



IN THE HIGH COURT OF SOUTH AFRICA

(EASTERN CAPE DIVISION, EAST LONDON CIRCUIT COURT)

CASE NO: 1195/2024

In the matter between:

GCOBISA MDLANDAZI

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

RUSI J

[1] The plaintiff sued the Road Accident Fund (the Fund) for damages under several heads in the sum of R6 000 000.00 for the bodily injuries he sustained

resulting from an accident that took place on 25 November 2023 at or near Scenery Park Road, East London. At the time of the accident, the plaintiff was the driver of his vehicle, and he alleges that the accident was caused by the negligent driving of the insured motor vehicle by the insured driver.

[2] In his particulars of claim, the plaintiff alleged that on the day of the accident, he was driving his white Polo Vivo with registration letters and numbers H[...] when the insured driver of a white Volvo bearing registration letters and numbers H[...]2 lost its control and collided with his vehicle. The accident took place in East London at or near Scenery Park Road, a public road. As a result of the accident, he sustained serious bodily injuries.

[3] The Fund denies liability for the plaintiff's claim. In its plea dated 03 October 2024, it put the plaintiff to the proof of all the allegations he made regarding the occurrence of the accident. Regarding the alleged negligence on the part of the insured driver, the defendant pleaded that the accident was as a result of the plaintiff's sole negligence in that, he drove his vehicle at an excessively high speed; he failed to keep his vehicle under proper control; he failed to keep a proper lookout; he failed to apply brakes timeously or at all; and he failed to avoid the accident when by the exercise of reasonable care and skill he could and should have done so, *inter alia*.

The trial

[4] On the date of the trial of the parties applied that the merits of the plaintiff's claim be separated from the quantum of damages. This application was granted.

[5] In proof of his claim, the plaintiff gave *viva voce* evidence as the only witness and further adduced evidence of the accident report and the hospital records showing that he was admitted at St Dominics Hospital, East London at or

around 18h35 on the same day of the accident. On the face of it, the accident report was compiled by Constable WM Ngwaza of the Scenery Park police station at 17h15 on 25 November 2023, checked by Sgt Bata of the same station, and it was ascribed Occurrence book number 1341/11/2025 and SAPA accident register number 27/11/2025. Both these documents were discovered between the parties and were admitted in evidence by consent between them.

The issues for determination

[6] The issues to be decided by this Court are therefore, whether an accident occurred on 25 November 2023 which resulted in the plaintiff suffering bodily injuries; whether the plaintiff's bodily injuries were caused by the negligent driving of another vehicle; or whether, as pleaded by the defendant, it was caused by negligence on the part of the plaintiff.

The plaintiff's evidence

[7] The plaintiff testified that around 17h20 on 25 November 2023 he was driving to work from Mdantsane towards East London along the Scenery Park Road. He was travelling at the speed of 30-40 km/h, and the road had no markings. The place where the accident took place is very busy as there is a tavern and car wash nearby. Along the road to his left, there was a stationary Toyota Avanza where a hawker was selling meat, and a line of customers were waiting to make their purchases.

[8] As he was about to reach a speed hump next to the Mnguni Car Wash and Butchery, he lowered the speed of his vehicle, and there was at that same time a Toyota Avanza that had been approaching from the opposite direction and its driver had also lowered its speed in order to get over the speed hump. Suddenly, a white Volvo sedan overtook the oncoming Toyota Avanza in high speed and encroached

on his side of the road. In order to avoid the collision, he was forced to swerve to the right as the left side of the road was obstructed by the stationary Avanza, the hawker, and his/her customers that were standing in line to make their purchases. Had he swerved to the left, he would have run those persons over or collided with the stationary Avanza. Due to the high speed at which the Volvo was driven, he could not finish his manoeuvre, and the Volvo collided with his vehicle. When the vehicles collided, his vehicle was propelled outside the road, and it landed in the yard of the car wash nearby. The accident report depicts the offending vehicle partially on the plaintiff's path of travel and the plaintiff's vehicle partially in the area where the Car Wash is situated.

[9] It emerged from the plaintiff's further testimony during cross-examination by Mr *Gona* who represented the defendant that even though the weather was rainy when the accident took place, the rain had no bearing on visibility. The front light of his vehicle was damaged. The point of impact was inside his lane of the road. The offending vehicle was at a distance of 6-7metres when he first saw it overtaking the oncoming Toyota Avanza and it was driven towards him in high speed. There was no other way for him to avoid the collision in the circumstances other than swerving to his right.

[10] Mr *Skoti* indicated that the police officer who compiled the accident report is no longer in the employ of the SAPS, and no one from the Scenery Park SAPS was willing to come forward and testify regarding the report. At the close of the plaintiff's case, the defendant adduced no evidence in rebuttal.

The parties' submissions

[11] Although Counsel rendered oral arguments on the date of trial, I directed them to file written submissions afterwards. In the plaintiff's written submissions,

Mr *Skoti* submitted that in as much as the plaintiff was a single witness whose evidence must be treated with caution, he gave credible evidence, and this Court must accept his version as the truth. Regarding the sudden emergency that the plaintiff found himself in, Mr *Skoti* invited this Court to have regard to the trite principle of the law which is to the effect that a driver confronted with a sudden emergency neither has the time nor the opportunity to weigh the pros and cons of the situation in which he finds himself, and that due allowance must be made, therefore, for possible error of judgment. He further submitted that the plaintiff acted in the best way to avoid danger in the sudden emergency, and it cannot be said that he was negligent.

[12] The plaintiff, so the submissions went, put forward a version with facts which are sufficient to support the conclusion that the defendant's insured driver was negligent. His evidence establishes upon a preponderance of probabilities that the insured driver was the sole cause of the accident which led to the injuries he sustained. It was Mr *Skoti*'s submission further, that there is no factual basis on which a finding may be made that there was negligence on the part of the plaintiff, hence, the Fund must be held 100% liable for the plaintiff's claim.

[13] Mr *Gona* indicated that he would not make any submissions as the Fund did not proffer any version in rebuttal of the plaintiff's case. That being the case, in the defendant's written submissions, he contended that a finding must be made that the plaintiff contributed to the injuries that he suffered as a result of the accident by his own negligence. In this regard he further submitted that as a driver the plaintiff had a duty to keep a proper look out.

[14] In dealing with this contention and with reference to the case of *Nogude v Union and South-West Africa Ins Co Ltd*,¹ Mr Skoti acknowledged in the plaintiff's heads of argument that it is the duty of every driver to keep proper lookout at all material times, with entails continuous scanning of the road ahead, from side to side for obstruction. That being so, he submitted that in the present case, there is no factual basis for the contention that the plaintiff contributed to the harm causing accident by his own negligence, and therefore, a finding ought to be made that the accident was caused by the sole negligence of the insured driver.

The legal principles

[15] Section 17 of the Road Act Fund Act 56 of 1996 makes provision for the Fund's liability for loss or damage suffered by a person as a result of bodily injuries caused by or arising from the driving of a motor vehicle by any person if the injury is due to the negligent or wrongful act of the driver.

[16] In order to succeed in his claim, the plaintiff had to establish on a balance of probabilities that her injury arose out of the negligent driving of a motor vehicle and that there is some connection between the driving and her injury.² In other words, the question to be answered is whether the plaintiff has, on a balance of probabilities, discharged the onus of establishing that the collision was caused by negligence attributable to the defendant (insured driver).³ It has been said that the 'balance of probabilities' entails more than the fact that the probabilities favour one party and not the other.⁴ Therefore, the onus resting on the plaintiff will be discharged if the court is satisfied on a preponderance of probabilities that his

¹ 1975 (3) SA 685 (A).

² *Kemp v Santam Insurance Co Ltd* 1975(2) SA 329 (C) at 330F; *Van Wyk v Lewis* 1924 AD 438 at 444.

³ *Stacey v Kent* 1995 (3) SA 344 (ECD) at 352I-J.

⁴ Schwikkard PJ (*et al*), *Principles of Evidence*, 4th Ed, 2016, page 627, at 32.7.

version is true and therefore acceptable, in that it is probable that the particular state of affairs existed.

Discussion

[17] Even though no evidence was adduced by the defendant in rebuttal of the plaintiff's version, in determining whether the plaintiff has discharged the onus that rests on him, of proving his claim against the Fund, I must still have regard to the defendant's plea as it stands together with the plaintiff's version. Furthermore, the fact that the plaintiff's version was not rebutted by the Fund does not mean that it must be accepted without further ado. The single version that is before court must still be measured against the probabilities.

[18] The evidence of the plaintiff is that of a single witness. Section 16 of the Civil Proceedings Evidence Act 25 of 1965 provides that judgment may be given in any civil proceedings on the evidence of any single competent and credible witness. In other words, only credible evidence shall be sufficient to enable a Court to give a judgment. The court must be satisfied that the single witness has told the truth. In determining the credibility of a single witness, this Court must weigh the evidence of the single witness and consider its merits and demerits, and having done so, decide whether it is trustworthy and whether it is satisfied that the truth has been told despite the shortcomings or defects or contradictions in the witness's evidence.⁵

⁵ *S v Sauls* 1981 (3) SA 172 (A) at 180E–G. Even though this principle was laid down in a criminal case, it holds true for the assessment of the evidence of a single witness in a civil trial.

[19] The approach to be followed in assessing the credibility of the witness's evidence was laid down in *Stellenbosch Farmers' Winery Group Ltd. and Another v Martell & Cie SA and Others*,⁶ where the Court held:

‘[t]he court’s finding on the credibility of a particular witness will depend on its impression about the veracity of the witness. That in turn will depend on a variety of subsidiary factors, not necessarily in order of importance, such as (i) the witness’s candour and demeanour in the witness-box, (ii) his bias, latent and blatant, (iii) internal contradictions in his evidence, (iv) external contradictions with what was pleaded or put on his behalf, or with established fact or with his own extra curial statements or actions, (v) the probability or improbability of particular aspects of his version, (vi) the calibre and cogency of his performance compared to that of other witnesses testifying about the same incident or events. . .’⁷

[20] What clearly emerges from the evidence of the plaintiff is that he was alert to his surroundings as he drove on the Scenery Park Road. Upon approaching the speed hump, he lowered his speed. He was mindful of the obstruction of his left side of the road by another vehicle and the line of customers to a hawker that was vending on the left side of that road. When he first saw the encroaching vehicle suddenly overtaking the oncoming vehicle in high speed, it was at a distance of 5-6 metres, and he swerved to his right in an attempt to avoid the collision. Owing to high speed at which the offending vehicle was driven, he had not completed his manoeuvre. It has not been suggested that the plaintiff was himself driving at a high speed. Importantly, his evidence stands uncontroverted.

[21] No factual basis was laid by the defendant in its plea and in evidence to support the contention that the plaintiff contributed to his injuries by his own negligence by failing to keep a proper look out. The defendant pleaded, instead, that the plaintiff’s negligent driving was the sole cause of the accident. There is a

⁶ *Stellenbosch Farmers' Winery Group Ltd and Another v Martell & Cie SA and Others* 2003 (1) SA 11 SCA.

⁷ *Ibid*, para 5.

difference between the two assertions. The purpose of the pleadings is to define the issues for the other party and the court, and a party has a duty to allege in the pleadings the material facts upon which it relies.⁸ In this connection, Uniform Rule 18(4) provides:

‘Every pleading shall contain a clear and concise statement of the material facts upon which the pleader relies for his or her claim, defence or answer to any pleading, as the case may be, with sufficient particularity to enable the opposite party to reply thereto.’

[22] It is impermissible for a party to plead one case and seek to advance another at the trial of the matter. Apart from this, no pertinent questions were put to the plaintiff by Mr *Gona* aimed at imputing that he was negligent, solely or to some degree, by failing to keep a proper lookout. This was important, for indeed it was held in *Nogude v Union and South-West Africa Insurance Co. Ltd*⁹ that ‘a proper look-out entails a continuous scanning of the road ahead, from side to side, for obstructions or potential obstructions. It means more than looking straight ahead - it includes an awareness of what is happening in one's immediate vicinity. He (the driver) should have a view of the whole road from side to side and in the case of a road passing through a built-up area, of the pavements on the side of the road as well.’¹⁰ Jansen JA further remarked that driving with “virtually blinkers on” would be inconsistent with the standard of the reasonable driver in the circumstances of this case.’¹¹

[23] The fact that Mr *Gona* made the aforementioned submissions regarding the plaintiff’s alleged contributory negligence after the plaintiff had left the witness stand militates against the defendant. The consequences of failure to cross-examine

⁸ *Minister of Safety and Security v Slabbert* [2009] ZASCA 163; [2010] 2 All SA 474 (SCA) (30 November 2009), para 11.

⁹ 1975(3) SA 685 (A).

¹⁰ *Ibid*, at 688A.

¹¹ At 688C.

the witness are that such failure is considered to be an indication that the party who had the opportunity to cross-examine did not wish to dispute the version or aspects of the version of the particular witness who was available for cross-examination during the course of the trial. This is a trite principle of the law.¹²

[24] In the absence of any evidence in rebuttal, upon a consideration of the evidence adduced before me, I have no reason to reject the version of the plaintiff regarding the fact the injuries he sustained were as the result of the sole negligence of the insured driver. What remains is the question of costs.

Costs

[25] Mr *Skoti* submitted that costs must be awarded on scale B referred to in Rule 67A of the Uniform Rules, and that costs of two counsel be allowed where employed. After the parties filed their written submissions, I invited Counsel to file further written submissions of the narrow issue of scale of costs, it having appeared in the plaintiff's written arguments that Mr *Skoti* sought costs on Scale B.

[26] In the further written submissions filed on behalf of the plaintiff on the question of costs, Mr *Skoti* placed emphasis on the dictum in *Mashavha v Enaex Africa (Pty) Ltd*¹³ where Wilson J remarked:

‘. . . When setting a scale under the rule, a court will generally be careful to say whether its decision has been influenced only by the nature or complexity of the matter, or also by the way the case was presented to it.’¹⁴

¹² *President of the Republic of South Africa and Others v South African rugby Football Union and Others* 2000 (1) SA 1 (CC), para 61.

¹³ 2025 (1) SA 466 (GJ).

¹⁴ *Id*, para 14.

In that same case, the learned Judge further held that the default position set under the rule is that, in the absence of contrary indication, counsel's costs will be recovered on scale "A, unless the application of a higher scale has been justified by careful reference to clearly identified features of the case that mark it out as unusually complex, important or valuable. The learned Judge went on to state that run-of-the-mill cases, which must be the vast majority of cases in the High Court, should not attract an order on the B or C scales.¹⁵

[27] Mr *Skoti* made a comparative analysis of the present case and the matter of *Sigcau v Road Accident Fund*¹⁶ in which this Court awarded Scale C upon a consideration of the inherent difficulties in that matter which included the failure of the police in their duty of the investigation of the scene of the accident and the collation of the record of information relevant to the accident.¹⁷ He submitted that even though those difficulties marked the case unusually complex, in both matters, the plaintiffs were avoiding a head-on collision and both cases involved a determination being made on the reasonableness of the plaintiff's action in an emergency situation.

[28] Emphasis was further placed by Mr *Skoti* on the nature of the claims and the manner in which the cases were presented in both cases. On this score, he highlighted the fact that in both the present matter and in *Sigcau*, the court dealt with the merits of the claim in which the Fund raised a bare denial of the allegations made by the plaintiff and still led no evidence in rebuttal of the version of the plaintiff.

[29] Mr *Skoti* submitted that in the present of the present case, while the issues before court were not complicated, the plaintiff 'stood to create a picture of the accident himself for the court and prove all the elements of delict, and the case was

¹⁵ Id, para 16.

¹⁶ Unreported judgment of *Sigcau v Road Accident Fund* (1779/2024) [2025] ZAECELLC 20 (2 September 2025).

¹⁷ *Sigcau*, para 61.

determined on the bases of merits and evidence of a single witness.’ He further submitted that the hearing lasted for just over an hour and that the matter was competently and ethically pursued by both practitioners concerned. In the defendant’s further written submissions, Mr *Gona* took the view that costs ought to be recoverable on Scale A.

[30] Apart from the general rule that costs follow the result, the court exercises its discretion on costs in accordance with what is fair between the parties. The court, in terms of Rule 67A has the powers to exercise control over the maximum rate at which counsel’s fees can be recovered under such an award.¹⁸ Mr *Gona* did not substantiate his submission that costs must be recoverable on Scale A.

[31] I agree with Mr *Skoti*’s submissions that the present matter is not complex. With that said, I am persuaded that there is merit in Mr *Skoti*’s submissions when regard is had to the manner in which the plaintiff presented his case, in contrast to the defendant who, as it happens in most of the cases that are heard in this Court, adduced no evidence to controvert it. For this reason, costs on Scale B are warranted.

[32] As regards costs of two counsel where so employed, I presume that this submission was erroneously made by Mr *Skoti* since it only appeared in the plaintiff’s first written submissions. The matter was first set down for trial on 10 November 2025. On that occasion, Mr *Skoti* appeared alone for the plaintiff. The test regarding costs consequent upon the employment of two counsel is trite – it is

¹⁸ *Mashavha*, footnote 12, *supra*, para 5.

whether the employment of two counsel was a wise and reasonable precaution on the part of the litigant.¹⁹

[33] In making an assessment whether two counsel were warranted, the court has regard the nature of the dispute between the parties, the length of the hearing, the importance and complexity of questions of law involved.²⁰ Furthermore, Mr *Skoti* acknowledged that while there are features of the present case which justified a higher scale of costs, it was not a complicated one, and it was devoid of the inherent difficulties that beset the *Sigcau* matter where services of two counsel were engaged. He further acknowledged that the hearing of the present matter lasted for just over an hour. For these reasons, it cannot simultaneously be said that the employment of two counsel in this case was a wise and reasonable precaution on the part of the plaintiff.

[34] In the result, I make the following order:

1. The defendant is held liable for 100% of the plaintiff's damages as may be proven or agreed, resulting from the motor vehicle accident that occurred on 25 November 2023 at or near Scenery Park Road, East London.
2. The determination of the quantum of damages shall stand over for determination on a later date.
3. The defendant shall pay the plaintiff's costs on Scale B referred to in Uniform Rule 67A, and such costs shall include costs of Counsel.

¹⁹ *De Klerk v Steven-Lee Properties* (297/12) [2013] ZASCA 54 (04 April 2013), at paragraph 21; *Long Beach Homeowners Association v MEC for Economic Development, Environmental Affairs and Tourism (Eastern Cape) & Others*, unreported Full Bench Appeal judgment per Pickering J in case number CA 316/2017, Eastern Cape Division, Grahamstown, delivered on 29 March 2019, at paragraph 48.

²⁰ *Motaung v Mukubela and Another*, NNO 1975 (1) 618 (O) at 631.

L. RUSI
JUDGE OF THE HIGH COURT

Appearances:

For the plaintiff : *Adv. D Skoti*

Instructed by : MM Tshozi INC., East London

For the defendant : *Mr S Gona*
The Office of the State Attorney, East London

Date heard : 24 November 2025

Date delivered : 17 February 2026