



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION - GQEBERHA)**

Case No: 2845/2024

In the matter between:

PETRUS JOHANNES DIRKER

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

MOLONY AJ:

Introduction

- [1] The plaintiff in this matter issued summons on 30 July 2024, claiming damages stemming from an accident which occurred on 14 October 2020 at approximately 16h30 in the afternoon, on a gravel road between Humansdorp and Oyster Bay. The collision involved a large truck (a horse and trailer, driven by an unknown driver – ‘the first motor vehicle’) and a Toyota Hilux Bakkie (driven by the plaintiff – ‘the second motor vehicle’).

- [2] It was pleaded that the first motor vehicle was the sole cause of the collision.
- [3] The particulars of claim state that as a result of the collision, the plaintiff sustained severe bodily injuries, those being:
- (a) Piriformis syndrome.
 - (b) Chronic Thoracic sprain.
 - (c) Cervicocranial syndrome.
 - (d) Right hip injury.
 - (e) Right knee injury.
- [4] The following damages have been claimed:
- (a) Estimated past medical and hospital expenses – R 300 000.00.
 - (b) Estimated future medical and hospital expenses – R 500 000.00.
 - (c) Estimated past and future loss of earnings – R 3 000 000.00.
- Total: R 3 800 000.00.**
- [5] The defendant's plea (filed on 4 October 2024) amounted to a bare denial, based upon a lack of knowledge of the relevant events.
- [6] It was not in dispute that this court has jurisdiction to decide this matter.
- [7] On 30 April 2025 an order was taken, by agreement, that the issues pleaded by the plaintiff in paragraphs 1, 3, 4.1, 6 and 16 of the particulars of claim (as read with the corresponding paragraphs of the defendant's amended plea¹) be separated in terms of rule 33(4) of the Uniform Rules. The remaining issues were stayed until such time as the separated issues had been disposed of.

¹ There was no 'amended' plea found in the court file, nor did the parties suggest one existed.

- [8] Paragraph 1 of the particulars of claim relates to the plaintiff's identifying details including name, date of birth, identity number and address. Paragraph 3 relates to the details of the collision. Paragraph 4.1 provides the available identifying details of the two motor vehicles. Paragraph 6 lists the grounds of negligence in regard to the driver of the first motor vehicle.
- [9] The issue of causation appears to be dealt with in paragraph 7 of the particulars of claim, which was not one of the paragraphs separated for determination.
- [10] The matter was accordingly heard, on the separated issues, on 19 February 2026.

The Evidence

- [11] There were three document bundles handed in on behalf of the plaintiff, which were marked exhibits 'A' (initial lodgment documents), 'B' (re-submission documents) and 'C' (merits bundle) respectively.
- [12] The plaintiff first led the evidence of his attorney of record, Ms Niemand, who testified in regard to the lodgment of the claim. Her evidence was necessary as the defendant, according to Ms Naidoo, had no record of the claim being registered. Ms Naidoo placed on record that she had sent an email requesting the document bundle, but later (having searched her emails), placed on record that she had discovered a bundle of lodgment documents sent by the plaintiff's attorney during 2025.
- [13] Ms Niemand confirmed that the necessary documentation (including a copy of the 'old' and 'new' RAF1 forms, as required at the time) were lodged with the defendant on 3 October 2023.²

² See exhibit 'A', pp. 1 to 58.

- [14] In a letter dated 29 November 2023, the defendant objected to the validity of the claim due to certain missing documentation, and returned the lodgment documents to the plaintiff's attorneys of record. Somewhat confusingly, the letter also stated that: *'We further advise that our pre-assessment has revealed that the claim will prescribe on Thursday, October 13, 2022'*.
- [15] One of the items listed as missing in the above-mentioned letter was the official accident report from the South African Police Service. Ms Niemand testified that such a report did exist, but they had been struggling to get it from the police. She confirmed that she had sent the relevant officer a subpoena to appear in court on 19 February 2026, to explain the situation. The relevant police officer did not arrive.
- [16] Ms Niemand re-submitted the plaintiff's documents on 12 April 2024. The response from the defendant was another letter, dated 16 July 2024, once again objecting to the validity of the claim on similar grounds to those contained in the defendant's letter of 29 November 2023. The second bundle of lodgment documents were therefore returned to the plaintiff's attorneys of record.
- [17] According to Ms Niemand, there had been substantial compliance with the requirements for lodging a claim. This aspect was not placed in dispute when Ms Niemand was cross-examined by Ms Naidoo.
- [18] The plaintiff was the next witness to testify.
- [19] The defendant, pursuant to a rule 37 minute dated 24 April 2025,³ declined to admit the plaintiff's personal information or *locus standi*. The defendant disputed the collision, the cause of the collision, the relevant grounds of negligence, as well as whether or not the plaintiff had complied with the requirements of section 24 of the Road Accident

³ The minute did not appear to have been signed by Ms Naidoo, although the correctness of the minute was not disputed when the matter was heard.

Fund Act (read with the relevant regulations) on lodging the claim and prosecuting this action.

[20] Despite the above, the defendant admitted that this court had jurisdiction to hear the matter.

[21] The plaintiff's evidence was to the following effect:

(a) He confirmed his name, identity number, gender, address, and *locus standi*.

(b) He confirmed the details of both vehicles and that the collision occurred on the relevant date and at the relevant time, on a gravel road between Humansdorp and Oyster Bay.

(c) On the day in question he had been travelling home to his farm and coming from the Humansdorp direction. He was driving on a section of the road which was well-known to be dangerous, and where the local farming community knew to drive slowly and carefully, and to be vigilant in regard to oncoming traffic. There were *inter alia* sinkholes in the road, which would cause vehicles to swerve, the road had corrugated sections, and the collision itself occurred as the plaintiff, who was travelling uphill at about 30 km per hour, came around a 90-degree bend in the road. He then saw the truck, which was approaching at high speed and travelling in the opposite direction to the plaintiff. The truck cut the corner and encroached on the plaintiff's side of the road. The plaintiff pulled as far to the left as he could, causing part of his vehicle to enter a furrow intended for storm water, and stopped. As the truck came past, the right rear part of the truck collided with the front right-hand side of the plaintiff's vehicle, causing significant damage. The truck itself had some damage to a toolbox under the trailer, mounted in front of the back wheels of the trailer. It came to a standstill approximately 70 meters from the back of the plaintiff's vehicle.

(d) The plaintiff himself, after the collision, took photographs of the vehicles and the damage caused, which formed part of exhibits 'A' and 'C'.

(e) One of the photographs was of the license disk of the truck, which was owned by Kimeshan's Trucking. The address of Kimeshan's Trucking was reflected on the license disk. The details relating to the reporting of the incident and the accident report number were also recorded on a piece of paper, which formed part of the same photograph.

Analysis

[22] The basis of the defendant's objections, according to the letters of objection, is found in Board Notice 271 of 2022, which amended the supporting documentation which was required to accompany all claim documentation when a claim was submitted. The import of the notice is, in essence, to require proof of a plaintiff's entire claim (including expert reports) to accompany claim documentation when lodged with the defendant

[23] The removal of the 'new RAF1' form in the re-submission documents (exhibit 'B') occurred in compliance with the order in the matter of *Legal Practitioners Indemnity Insurance Fund NPC and Others v Road Accident Fund and Others*,⁴ in which *inter alia*, the Board Notice was declared unlawful, reviewed and set aside. The view expressed in that judgment has also found favour in this division, and I align myself with that view.⁵

[24] There was, in my view and having considered the contents of both lodgment bundles, substantial compliance with requirements, and the

⁴ 2024 (4) SA 594 (GP) at para 55.

⁵ See *Mlamli v Johnstone NO and Another* 2024 (4) SA 611 (ECMk).

attempts to object and return documentation could not have been for any legitimate purpose.

[25] The fact that the defendant, despite having received extensive documentation in relation to the plaintiff's claim, pleaded a lack of knowledge, could only be intentionally obtuse, as the documentation provided was clearly sufficient for the defendant to investigate the claim.

[26] The defendant, additionally, despite the contents of the two letters sent to the plaintiff's attorneys of record, did not specifically plead that the claim was invalid for any particular reason, nor did the defendant plead that the claim had prescribed.

[27] In regard to the merits there is no reason to doubt the veracity of the evidence adduced on behalf of the plaintiff, which was consistent with the photographs and the rest of the lodgment documentation.

[28] The evidence adduced by the plaintiff self-evidently demonstrated, on a balance of probabilities, that the negligence on the part of the driver of the truck was the sole cause of the collision.

[29] The defendant's obtuse stance in this matter was, disappointingly, one which required the plaintiff to incur the cost of running a trial and adducing evidence when it was clearly not necessary. This stance also resulted in public funds, as well as court time and resources, being wasted. Such conduct is, in my view, worthy of a punitive costs order.

Order

[30] The following order is accordingly issued:

- (a) The defendant is held liable for 100% for the plaintiff's proven or agreed damages emanating from the accident that occurred on 14 October 2020.
- (b) The defendant shall pay the plaintiff's costs of suit, such costs to be on an attorney and client scale, which costs shall include the costs associated with the photographs adduced in evidence, the cost of the interpreter employed for 19 February 2026 and the cost of preparing exhibits 'A', 'B' and 'C' for trial.
- (c) The defendant shall pay interest on the costs of suit at the prescribed legal rate from 14 days after *allocator* to date of payment.

N MOLONY
ACTING JUDGE OF THE HIGH COURT

Appearances:

For the Plaintiff: Mr Frost
Instructed by: Meyer Inc. Attorneys
GQEBERHA

For the Defendant: Ms Naidoo
Instructed by: State Attorney
GQEBERHA

Heard on: 19 February 2026
Judgment delivered: 20 February 2026