



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG**

CASE NO. 2884/2022P

In the matter between:

BONGUMUSA ZONDI

APPELLANT

and

ROAD ACCIDENT FUND

FIRST RESPONDENT

ORDER

1. The plaintiff succeeds on liability.
2. The defendant is held 100% liable for the damages proved or agreed.
3. The defendant is ordered to pay costs on Scale C.

JUDGMENTDelivered:

Mngadi J:

[1] The plaintiff instituted an action claiming damages from the defendant due to bodily injuries sustained in an accident.

[2] The plaintiff is Bongumusa Zondi an adult male trainee-plumber. The defendant is the Road Accident Fund (the fund) a juristic entity established in terms of the provisions of the Road Accident Fund Act, Act 56 of 1996 (the Act). Section 17(1) of the Act provides that the Fund is obliged to compensate any person for bodily injury caused by or arising from the driving of a motor vehicle if the injury or death is due to the negligence or other wrongful act of the driver or owner of the motor vehicle.

[3] The plaintiff in the particulars of claims stated that on or about 29 September 2017 and or in the vicinity of New Hanover in KwaZulu-Natal, the plaintiff was a passenger in a motor vehicle bearing registration letters and numbers NP 6677. An unidentified motor vehicle truck (the truck) was travelling to the opposite direction. When it passed the plaintiff's motor vehicle a metal object came off the truck and injured the plaintiff.

[4] The plaintiff stated that the truck driver was negligent in one or more of the following respects, namely, in not having properly secured the metal object he was transporting, alternatively, it was a wrongful act of the truck driver not to properly secure the metal object he was transporting.

[5] The plaintiff then referred to the provisions of the Road Traffic Act 93 of 1996. Section 63(1) provides that no person shall drive a vehicle on a public road recklessly

or negligently. Section 63(2) provides that any person who drives a vehicle in a wilful or wanton disregard for the safety of persons or property shall be deemed to drive that vehicle recklessly. Section 64 which provides that no person shall drive a vehicle on a public road without reasonable consideration for any other person using the road.

[6] The plaintiff pleaded that the metal object hit the plaintiff in the left eye and it got stuck in the eye. It completely damaged the left eye resulting in evisceration of the left eye which resulted in the total loss of the left eye.

[7] The defendant pleaded no knowledge of the incident and put the plaintiff to the proof of its case. The parties at the commencement of the hearing agreed to an order separating the issue of quantum from the issue of liability. The issue of quantum to be held in obedience for later determination. In addition, the parties agreed that documents in the bundles be admitted as evidence in the trial.

[8] The plaintiff lead evidence of three (3) witnesses; namely, the plaintiff; Khulekani Jerermiah (Gabela) and Kwanele Mahlaba. The defendant closed its case without leading any evidence. The evidence for ease of reading is not summarised in the sequence it was given.

[9] The plaintiff testified as follows. On the day in question, he was in a kombi taxi (taxi) from Pietermaritzburg to Greytown. He was doing a course in plumbing in a college in Pietermaritzburg. The college closed for the end of third term holidays, and he was travelling to his home in Greytown. He boarded the taxi in Masukwana Taxi Rank in the Pietermaritzburg CBD. The taxi left the taxi rank full of passengers at about 14h00. In the taxi he sat in a seat directly behind the taxi driver. It was a hot sunny day. The taxi travelled on the main road (R33) which is tarred with lanes to both directions between Pietermaritzburg and Greytown. When the taxi was almost halfway, having travelled for about an hour, he had the window next to him on his right open. He saw a truck travelling to the opposite direction. That truck when it was next to the taxi he heard a sound coming from that truck and it was at the time when an object flew into the taxi through the open window from the passing truck and it hit him on his left eye. He bent over behind the drivers' seat, holding his face over the left eye and he bled profusely from the left eye. He felt excruciating pain from the left eye.

Female passengers sitting next to him told the taxi driver of his injury and insisted that he be attended to. An ambulance was summoned for him by phone. The taxi drove on not for a long distance and it stopped. He got out of the taxi to get some fresh air, but he remained in excruciating pain.

[10] The plaintiff testified that an ambulance arrived. The ambulance staff attended to him, and they took him by ambulance to Greytown Hospital. He arrived at the hospital around 17h00. He was treated by being examined and he was given pain tablets. It was decided that he be transferred to Edendale Hospital in Pietermaritzburg for further medical treatment. He arrived at the Edendale Hospital around midnight and he was admitted. He remained in hospital for about two months.

[11] The plaintiff testified that as part of his examination at the Hospital, he was taken to the scan. The scan showed the foreign object still stuck inside the left eye. He was told that the left eye was totally damaged and it could not be saved. The doctor asked for and he gave consent for the evisceration of the left eye operation which was done. The object stuck in his eye during the evisceration was taken out and it was given to him. The plaintiff for the record produced the foreign object which was in a plastic container. It was admitted as evidence and marked Exhibit 1. It is a right circular cylinder/drum shaped. Its height is 10mm and its radius is 5mm. Its surface on the cylinder is rugged as if it had been stuck on something, the other side top is smooth. The opposite side not smooth and it appears as if it is broken off. It is brownish in colour, and one can easily mistake it for some wood, but if you hit it against a metal then confirms that it is a metal. It is heavy for its size, (size of big bean) may be as heavy as a 9mm live round of ammunition. The container is labelled and written as follows: Hospital: Edendale; Name: Zondi Bongumusa, Reg No:941211 ward: Eye Ward; Date: 04/10/2017.

[12] The plaintiff conceded that he did not actually see the object that hit him leaving the truck, flying into the taxi through the window and hitting him. But it was at that time the truck was next to the taxi when an object hit his left eye. In the taxi at the time there was no commotion it was normal. The object did not hit or damage the taxi anywhere. The taxi was driving normally along the road in a farm area. When the object hit him, he was sitting straight up in his seat with the window next to him open.

He had passengers sitting on his left. The other passengers in the taxi immediately saw that he had been injured on the left eye and saw that he was bleeding profusely.

[13] Mr Zondi testified that the truck in question did not stop. He did not obtain its particulars. It was white and it was carrying logs. He saw that as it was coming to pass the taxi. Except the truck driving passed there was nothing else happening. There was traffic driving to the same direction as the taxi. The truck was driving at a high speed, maybe 120 or 140 kph. The photos in the admitted bundle of documents show a tarred road with one lane to each direction. The lanes are separated a barrier line. The road has wide lanes with no yellow lines on the sides. The road is running West/East. It is gentle curving to the right for one driving toward the east. The sides of the road are a short wide gras verge.

[14] The parties testified that he told the medical staff how he got injured but he did not know the name of the medical staff who talked to him. He did not know whether what is written in the medical records was written by the medical staff that talked to him or not. He talked to them in IsiZulu. The medical records are written in English. The incident was reported to the police at New Hanover Police station. The taxi driver was present when the accident was reported to the police. The injury caused him severe pain and trauma, and his mind was affected after the incident. He was in that condition when he told the medical staff what happened, but he did not loose consciousness.

[15] Kwanele Mahlaba testified as follows. He was in the same taxi as the plaintiff. He boarded the taxi in Pietermaritzburg, and he was going to Greytown. He did not know the plaintiff before that date. He was in the taxi sitting in a seat directly behind the plaintiff. The window next to him was not a window that opens. The plaintiff had the window next to him opened. He saw the plaintiff getting injured on the left eye. He heard a burst noise from a truck which was driving passed the taxi to the opposite direction. The truck came from a road from the farms. The noise was from the wheel of the truck. He did not know which wheel. Something came out of the truck, and it hit the plaintiff on the left lane. The plaintiff placed his hands over the left eye and he was bleeding. It was a metal object that got into the eye of the plaintiff. He saw that after it was removed from the eye at the hospital. When the object hit the plaintiff the

truck was next to the taxi. The object did not hit any part of the taxi or any person in the taxi except the plaintiff. There was no commotion in the taxi or anything happening and there were no people outside the taxi.

[16] After the plaintiff got injured the taxi kept driving on. An ambulance was summoned. They stopped at Mispah not very far and waited for the ambulance. The ambulance arrived and it took the plaintiff to the hospital. The taxi proceeded with its journey to Greytown. The metal object that hit the plaintiff came from the truck. The truck had two trailers loaded with logs. He did not notice its colour. It was driving slowly as it had come from the farm. The truck although it is a big vehicle making noise when driving, he could hear that noise came from the wheel of the truck. The incident happened when the taxi was driving up approaching New Hanover. He did not notice whether at the time other passengers in the taxi had opened their windows or not.

[17] Khulekani Jeremiah Gabela (Gabela) testified as follows. He was a hospital manager at Edendale Hospital. He was in charge of all the medical staff at the hospital. He was in charge and in control of all the medical records at the hospital. He was a medical doctor by profession.

[18] Gabela testified that he had the medical records of Edendale Hospital relating to the plaintiff. The plaintiff was transferred from Greytown Hospital to Edendale Hospital. The first entry on the records dated 30 September 2017 states that the patient was hit by a foreign object on the left eye whilst (what) had window open a truck went pass carrying stones. The patient report form records that the plaintiff was from Greytown Hospital to Edendale on 30 September 2017 was received at 23:58 arrived 03h06 and the chief complainant was an injury on the left eye, assault with stone. The Edendale Emergency Department Clerking Sheet dated 30/09/2017 as a present complaint at 3h59 record is that he was hit in the left eye with an unknown object. The patient referral letter dated 29 September 2017 as reasons for referral states: '22 yr old patient injured on his left eye when an unknown moving object that came as a bus passed the vehicle he was on with his window open. He sustained a ruptured globe with absent light vision and has no other medical condition'. The theatre note dated 3

October 2017 states 'evisceration operation, metal foreign body (large thing') evisceration-area of dome, smooth, sutures visible, evisceration for prosthetic eye.

[19] Dr Gabela confirmed that all medical records show that the plaintiff had a large foreign body in the left eye which got into the left eye when he had his window open, it came from a vehicle passing a taxi to the opposite direction. The plaintiff was advised that there was no other option except an evisceration operation which he the consented to and signed a consent form. Nobody before the foreign object was removed could say what was the nature of the foreign object. It was then found to be a metal foreign object. The medical records show that it was on 4 October 2017 when an intraocular metal foreign object was removed together with the eye contents.

[20] The Road Accident Fund Act 56 of 1996, s4(1)(b) provides that the powers and functions of the Fund shall include the investigation and settling, subject to this Act of claims arising from loss or damage caused by the driving of a motor vehicle whether or not the identity of the owner or driver of or the identity of both the owner and the driver thereof, has been established. Section 17(1) provides that the Fund shall be obliged to compensate any person for any loss or damage which the third party has suffered as a result of any bodily injury caused by or arising from driving of a motor vehicle if the injury is due to the negligence or other wrongful act of the driver or owner of the motor vehicle.

[21] The plaintiff and his witness gave evidence in a straightforward, logical and convincing manner. The discrepancy between the evidence of the plaintiff and Mahlaba is whether the truck was driving slowly or it was speeding. This discrepancy does not go to the extent that one can say there was no truck at the time was driving to the opposite direction. The discrepancy may be attributed to a fading memory, incident took place on 29 September 2017 and they testified on 17 November 2025 which is about eight (8) years after the incident. The plaintiff cannot be discredited based on the report on the medical records whether he said the truck was carrying stones or logs since the medical records are in English and he spoke in Isizulu and it is not known whether the recordal was done by a person who spoke to the plaintiff or not. The evidence of the plaintiff and Mahlaba is confirmed by what happened as the plaintiff got hit.

[22] The evidence of the plaintiff and his witnesses is reliable, and it is credible, the court can fairly rely on it to come to arrive at a decision. The evidence is very clear that the plaintiff was hit on the left eye as the truck was passing next to his open window. The object that hit him came from nowhere except through the open window, it came through the open window from nowhere other than from the truck. It is immaterial whether the truck at the time was speeding or not. The plaintiff does not allege negligent driving of a truck as the cause of his injury. He relies in the negligent operating a truck by driving it on a public road when the truck with its fittings and fixtures constituted a danger to other road users.

[23] The object that injured the plaintiff by its nature was not part of the load of the truck. It is irrelevant what the load of the truck was. There is no evidence that it detached from the load of the truck. There is a probability that it broke off from somewhere from the truck. *Res ipsa loquitur* is a legal doctrine described as meaning 'the thing speaks for itself which allows a plaintiff to prove negligence through circumstantial evidence when a lack of direct evidence makes it difficult to prove fault. For the doctrine to apply three conditions must generally be met, namely- the incident is a type that would not ordinarily occur without negligence, the instrument causing the harm was under the exclusive control of the defendant, and the plaintiff did not contribute to the incident. It provides an indirect way for a plaintiff to establish the defendant's negligence, especially when the specific negligence act is unknown. The doctrine created a rebuttable presumption of negligence, meaning the defendant can still present evidence to disprove the claim. In *Goliath v MEC for Health* 2015 (2) SA 97 (A) at par [10] the court held: 'Broadly stated, *res ipsa loquitur* (the thing speaks for itself) is a convenient Latin phrase used to describe the proof of facts which are sufficient to support an inference that a defendant was negligent and thereby to establish a *prima facie* case against him. The maxim is no magic formula (*Arthur v Bezuidenhout and Mieny* 1962 (2) SA 566 (A) at 573E). It is not a presumption of law, but merely a permissible inference which the court may employ if upon all the facts it appears to be justified (Zeffert & Paizes *The South Africal Law of Evidence* e ed at 219). It is usually invoked in circumstances when the only known facts, relating to negligence, consist of the occurrence itself (see *Groenewald v Conradie*; *Groenewald en Andere v Auto Protection Insurance Co Ltd* 1965 (1) SA 184 (A) at 187F)-where the occurrence may be of such a nature as to warrant an inference of negligence.

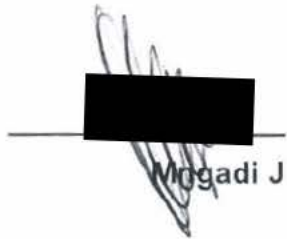
The maxim alters neither the incidence of the onus nor rules of pleading (*Madyosi v SA Eagle Insurance Co Ltd* 1990 (3) SA 442 (A) at 445F)-it being trite that the onus resting upon a plaintiff never shifts (*Arthur v Bezuidenhout and Mieny* at 573C). Nothing about its invocation or application, I dare say, is intended to displace common sense. In the words of Lord Shaw in *Ballard v Northern British Railways Co* 60 Sc LR 441, 'the expression need not be magnified into a legal rule: it simply has its place in that scheme of and search for causation upon which the mind sets itself working' (cited with approval in *Naude NO v Transvaal Boot and Shoe Manufacturing Co* 1938 AD 379 and *Arthur v Bezuidenhout and Mieny* at 573F-G).

[24] The plaintiff was innocently in a motor vehicle which was driving on a public road. He and the motor vehicle he was in did not in any way contribute to the cause of the injury to the plaintiff. There is no doubt that the truck caused the metal object to fly through the window resulting in it causing the injury to the plaintiff. The truck driver might not have been aware of what was happening. If the metal object detached from somewhere in the truck, it is the responsibility of the driver and/or owner operating a motor vehicle on a public road with other road users to ensure that his motor vehicle is in a condition that nothing detaches from it causing injury to other road users.

[25] The plaintiff is not required to prove his case beyond reasonable doubt. He is required to prove his case on the preponderance of probabilities. The metal object came through the window, and it hit the plaintiff. The plaintiff had no means to stop the truck there and there, and to have it properly inspected. The truck having gone unidentified it could no longer be found for thorough inspection. The truck was travelling on a tarred road surface used by other traffic with no debris on it. The metal object has no damage on it to show that the truck or other traffic had it lodged in the grooves of the tyres as the trye drove on the tarred road surface. This shows that the metal object detached from the truck and it flew in through the window, and it hit the plaintiff. There is no explanation from the defendant. The only inference is that it detached due to either its make or the manner it was attached by those in charge for keeping the truck in a road worthy condition. In either case, the plaintiff succeeds to establish fault that renders the defendant liable 100% for the damage caused to the plaintiff. As a result, the plaintiff on a balance of probabilities has proved liability.

[26] It is ordered as follows:

1. The plaintiff succeeds on liability.
2. The defendant is held 100% liable for the damages proved or agreed.
3. The defendant is ordered to pay costs on Scale C.



Mogadi J

APPEARANCES:

Case Number: 2884/2022P

For the Plaintiff: Adv. Veren Sitaram

Instructed A. Soodyall & Associates
MORNINGSIDE

For the Defendant: Adv Moodley

Instructed by: Office of the State Attorney
DURBAN

Heard on: 17 November 2025

Judgment delivered on: 05 December 2025