein.