

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, THOHOYANDOU

CASE NO: HCA14/2024

(1)	REPORTABLE: YES /NO
(2)	OF INTEREST TO THE JUDGES: YES /NO
(3)	REVISED
DATE: 27/02/2026	
SIGNATURE: [Redacted]	

THABELO SANDRA KONE
And
ROAD ACCIDENT FUND

APPELLANT
RESPONDENT

JUDGMENT

AML PHATUDI J

[1] The appellant instituted an action against the respondent for damages she alleged to have sustained arising from the motor vehicle accident that occurred on 20 April 2017. The trial proceeded before Mdhluli AJ who, on 25 October 2017, dismissed the claim with cost (trial court). The appellant's dissatisfaction with the judgment and order of the trial court prompted her to

pursue the appeal proceedings. The appellant's appeal to this court, is with leave of the Supreme Court of Appeal, which granted condonation; leave to appeal before the Full Court of this division, with costs ordered by the trial court, being set aside; and placed the costs of the application for leave to appeal and the trial court in abeyance for determination by this appeal court.

[3] On the hearing of this appeal, this court outright granted the appellant, condonation for the late filing and prosecution of this appeal.

[4] The factual background that brought the appellant's claim this far, is that on 20 April 2017, the appellant was a driver of a motor vehicle that got involved in an accident that was caused by an unidentified motor vehicle. The appellant tendered evidence, from which the trial court found that her evidence was replete with version inconsistencies. The trial court identified the following versions. The first version extracted from the accident report is that the appellant, unprompted by another vehicle, lost control of her vehicle and crashed into the market at the Tshilidzini Hospital's gate. The second, extracted from section 19(f) affidavit, is that another vehicle was coming from behind, in a high speed and wanted to overtake her. The appellant made another statement to the police that 'the truck overtook her on the outer lane, and it then backed to the fast lane in front of her.'

[5] The appellant's oral testimony is that there was a truck behind her flicking its lights at her from her rear view. The truck overtook her by entering the fast lane of the oncoming traffic and came back to the fast lane in front of her. She evaded collision by swerving into a curb, causing her vehicle to capsize. The trial court found that these versions are contradictory to each other. However, the court observed that the respondent's counsel elicited a concession that the truck was mentioned and thus, the existence of another vehicle.

[6] The issue that was before the trial court was whether the appellant was the sole cause of the accident. Putting it differently, the court had to determine if there was no other vehicle that was driven negligently, leading to the accident rendering the respondent liable.

[7] The appellant argued that there was no consideration of any contradicting evidence (oral or written). Again, the Trial Court failed to give appropriate weight to the oral evidence of the appellant in addition to their Section 19(f) affidavit. In any event, the appellant's counsel opines that the accident report concerned does not negate the possibility of a third party's involvement. Counsel opines further that the appellant's evidence remained unanswered and uncontested, resulting in her claim succeeding.

[8] Counsel for the respondent opines in rebuttal, that multiple versions brought to the fore by the appellant, with emphasis on the accident report, omitted to mention the existence of a third party. Counsel further opines that the failure on the part of the appellant in calling the person who was a passenger in her vehicle, Tshisikule, demonstrates that there was no other vehicle that could be said to have negligently attributed thereto.

[9] Likewise, she did not call Constable Nembilwi for further clarification of anything in the accident report. The Accident Report was not the sole reason for the trial court's conclusions and because it was availed to the court bundle through discovery, it was validly admitted. The report was relevant and intended to substantiate the incident occurred as alleged.

[10] She opined further that, even if it was hearsay, it would have been an exception under the common law as the mere production of a public document is sufficient for its admission. The appellant did not take steps to correct the

error she complained of. Constable Nembilwi would have had no reason to obfuscate the evidence. Thus, the horse had bolted. In any case, as counsel opined, that the respondent had not shown herself to be a credible witness as she had at one stage mentioned no vehicle, then a vehicle, then a truck. Lastly, the onus of proof upon the appellant as she is the plaintiff in this matter, had not been discharged. No *prima facie* case was made out; it was correctly dismissed.

[11] The Trial Court rightly characterised the issue as one of whether the respondent ought to be held liable for the damages following the accident to accord with the provisions of section 17(1)(b) of the Road Accident Fund Act 19 of 2005.¹ Given the facts, it was a natural antecedent step to first determine the question of whether there was a third party as that was placed in dispute at the outset.² Where a fact is disputed in action proceedings, or, where the claim is not for a debt or liquidated demand, the matter must proceed to trial and leading of evidence is inevitable.³ The burden of proof is upon the Plaintiff to prove on a balance of probabilities that there was indeed a third party

¹ 17. (1) The Fund or an agent shall- (a) subject to this Act, in the case of a claim for compensation under this section arising from the driving of a motor vehicle where the identity of the owner or the driver thereof has been established; (b) subject to any regulation made under section 26, in the case of a claim for compensation under this section arising from the driving of a motor vehicle where the identity of neither the owner nor the driver thereof has been established, be obliged to compensate any person (the third party) for any loss or damage which the third party has suffered as a result of any bodily injury to himself or herself or the death of or any bodily injury to any other person, caused by or arising from the driving of a motor vehicle by any person at any place within the Republic, if the injury or death is due to the negligence or other wrongful act of the driver or of the owner of the motor vehicle or of his or her employee in the performance of the employee's duties as referred to in subsection (4)(c) quarterly, in order to counter the effect of inflation. employee: Provided that the obligation of the Fund to compensate a third party for non-pecuniary loss shall be limited to compensation for a serious injury as contemplated in subsection (1A) and shall be paid by way of a lump sum.

² At paragraphs 7 to 22 of the Judgment Mdhuli AJ goes about the task of determining if there was a third party involved in the MVA.

³ *Peter Guy Parker v Quantum Leap Investments 386 (Pty) Ltd and Another* ZAWCHC 74 (6 March 2024) at para 19. *Mlaleli Sibanda v RAF ZAGJ* (38498/2017) [24 March 2023]

involved in order for the Road Accident Fund's involvement to be legally sound. This is in keeping with the maxim: *Actori incumbit onus probatio*.⁴

[12] It was, and still is, the appellant's duty to demonstrate the probability of, firstly, that a third party existed, secondly, that it was driven negligently and such negligence caused the accident.

[13] I find it apposite to first state the requirements for pleadings. The Uniform Rules of Court⁵ at Rule 18(4) provide that particulars of claim must contain: "a clear and concise statement of the material facts upon which the plaintiff relies for his claim" and must "set forth the grounds... with sufficient particularity and clarity to enable the opposite party to reply thereto."

[14] Naturally, the purpose of pleadings has been much discussed as it is foundational. A helpful example is drawn from *South African Transport and Allied Workers Union and Another v Garvas and Others*⁶ where it was said that pleadings are essentially a notification that ought to give the opponent a chance to appreciate the case they must meet. How can the court here test whether the sufficient particularity rule has been met? By assessing whether the particulars disclosed enable the opposing party to understand and respond to the case. Pleadings must contain enough particulars to define the corridor of issues to be traversed in the case.⁷

⁴ "*Actori incumbit onus probandi* is a Latin legal maxim meaning **"the burden of proof lies on the plaintiff"** See- *Muller v Snyman* (MCA 05/2023) [2024] ZALMPHC 24 (15 March 2024) at para 14.

⁵ Rules Regulating the Conduct of the Proceedings of the Provincial and Local Divisions of The High Court of South Africa (Updated to 30 January 2026).

⁶ *South African Transport and Allied Workers Union and Another v Garvas and Others* (CCT 112/11) [2012] ZACC 13 at para 114: "Holding parties to pleadings is not pedantry. It is an integral part of the principle of legal certainty, which is an element of the rule of law, one of the values on which our Constitution is founded. Every party contemplating a constitutional challenge should know the requirements it needs to satisfy and every other party likely to be affected by the relief sought must know precisely the case it is expected to meet."

⁷ Van Loggerenberg D, Dicker L and Malan J "Taking exception in the High Court" 2006 *De Rebus* 33. The point is made that pleadings must simply plead facts and not conclusions of law (at c-e).

[15] The appellant stated succinctly in her Particulars of Claim that she, on 20 April 2017, was driving on the R524 (westbound) with a passenger in tow near Tshilidzini. She alleged that due to the negligent driving of the other driver, whose description was (and still is) unknown to her, an accident occurred. Patently, there is a third party pleaded from the outset. The trial court cannot be correct to find that the third party was a fabrication or a later addition. It may well be that it may not have been mentioned concisely in the Particulars of Claim.

[16] It must be borne in mind that the rule requires the pleading of material facts, and not evidence. This distinction is of high importance. It has always been the *facta probanda*⁸ versus *facta probantia*⁹ distinction. The pleadings set out what happened¹⁰ while the evidence at trial tells further detail on how such transpired with substantiation¹¹ by way of documentary proof when dictated by necessity.

[17] The pleadings stipulates that the appellant had an accident because of the negligent driving of a vehicle by an unknown third party. The trial evidence provided the evidentiary details such as the actual negligent conduct of the third-party vehicle in respect of the flashing of lights, aggressive overtaking via barrier line and cutting her off. Pleadings and proof were erroneously conflated, which created the impression of inconsistency. In any event, it is not conceivable that pleadings anticipate every possible way in which evidence may be led to prove a particular fact at trial.

[18] This is how the record shows how the evidence was brought to the fore:

⁸ Facts in issue

⁹ Facts relevant to facts in issue

¹⁰ Fact in issue

¹¹ A fact relevant to a fact in issue

Mr MATUMBA: Can you explain how it occurred?

Ms KONE: So, I was driving on the fast lane at the speed of 60. There was a big heavy truck behind me flicking and hooting. [indistinct] when I tried to go to the slow lane, unfortunately, there was a car. Then the truck then overtook...”

[19] The trial court quoted from the appellant’s section 19 Affidavit stating that the appellant “forced off the road by an unknown vehicle which attempted overtaking on the barrier line. As a result, she lost control of the motor vehicle which collided with a hill.” The trial court further noted the version stipulated in the accident report, which contradicted the evidence led in court.

[20] On the face of it, it is demonstrable that the version at trial and the pleaded case in the Particulars of Claim are not reconcilable and substantially consistent. It may be said that at trial, the appellant elaborated further.

[21] The Accident Report is indeed generally accepted as hearsay evidence especially when tendered as proof of their contents. The respondent rightly says that such can be admissible under the common law as public documents compiled in the line of duty. Alternatively, discovery permits the admission of the report. Notwithstanding the tried law, the trial court, in my view, erred respectfully in not considering that the accident reports have limited evidentiary weight because (i) they are typically prepared by officers who did not witness the accident; they usually comprise of information provided by individuals at the scene; the Officer penning the Accident Report cannot report on what is not there- for example, a runaway truck could not be noted – if there was one – because it would have ostensibly carried on driving on the R524 westbound and the case law has restated that they cannot be preferred

over *viva voce* evidence by the claimants.¹² Accordingly, absent any serious disturbance to the version of the appellant, her version ought to have been accepted.

[22] It must be noted, on the one hand, that the trial court did not err in creating a negative inference that the appellant sought to obfuscate the evidence by not calling Tshisikule. Ostensibly, the trial court ought to have noted that there is no general legal obligation to call any witness. There is only a requirement for one to prove one's case on the balance of probabilities. The "how" is not dictated, save for the rules of procedure and evidence. Parties enjoy autonomy in presenting their respective cases. Notwithstanding the correctness of the inference, presiding officers are meant to elucidate the substrata of their reasoning for the parties and the public at large. For one, an adverse inference may be drawn when:¹³ (i) The witness is reasonably available to the party; (ii) the witness has personal knowledge of the material facts; (iii) the witness would naturally be called if the party's version were true and that (iv) there is no reasonable explanation for not calling them.

¹² See: *S v Mafaladiso en Andere* 2003 (1) SACR 583 (SCA) at 593F-594G makes it clear that not every error or inconsistency makes a witness inconsistency. The aim is not to prove which version is correct, but the Court should consider that a witness could err, but the Judge ought to weigh previous statements, *viva voce* evidence and other evidence to decide on credibility despite shortcomings, thus, not just the report should be considered and considered above the *viva voce* evidence merely for slight shortcomings.

¹³ PJ Schwikkard (et. al), *Principles of Evidence*, Second Edition, (2002) at page 513:

"A party's failure to call available witnesses may in exceptional circumstances lead to an adverse inference being drawn from such failure against the party concerned. The extent to which such an inference can be drawn will depend on the circumstances of the case. The Court should, inter alia, consider the following: Was the party concerned perhaps under erroneous but bona fide impression that he had proved his case and that there was therefore no need to have called the witness? Is there a possibility that the party concerned believed that the potential witness was biased, hostile or unreliable?" See also: *Shishonga v Minister of Justice and Constitutional Development and Another* 2007 (4) SA 135 (LC) at paragraph 112, which provides that:

"[112] The failure of a party to call a witness is excusable in certain circumstances, such as when the opposition fails to make out a prima facie case. But an adverse inference must be drawn if a party fails to testify or produce evidence of a witness who is available and able to elucidate the facts, as this failure leads naturally to the inference that he fears that such evidence will expose facts unfavourable to him, or even damage his case. That inference is strengthened if the witnesses have a public duty to testify."

[23] Tshisikule is said to be a friend of the appellant who was with in the vehicle at the time of the accident (possessed personal knowledge of the material facts) and would naturally be corroborative. This is not an error of conclusion but of implied reasoning. The Constitutional Court bemoaned consistently the practice of litigants directly approaching it as it would require the lower courts' views, which views ought to be clear to enable the subsequent court to bear on the matter appropriately.

[24] The approach regarding Constable Nembilwi is different. The officer did not directly witness the accident but could assist the court in so far as what information could be gathered at the scene. It ought not to cause an adverse inference that the appellant did not call upon such a witness. This was, with respect, overemphasised. Moreover, the respondent, with the evidence of Constable Nembilwi, could not be said to have substantially disturbed the version of the appellant. The officer's testimony would have merely confirmed what was observed at the scene post-accident – a single capsized vehicle. It was a material error to afford no weight to this fact. The absence of the motor vehicle or truck at the time of the officer's attendance, does not negate its prior involvement in causing the accident.

[25] I, again, am of the view that the trial court erred in conflating inconsistencies relating to minutiae, notwithstanding the trial court's judicial notice taken of the road – a truck versus a vehicle, an unknown driver versus an unknown vehicle, lane positioning, colliding with the hill versus the curbs, with a lack of credibility. These can be said to be semantics. Material to pleadings is the essentialia, namely, the date the accident, the location of the accident, the presence of a third party, negligent conduct of the said third

party, unknown nature of the third party, and damages resulting from said conduct.

[26] The trial court accepted the understanding of a lay person in relation to the description of what the vehicle collided with, that is the curb/island/hill debate that ensued during trial. The same reasoning ought to have applied considering the existence of the third-party vis-a-vis the Particulars of Claim taken together with the appellant's oral evidence, make this contextually apparent. The trial court, respectfully, ought to have been constrained to the material facts in determining credibility. Put differently, once the appellant pleaded the *essentialia* (driving on a public road, and an accident ensuing due to unknown vehicle) it was not then open to question matters such as if she remembered the exact lane unless improbably in its entirety. That would be peripheral detail to colour an already clear *prima facie* case.

[27] A further error was in the failure to consider the respondent's evidential burden. In civil proceedings, the 'evidential onus shifts to the Defendant at the close of the Plaintiff's case to rebut what would at that stage be a *prima facie* case.'¹⁴ The respondent did not bring more to the trial court other than the *ex post facto* recollection of the state of the accident scene through Constable Nembilwi. The Accident Report is of a similar weight as it is essentially the Constable's written recount of the same information he would have confirmed gathering at the scene. Without information directly contradicting that narrative, it would be the case that the respondent did not successfully rebut the appellant's case.

¹⁴ DM Matlala "Winning a Civil Case Without Giving Any Kind of Evidence Whatsoever?- *Jordaan v Bloemfontein Transitional Local Authority* [2004] 1 All SA 496 (SCA), 2004 3 SA 371 (SCA)" (2005)

[28] Having said that', the trial court erred in over-relying on annexure A, the Accident Report, to the exclusion of the appellant's oral evidence, treating peripheral inconsistencies¹⁵ as material credibility failures. The trial court further erred in failing to recognise that the respondent did not discharge its evidential burden to rebut the appellant's evidence at the close of her case.

[29] I then, find it prudent to determine if the appellant managed to discharge her onus of proving any negligence on the part of the driver of the vehicle and or truck. It is a trite principle of evidence that in civil matters, the plaintiff bears the onus of proving his or her case on a balance of probabilities. Putting it differently, the burden of proof is discharged as a matter of probability. The standard is often expressed as requiring proof on a "balance of probabilities," but that should not be understood as requiring that the probabilities should do no more than favour one party in preference to the other. What is required is that the probability in the case be such that, on a balance of preponderance, it is probable that the situation existed.

[30] The court in *Miller v Minister of Pensions* [1947] 2 All ER 372 found that the case must be 'decided according to the preponderance of probability. If at the end of the case the evidence turns the scale one way or the other, the tribunal must decide accordingly, but if the evidence is so evenly balanced that the tribunal is unable to come to a determined conclusion one way or the other, then the plaintiff must be given the benefit of the doubt. This means that the case must be decided in favour of the plaintiff unless the evidence against him/her reaches the same degree of cogency as is required to discharge a burden in a civil case.'¹⁶ That degree is well settled. It must carry a reasonable

¹⁵ A truck versus a vehicle, an unknown driver versus an unknown vehicle, lane positioning, colliding with the hill versus the curbs

¹⁶ [374A-B]

degree of probability, but not so high as is required in a criminal case. If the evidence is such that the tribunal can say: "We think it more probable than not," the burden is discharged, but, if the probabilities are equal, it is not.'

[31] In *Wilson v RAF*,¹⁷ Kganyago J, faced with a case like the present, stated that the causal link that is required is essentially the same causal link that is required for *Aquilian* liability. There can be no question of liability if it is not proven that the wrongdoer caused the damage of the person suffering the harm. Whether an act can be identified as a cause, depends on a conclusion drawn from the available facts and relevant probabilities. The important question is how one should determine a causal nexus, namely whether one fact follows from another. (See *Grove v The Road Accident Fund*)."

[32] In other words, Kganyago J addressed the issue like the one here, namely, how a Plaintiff in the appellant's shoes would go about proving the claim. The appellant must prove (i) the existence of third-party vehicle; (ii) the negligent driving by that vehicle; (iii) that such negligence caused the accident and injuries

[33] The facts in *Wilson*, as summarised by Kganyago J, is that the plaintiff took the witness stand and testified under oath that he (the plaintiff), on 21 December 2017, was involved in a motor vehicle accident whilst driving from Steers. As he was driving, he stopped at the four ways stop at Agatha. The road he was using had two lanes on his side and two lanes from the opposite direction. He was driving in the middle lane. About 100 meters after passing the four ways stop, he saw through the mirror of his vehicle a vehicle from behind flickering its head lights on him. He tried to swerve to the extreme

¹⁷ *Wilson v Road Accident Fund* (3640/2018) [2024] ZALMPPHC 12 (12 February 2024).

left lane to give the vehicle behind way to pass. However, the vehicle behind him also swerved to the extreme left lane. The plaintiff swerved his vehicle to the right into the lane of oncoming cars, lost control of it and collided with concrete dustbin which was on the right side of the road.

[34] The plaintiff was cross-examined and it was put to him that in his particulars of claim he had not pleaded that he was blinded by the lights of the vehicle behind him, and his response was that he had mentioned that in his police statement and told his attorney. When asked how the lights of the vehicle from behind had blinded him, his response was that they were so bright to the extent that it reflected inside his vehicle. He stated that the accident occurred around 24h00. He stated that he did not know where the vehicle behind him came from, but it just emerged from a curve and when it was about 10 to 15 meters, it started flickering lights to him. The plaintiff stated that he was travelling at a speed of less than 60 km per hour. He further stated that the vehicle behind him came at an excessive speed and he did not know whether it had stopped at the four-way stop, and that made him (plaintiff) end in the lane of oncoming cars as he was trying to avoid it. The plaintiff conceded that after the vehicle from behind him had flickered its lights, he could still see the road ahead of him.

[35] In Wilson, the trial court found no nexus between the flickering of lights with the collision, resulting in the dismissal of the case. In this case, the appellant pleaded in her particulars of claim, the existence of the third party (the unknown vehicle). She clarified the existence of the vehicle in her oral evidence notwithstanding no record of any vehicle in the Accident Report. I indicated earlier that the accident report should not be preferred over her

sworn testimony on affidavit¹⁸ and in trial, particularly where the respondent adduced no direct contradictory evidence. The appellant's testimony, properly construed, supports her allegations of negligence on the part of the driver of the vehicle (truck) in that it flashed lights and overtook recklessly before it returned to her lane in front of her.

[36] The conduct of the driver of the insured vehicle fell below the standard of a reasonable driver. The causation on a factual level (*conditio-sine-qua non*) is thus established. Had it not been for the truck driver's conduct, the appellant would not have swerve to the curbs. It was, in my view, eminently foreseeable that the conduct of the insured driver as that of the respondent, a reasonable person in the appellant, would result in evasive action and possibly lose control as opposed to a lawful overtaking as is in Wilson's case.

[37] The then Appellate Division in *South African Railways v Symington*¹⁹ stated that 'where a driver is placed in a position of sudden emergency by another's negligent driving, and takes reasonable evasive action that results in harm, the original negligent driver remains liable even if the evasive action itself contributed to the accident. The chain of causation is not broken by the Plaintiff's reasonable attempt to avoid greater harm.' The appellant's position is that she faced the 'sudden emergency' of a truck cutting her off from the oncoming lane of travel to her front with insufficient stopping distance. Her choice to swerve, rather than brake, was reasonable given the risk of going under the truck. The truck driver's negligence remained the legal cause of the accident.

¹⁸ Section 19 Affidavit handed in as exhibit C

¹⁹ *South African Railways v Symington* 1935 AD 37 at 44 & 45; See also *Road Accident Fund v Grobler* 2007 (6) SA 230 SCA at paras 9 – 12.

[38] The respondent adduced no evidence to rebut the appellant's version of the truck or vehicle's existence and the insured driver's conduct; suggest the truck was driving lawfully or reasonably; establish that the appellant's reaction was unreasonable; or, that the accident was caused solely by the appellant.

[39] The accident report, which the trial court relied on in concluding that there was no liability on the part of the respondent, does not definitively exclude the probability of the appellant's version. The accident report establishes that at the time of the attendance to the scene; there was a single vehicle and presumably the usual aftermath of the narrative of the accident by the appellant. Emphasising the principle, once the Plaintiff testifies, the evidential onus shifts to the defendant to rebut. Their failure to do so means the version of the Plaintiff stands uncontradicted²⁰. In the result, the appellant stands to succeed with her claim.

[40] Kampepe J²¹ states that determination of costs is no longer a usual recitation- "costs follow the event". She indicates that "it is not correct to begin the enquiry by a characterisation of the parties", for "the starting point should be the nature of the issues".²²

[41] The determination of costs occasioned by the appellant's failure to file and prosecute this appeal on time, is the starting point. Condonation application before this appeal court has been granted, though unopposed, because of the prospects of success she had on appeal. The conduct giving rise to the condonation application falls squarely on the appellant. Such conduct warrants the appellant being mulcted with costs of the said application- on scale B.

²⁰ *Jordaan v Bloemfontein Transitional Local Authority* [2004] 1 All SA 496 (SCA), 2004 3 SA 371 (SCA)

²¹ *Mphephu-Ramabulana and Another v Mphephu and Others* [2021]

²² Para [81]

[42] When granting leave to appeal, the Supreme Court of Appeal the 'costs of the application for leave to appeal in this court and the court a quo are costs in the appeal'. This simply means that the said costs are costs in the cause. Costs in the cause means that the costs of those proceedings, including interlocutor, are to be awarded according to the final award of costs. A party that succeeds and is awarded costs, such a party is entitled to costs of litigation including interlocutory costs as part of his/her costs of the action or motion.

[43] The appellant ultimately succeeds, and she is entitled to the costs of her application for leave to appeal in the Supreme Court of Appeal, costs of the trial court and of this appeal, save for the costs occasioned by her application for condonation of the late filing and prosecution of this appeal.

[44] In the result, I find the following order appropriate.

ORDER

44.1 Condonation for the late filing and prosecution of this appeal is granted. The appellant is to pay the costs occasioned by the application for condonation.

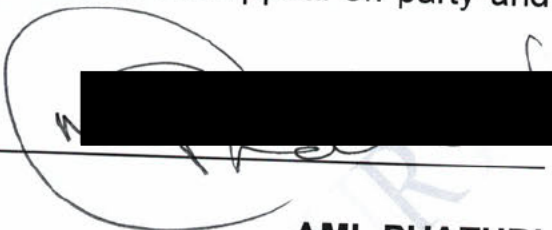
44.2 The appeal is upheld.

44.3 The order of Mdhluli AJ handed down on 25 October 2023 is set aside and replaced with the following:

"1. The Defendant is ordered to compensate, 100% of the Plaintiff's proven, or agreed damages arising from the motor vehicle accident in which the plaintiff was involved on 20 April 2017 on the R524 public road near Tshilidzini Hospital.

2.The Defendant is ordered to pay the costs of suit on party and party -Scale B.”

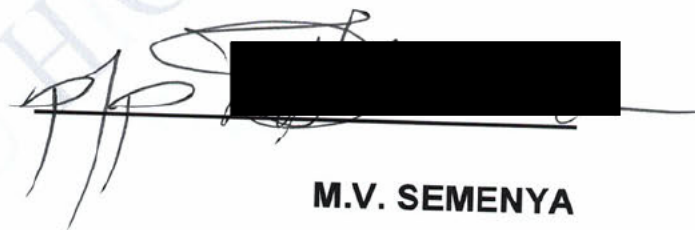
44.4 The respondent is ordered to pay the costs of this appeal on party and party- Scale B.


AML PHATUDI

JUDGE OF THE HIGH COURT

LIMPOPO DIVISION

I agree


M.V. SEMENYA

DEPUTY JUDGE PRESIDENT

LIMPOPO DIVISION

I agree


T.C. TSHIDADA

JUDGE OF THE HIGH COURT

LIMPOPO DIVISION

APPEARANCES

FOR THE APPELLANT : T.E. Matumba

INSTRUCTED BY : Tambani Matumba Attorneys

FOR THE RESPONDENT: Z. Moyo

INSTRUCTED BY : State Attorneys- Thohoyandou

DATE OF HEARING : 08 August 2025

DATE OF JUDGEMENT : February 2026

JUDGEMENT DATE : Judgment handed down electronically by circulation to the parties' legal representatives by email and publication through SAFLII. The date deemed handed down is 27 February 2026.