



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

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

Date: 19/12/2025 Signature: [Redacted]

CASE NO: A2024-093912

In the matter between:

3RD GENERATION INDUSTRIES (PTY) LTD

Appellant

and

ITUMELENG THABO MPHACHOU

Respondent

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 email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 19 December 2025.

JUDGMENT

DREYER, AJ:

- [1] This is an appeal against the decision of the Booysens Magistrate's Court granting judgment to the respondent, Mr Mphachou in the sum of R99 472,00 for the damages the respondent suffered as a result of the appellant, 3rd Generation Industries (Pty) Ltd ("*3rd Generation*") in repairing the respondent's Kawasaki Motorcycle.
- [2] In November 2017, Mr Mphachou purchased a second-hand Sports Motorcycle ("*the motorcycle*") from 3rd Generation. 3rd Generation performed certain repairs and general maintenance on the motorcycle for Mr Mphachou. The first and only scheduled maintenance ("*service*") 3rd Generation performed on the motorcycle was on 3 June 2019. There is no dispute between the parties that this service was properly done. At this time, the motorcycle's odometer reading was 23649km. Mr Mphachou had not had the motorcycle serviced since the time of his purchase in November 2017.
- [3] 3rd Generation returned the motorcycle to Mr Mphachou on 5 June 2019. On 8 June 2019, while Mr Mphachou was driving the motorcycle, the engine malfunctioned. Mr Mphachou took the motorcycle back to 3rd Generation, who identified that the clutch of the motorcycle needed to be replaced. 3rd Generation replaced the clutch. On 12 June 2019, while Mr Mphachou was driving the motorcycle, it malfunctioned and the engine seized. It is the second malfunction of the motorcycle that gave rise to Mr Mphachou's claim for defective workmanship against 3rd Generation. Mr Mphachou claimed in the alternative that 3rd Generation repair and restore the motorcycle engine to working condition, or for payment of damages in the sum of R107 337.
- [4] In the trial before the Magistrate's Court, both 3rd Generation and Mr Mphachou called an expert witness to opine on the cause of the

motorcycle malfunction. The trial court accepted the evidence of Mr Mphachou's expert, Mr Morias and rejected that of 3rd Generation's witness, Mr Zeeman. The trial court found that Mr Zeeman failed to provide objective evidence, as expected of an expert. The trial court awarded Mr Mphachou damages in the sum of R99 472,00.

- [5] The issues on appeal for determination by this Court are whether the trial court was correct in rejecting the evidence of Mr Zeeman and what damages, if any, are to be paid to Mr Mphachou.

THE EVIDENCE OF MORAIS

- [6] Mr Morias testified that he is a motorcycle mechanic and motorcycle workshop manager for a period of 40 years. Mr Morias experience is in the field of motorcycling racing, where he has worked as a manager and owner of motorcycle race teams in South Africa including Kawasaki.
- [7] Mr Morias testified that he was informed by Mr Mphachou that the motorcycle seized after the clutch had been replaced. Mr Morias conducted a superficial inspection of the motorcycle, noting that the connecting conrod had broken and it had broken through the front of the engine casing rendering the engine inoperable.
- [8] Mr Morias testified that in his experience, in superbike racing, the reason a motorcycle may seize after a clutch is replaced, is that the oil sieve in the sump pan at the bottom of the engine block becomes blocked with clutch friction material. Mr Morias testified that in the Kawasaki motorcycle, the gearbox and the clutch are lubricated by the same oil so if the clutch is burnt, the material which burns off the clutch contaminates the oil. These fine particles cannot pass through the oil sieve. The particles block the sieve, preventing the oil from passing through clutch to

the gearbox, resulting in insufficient oil to the engine. Mr Morais testified that it was common practice when replacing a clutch on a modern superbike to remove the sump, remove the oil strainer to clean it and put it back together. This is for preventative maintenance.

- [9] Mr Morais testified that he pulled off the sump and found that the sieve was blocked with debris. He rubbed the material between his fingers, finding it fibrous. He identified the material as material from the clutch. Mr Morais' opinion was that the connecting rod ("the conrod") bearing failure was due to clutch friction material blocking the oil sieve. As a result of an insufficiency of oil, the conrod welded itself to the crankshaft, then broke off. The conrod hit the cylinder head causing damages to the valves. On ascertaining the cause of the problem Mr Morais did not inspect the motorcycle further.
- [10] In his view the oil pan and oil sieve should have been removed and cleaned out when the clutch was replaced. Mr Morais testified that the cleaning of the sump is a service that should be offered to the client when removing the clutch. If the client refuses, they should accept the responsibility of any resultant damage.
- [11] Under cross-examination, Mr. Morais made several concessions. He conceded that he had not examined the clutch and could not comment on whether the steel and friction plates were genuine Kawasaki spare plates, fitted in the correct order. Mr Morais acknowledged that the clutch was correctly installed, calling it a "good job".
- [12] Mr Morais acknowledged that poor maintenance was a contributing factor to the engine malfunction. He conceded that excessive engine revving will wear the motorcycle out sooner, but would have no effect as long as the oil is changed every 5000 to 6000 kilometres and the oil and air filters are changed. Mr Morais conceded that he did not know the maintenance

history of the motorcycle, but stated that from his perspective the respondent was looking after the motorcycle. Mr Morias conceded that other than the "finger test" which confirmed his view that there was clutch material in the oil, he did no further tests.

- [13] Mr Morais conceded that emptying the sump is not stipulated in the workshop manual, but in his view, it was common sense to do so and negligent not to do so. Mr Morais testified that there was no blockage at the oil intake, but rather a partial blockage that allowed some oil to pass through the engine, but not enough to meet the engine's requirements.

THE EVIDENCE OF MR ZEEMAN

- [14] Mr Zeeman testified that he is a director of 3rd Generation and has been involved in maintenance and repair of motorcycles for 17 years.
- [15] Mr Zeeman testified that he has advanced technical training from the manufacturers of the various motorcycles and is a certified SABS-approved brake line technician. Mr Zeeman has received training in both the Suzuki and Bajaj motorcycles and in general maintenance and repairs. He has undertaken regular periodic supplementary training for these manufacturers. Initially, Mr. Zeeman worked as a technician for 3rd Generation. His current position is as a service advisor to training technicians who do the repairs and maintenance. The technician who worked on the motorcycle, under Mr Zeeman's supervision, was a Mr Faason. Mr Faason received his initial technical training from MERseta and is a qualified BMW technician, authorised Ducati technician, and authorised Suzuki technician. Mr Faason is an authorised brake line manufacturer and was a senior service technician for a race team in South Africa.

- [16] 3rd Generation retains records of all motorcycle services and has 12 CCTV cameras that Mr Zeeman can monitor the work as it is performed at the workshop at any time. The footage is retained and available for review if clients have any queries regarding the work performed. In November 2017, 3rd Generation was a Kawasaki dealer.
- [17] Mr Zeeman purchased the motorcycle from a private client and conducted the pre-purchase inspection, which included both visual and physical inspection. The motorcycle had approximately 5800 km on its odometer. In particular, the 3rd Generation inspected the engine to ascertain whether the manufacturer's bolts bore wear marks from tightening or loosening, which would be a telltale sign that the engine had been opened. Motorcycle engines are opened to allow modifications to the engine. 3rd Generation would not have purchased the motorcycle if modifications had been made. There was no wear on the bolts on the cylinder head indicating that the bolts had been opened. To the 3rd Generation's knowledge, the motorcycle had not been ported. Porting is the process of increasing the size and smoothing out the edges of the cylinder head to increase airflow which results in better combustion and increased horsepower and engine performance.
- [18] Mr Zeeman stated that the motorcycle required a service between 5000 and 6000 km or annually. Services are either recorded in the motorcycle's service book or on a copy of the previous invoice. The service is provided in accordance with the manufacturer's requirements. For Kawasaki, such a service would include an oil change and an oil filter change at each scheduled interval.
- [19] 3rd Generation recorded work done on the motorcycle in the workshop report. The only record Mr Zeeman had for a service for the motorcycle was on 3 June 2019, the workshop report recorded that the motorcycle had not been serviced for some time. The workshop report of 8 June 2019

recorded that the motorcycle had broken down and was stuck in the gears. The clutch was found to be worn and overheated. The clutch was replaced with a clutch pack, a clutch gasket, and the contaminated oil was removed and replaced with new oil. The motorcycle was test-driven and no faults were recorded. The clutch pack included a clutch replacement which required that the motorcycle oil was drained to remove all the oil contaminants which removes all the oil and contaminants

- [20] Mr Zeeman disagreed with Mr Morais that it was common sense to replace the oil sieve at the bottom of the motorcycle. The purpose of the oil sieve is to strain contaminants from the oil and prevent their passage through the motor. Mr Zeeman reasoned that this was not required in the workshop manual. The manufacturer's clutch kit does not include a sump gasket; accordingly, it is not expected that the oil sieve be cleaned during clutch replacement. Mr Zeeman confirmed with Kawasaki head office that such a procedure was not part of the standard clutch replacement.
- [21] The motorcycle was returned to 3rd Generation's workshop on 13 June 2019 following the engine malfunction. The workshop report recorded that the client (Mr Mphachou) heard a motor-like noise while he continued driving, and that the rear wheel repeatedly locked. The client kept riding and then stopped after hearing a loud bang. This description, Mr. Zeeman stated, was that the engine seized while in operation. The bearing collapsed onto the connecting rod, thereby locking the rear wheel and causing the catastrophic malfunction. The seizure of the engine caused the bearings to collapse; the engine could no longer turn, the drive chain could no longer turn, and the moving part stopped.
- [22] 3rd Generation removed the clutch cover and found that the oil pump gear was in place and meshed correctly. A review of the CCTV footage confirmed that all work had been done correctly. The engine was opened and the cylinder head was removed. Mr Zeeman testified that the intake

ports on the cylinder head in the motorcycle had been modified, that is, increased in size to allow for more air to move into the engine and increase its performance. Mr Zeeman testified that the port modification was apparent from the deep grinding marks on the port.

- [23] Mr Zeeman later inspected the motorcycle at Mr Morais' workshop. He found that the motorcycle had not been stripped, but merely the sump, the clutch cover, and the exhaust parts were removed. Mr Zeeman disputed Mr Morias opinion that the debris lying outside the oil strainer was clutch friction material. The debris, Mr Zeeman stated, was metallic, not fibrous. In Mr Zeeman's view, the debris was the result of pieces of metal grinding against one another while oil was flowing through the motor during the motorcycle's seizure. The oil sieve captured the metal pieces that passed through the engine. In Mr Zeeman's view had Mr Morias tested the oil, the test result would have determined the nature of the particles and the cause of the malfunction.
- [24] Mr Zeeman disagreed with Mr Morais' contention that the material blocked the oil filter and prevented the oil from flowing into the engine. The theory was flawed, Mr Zeeman testified, as the material particles were much larger than oil particles. If the material particles could pass through, then the oil particles would have passed through the sieve. If the oil sieve was blocked, the motorcycle would have dropped below the specified oil pressure, resulting in the oil light illuminating on the dashboard. This warning light should have prompted Mr Mphachou to stop the motorcycle before the engine seized.
- [25] Mr Zeeman testified that another reason why Mr Morias' theory was incorrect was the fact that a single conrod broke. This showed that oil was moving through the crankshaft. As he had not stripped the motor, he would not have noticed this. In Mr Zeeman's opinion, the evidence showed that there was over-revving of the engine that caused the conrod

to break, coupled with advanced wear on the motor. The accelerated wear on the motor, Mr Zeeman opined, was caused by a lack of preventative maintenance. The clutch replacement did not cause the accelerated damage.

[26] The only aspect of Mr Zeeman's expert evidence challenged under cross-examination was the modification of the cylinder intake ports. Mr Zeeman disagreed with Mr Morais that the cylinder intake ports could not be modified. Mr Morais had not inspected the intake ports. Had Mr. Morais done so, Mr. Zeeman testified, he would have noted that the manufacturer's step in the cylinder intake port was absent, which would have been conclusive proof that the cylinder intake ports had been modified.

[27] This Court in *Holtzhauzen v Roodt*¹ summarised the relevant principles applicable to the admissibility of expert evidence as:

(i) *The expert witness must be called to give evidence on matters calling for specialised skill or knowledge. It is therefore necessary for the Court to determine whether the subject of the enquiry does raise issues calling for specialised skill or knowledge. Evidence of opinion on matters which do not call for expertise is excluded because it does not help the Court. At best, it is superfluous and, at worst, it could be a cause of confusion.*

(ii) *.... However, the expertise of the witness should not be elevated to such heights that sight is lost of the Court's own capabilities*

¹ 1997 (4) SA 766 (W) at 772D-773C

and responsibilities in drawing inferences from the evidence.

- (iii) *The witness must be a qualified expert. It is for the Judge to determine whether the witness has undergone a course of special study or has experience or skill as will render him or her an expert in a particular subject. It is certainly not necessary for the expertise to have been acquired professionally.*
- (iv) *The facts upon which the expert opinion is based must be proved by admissible evidence. These facts are either within the personal knowledge of the expert or on the basis of facts proved by others. If the expert has observed them, then the expert must testify as to their existence. The expert must furnish criteria for testing the accuracy and objectivity of his or her conclusion and the Court must be told of the premises upon which the opinion is based. Since the testimony of an expert is likely to carry more weight, higher standards of accuracy and objectivity should be required.*
- (v) *The guidance offered by the expert must be sufficiently relevant to the matter in issue which is to be determined by the Court.*
- (vi) *Opinion evidence must not usurp the function of the Court. The witness is not permitted to give an opinion on the legal or general merits of the case. The evidence of the opinion of the expert should not be proffered on the ultimate issue. The expert must not be asked or answer questions which the Court has to decide.*

[28] In this matter, both experts testified on subject matter within their respective areas of expertise. There was no dispute that the motorcycle was in good working order when it was purchased in November 2017.

There was no dispute that the motorcycle had not been serviced from November 2017 to June 2019. The experts agreed that a motorcycle required a service every 5000 to 6000 kilometres. The absence of these scheduled services would accelerate engine wear. Mr Mphachou disputed that when he purchased the motorcycle in November 2017, the odometer read 5800 kilometres; in his recollection, it was at least 10 000 kilometres. The motorcycle missed at least one service (on Mr Mphachou's version), if not two services (on 3rd Generation version). The experts agreed that the clutch replacement was correctly installed. The only issue on which the experts disagreed was Mr Morias view that the oil pan or sump and the oil sieve should have been removed and cleaned out when the clutch was replaced. Mr Morias accepted that this was not a manufacturer's requirement in the workshop manual.

[29] It is against this factual matrix that experts' evidence is assessed. The trial court misdirects itself in rejecting Mr Zeeman's evidence. Mr Zeeman testified on his inspection of the motorcycle in November 2017, before 3rd Generation sold it to Mr Mphachou, the service and repairs that 3rd Generation did to the motorcycle in June 2019, and the inspections after the seizure of the motorcycle. These facts were all within Mr Zeeman's personal knowledge. There was no reason for the trial court to reject Mr Zeeman's evidence.

[30] In *Price Waterhouse Cooper v National Potato Co-op*² the Court identified the duties that an expert witness should observe when giving evidence.

"[97] *Opinion evidence is admissible 'when the Court can receive "appreciable help" from that witness on the particular issue'.*

² [2015] 2 All SA 403 (SCA)

That will be when:

'... by reason of their special knowledge and skill, they are better qualified to draw inferences than the trier of fact. There are some subjects upon which the court is usually quite incapable of forming an opinion unassisted, and others upon which it could come to some sort of independent conclusion, but the help of an expert would be useful.'

As to the nature of an expert's opinion, in the same case, Wessels JA said:

'... an expert's opinion represents his reasoned conclusion based on certain facts or data, which are either common cause, or established by his own evidence or that of some other competent witness. Except possibly where it is not controverted, an expert's bald statement of his opinion is not of any real assistance. Proper evaluation of the opinion can only be undertaken if the process of reasoning which led to the conclusion, including the premises from which the reasoning proceeds, are disclosed by the expert.'

- [31] The difficulty with Mr Morias' opinion that the cause of the motorcycle engine malfunction was clutch material, left over from the removed clutch, blocking the oil sieve, is that there was no evidence before the trial court that the material was clutch material, least of all clutch material from the clutch removed on 8 June 2017. The "finger" test Mr Morias relied on is merely a bald opinion. Without more, it is of no assistance to the court. Mr Morias asserted that it was not for him to prove that the material was clutch material; it was Mr Zeeman to prove that it was not. It was Mr Mphachou's obligation to do so, but he has not.

[32] Mr Morias opinion did not bear up to scrutiny. On a proper evaluation, Mr Morias' opinion that the left-over clutch material blocked the oil sieve does not explain why oil continued to flow through the engine, why the oil light did not illuminate to indicate low oil pressure, or why only one of four conrods broke.

[31] Mr Morias only considered that there was a blockage in the oil sieve. He did not consider any other material facts, including the motorcycle's service history. The only inspection Mr Morais conducted was to remove the sump and inspect the sieve. He reached his conclusion without due consideration.

[32] An expert must be independent. "*An expert witness's objectivity and the credibility of his opinions may be called into question, namely, where he or she....*"³

- *shows a lack of independence or a bias;*
- *has an interest in the outcome of the litigation, either because of a relationship with the party that retained his or her services or otherwise;*
- It is against these principles that the evidence of both experts who testified for the parties is to be considered.

[33] The trial court rejected Mr Zeeman's expert evidence on the basis that, as a director of 3rd Generation, he had an interest in the outcome of the litigation. Mr Zeeman's actual testimony did not show any bias; he

³ In PriceWaterHouse Coopers supra Wallis JA referred to the decision of *Ikarin Reefer. National Justice Compania Naviera SA v The Prudential Assurance Co Ltd (the Ikarin Reefer)* [1993] 2 Lloyd's Rep 68 [QB (Com CT)] at 81-82.

testified regarding his own observations and inspection of the motorcycle. He referenced the repairs and service 3rd Generation performed on the motorcycle to the workshop manual standard. Mr Zeeman had observed the CCTV footage of all repairs and the service undertaken by 3rd Generation. Mr Zeeman's difference of opinion with Mr Morias was reasoned. Mr Zeeman's evidence as an expert was not challenged in cross-examination. There was no cross-examination challenging Mr Zeeman's knowledge of either the facts or his expertise as a motorcycle technician. There was no basis for the trial court to reject Mr Zeeman's evidence.

[34] Mr Mphachou's claim was for contractual damages, arising from 3rd Generation's breach of the agreement on 3 June 2019 to service the motorcycle. There was no evidence that the service was performed incorrectly or defectively, or that it caused the motorcycle's engine malfunction. The trial court determined the matter on the basis that 3rd Generation failed to remove the sump and oil sieve during the clutch replacement. That was not the pleaded issue for determination.

[35] The experts agreed that the clutch was replaced correctly. The experts agreed that the workshop manual did not require the removal of the sump and oil sieve during clutch replacement. It was common cause that the motorcycle was serviced only once in 18 months. As stated above. Mr Morias opinion did not bear up to scrutiny. There was no evidence before the trial court that the debris in the oil sieve was, in fact, clutch material, least of all clutch material from the clutch that was 3rd degree removed. There was insufficient evidence before the trial court to find that 3rd Generation's failure to remove the sump and oil sieve when replacing the clutch caused the engine of the motorcycle to seize.

[36] In the result, the following order is proposed:

- [36.1] The appeal is upheld.
- [36.2] The order of the trial court is replaced with the following order:
- 36.2.1 The plaintiff's claim is dismissed.
- 36.2.2 The plaintiff must pay the defendant's costs including the costs of counsel.
- [36.3] The respondent is to pay the appellant's costs of the appeal, including the costs of counsel on scale C.

**DREYER AJ**

*Acting Judge of the High Court of South Africa
Gauteng Division, Johannesburg*

**MDALANA-MAYISELA J**

*Judge of the High Court of South Africa
Gauteng Division, Johannesburg*

I agree:

HEARD ON:	7 August 2025
DATE OF JUDGMENT:	19 December 2025
FOR APPELLANT:	Advocate C D Roux
INSTRUCTED BY:	RC Christie Inc.
FOR RESPONDENT:	Attorney E M Dlamini Bouwer Cardona Inc.
INSTRUCTED BY:	Bouwer Cardona Incorporated