



IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, EAST LONDON CIRCUIT COURT)

CASE NO: 411/2023

In the matter between:

UKHONA LALI

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

RUSI J

[1] The plaintiff claimed damages against the defendant (the Fund) in the amount of R12 727 117.30 under various heads of damages, for the bodily injuries she sustained as a result of a motor vehicle accident that occurred on 23 November 2020 at or near Voortrekker Road in East London. The claim is resisted by the Fund.

The pleadings

[2] The nub of the plaintiff's claim is that the aforementioned accident was caused by the sole negligence of the unknown driver of a Toyota Avanza whose registration letters and numbers are unknown as the driver fled the scene of the collision.

[3] The plaintiff pleaded that the said unknown driver was negligent in that: he drove his vehicle onto the incorrect side of the road; he failed to have regard to the vehicles approaching from the opposite direction, specifically her vehicle; he drove onto the plaintiff's line of travel at a time when it was dangerous and inopportune to do so; he drove at an excessive speed; he failed to keep a proper look out and to apply the brakes of his motor vehicle timeously or at all; and he failed to avoid the collision when by the exercise of reasonable care and skill he could and should have done so.

[4] In its plea dated 29 October 2024, the defendant denied the allegations made by the plaintiff regarding how the accident occurred and pleaded that the accident was caused by the plaintiff's sole negligence on several grounds including the fact that she drove her vehicle at an excessively high speed; she failed to keep her vehicle under proper control; she failed to keep a proper lookout; she failed to apply brakes timeously or at all; and she failed to avoid the accident when by the exercise of reasonable care and skill she could and should have done so.

The trial

[5] The trial of the matter proceeded only on the merits of the claim pursuant to the application of the parties for the separation of the merits from the quantum of damages.

The issues

[6] The issue for this Court's determination as formulated by the parties in their pre-trial minute and other case flow management instruments is whether there was a collision, its cause, and the question of negligence.

The incidence of the onus

[7] The plaintiff bore the onus to prove the issues as formulated by the parties. At the trial of the case, she was the only witness in support of her claim. She also produced evidence of the accident report, and the affidavit dated 20 June 2022 in which she stated the facts relating to the accident.

The plaintiff's case

[8] The plaintiff testified that she was traveling on Voortrekker Road around 07h00 on 23 November 2020 with a nine-year-old child. The road had two opposite lanes which were divided by a barrier line. She was driving to the direction of East London. Suddenly, a blue Toyota Avanza that was driven at high speed from the opposite direction overtook a white sedan vehicle in front of it and encroached on her path of travel. When she saw the encroaching Avanza, it was 5 metres away from her. She was traveling at 55-60 km/h as she had been traversing a slight incline. In order to avoid the collision with the encroaching vehicle, she swerved to her left and lost control of her vehicle which collided with the side rail and rolled over. When she lost control of her vehicle, she had completed the evasive manoeuvre. As a result of the accident, she sustained injuries to her spine, neck and ribs. An ambulance conveyed her from the scene of the accident to Life Beacon Bay Hospital. The plaintiff contended that had she not swerved to the left, the encroaching vehicle would have collided with her head-on.

[9] This Court was referred to the sketch plan attached to the accident report which purports to have been completed on 23 November 2020, at 10h00, by a Traffic Officer named N. Tom of the Buffalo City Metro Municipal Traffic Police Office. The sketch depicts a two-way road. The plaintiff's vehicle, marked A on the sketch, and the front part of the encroaching vehicle marked B, are depicted on the left lane. The vehicle that the encroaching vehicle had been overtaking is depicted on the opposite lane and marked C.

[10] Apart from what the plaintiff narrated in her evidence, she further stated in her affidavit that when she swerved to her left, she veered onto the gravel verge of the road and lost control of her vehicle. She had no recollection of what happened after she lost control of her vehicle. She regained consciousness at Life Beacon Bay Hospital. While she was recovering at home, she was informed that the Traffic Department visited the scene of the accident. She was never visited by the police, and no statement was taken from her. The only person who contacted her was a Traffic Inspector whom she provided with her explanation of how the accident took place, and the Traffic Department thereafter completed the accident report.

[11] During her cross-examination by Mr *Gona*, the following facts emerged from the plaintiff's evidence: a passer-by or bystander called the police, but when she was removed from the scene of the accident, the police had not arrived. Since the accident occurred during the Covid-19 pandemic period, no visits were allowed in hospital, therefore, she was only telephoned by a police official who told her that he only required her statement, otherwise, he would attend to the completion of the accident report.

[12] Upon questioning by the court for the clarification of some of the facts she testified about, it was the plaintiff's evidence further, that the police officer who contacted her was Mr Nkululeko Tom, a member of the Buffalo City Metro

Municipal Traffic Police Office. She and Mr Tom work in the same office and he holds the rank of Senior Traffic Officer, and it is to Mr Tom that he telephonically provided her explanation about how the accident occurred.

[13] At the close of the plaintiff's case, the defendant closed its case without leading any evidence.

The parties' submissions

[14] On behalf of the plaintiff, Mr *Bester* submitted that since the plaintiff's version was not challenged, it should prevail, and that this Court must find the Fund 100% liable for her claim. According to Mr *Bester*, the fact that the plaintiff had completed her evasive manoeuvre when she lost control of the vehicle did not detract from the fact that she was placed in a dangerous situation by the encroaching vehicle and that but for the conduct of the unknown encroaching vehicle, she would never have been in that situation. He further submitted that since the accident report was not objected to, it is to be accepted in evidence.

[15] Mr *Gona* indicated that since the Fund placed no version before court he was in no position to make any substantive submissions on the merits of the case. Mr *Gona*'s position was indeed an unenviable one. Suffice it to state that case law from this Division and elsewhere is replete with the courts' lament about the Fund's persistent failure to meaningfully participate in court proceedings in a way that efficiently aids the expeditious disposal of litigation. Mr *Gona*'s submissions were limited to the accident report. He took issue with the fact that it is not stamped despite the plaintiff's testimony that she was told that a Traffic Police officer had attended to its completion.

The legal principles

[16] In terms of section 17(1) of the Road Accident Fund Act 56 of 1996 the defendant is obliged to compensate any person for any loss or damage which the person 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.

[17] The Fund's liability for the plaintiff's claim rests on two requirements, namely, that the bodily injury was caused by or arose out of the driving of the insured motor vehicle; and that the bodily injury was due to the negligence or other unlawful act of the driver of the insured vehicle or the owner thereof or his servant.¹ As the Supreme Court of Appeal held in *Grove v The Road Accident Fund*,² there can be no question of liability if it is not proved 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 available facts and relevant probabilities.³

[18] This being a civil trial, the standard of proof, is proof on a balance of probabilities. This Court must be satisfied that on a preponderance of probabilities the onus bearing party's version is true and therefore acceptable, in that it is probable that the particular state of affairs existed.⁴

¹ *Wells and Another v Shield Insurance Co. Ltd and Others* 1965 (2) SA 865 (C) at 868G-869A.

² *Grove v The Road Accident Fund* (74/10) [2011] ZASC 55 (31 March 2011).

³ *Id*, para 7.

⁴ Schwikkard PJ (*et al*), *Principles of Evidence*, 4th Ed, 2016, page 627, at 32.7; see also, *Stacey v Kent* 1995 (3) SA 344 (ECD) at 352I-J.

Discussion

[19] The plaintiff's version of how the accident occurred stands uncontroverted in the sense that the defendant adduced no evidence in rebuttal of her case. No onus rests on the defendant, and this means that despite the absence of evidence in rebuttal, the plaintiff had to prove that there was a collision which was caused by the unknown driver's negligent driving of the offending vehicle.

[20] The starting point is that the driver of the insured vehicle is unknown since it is alleged that he/she fled the scene. There was no contact between the plaintiff's vehicle and that of the unknown driver. That being the case, any other wrongful conduct on the part of the insured driver suffices as the basis of the Fund's liability.

[21] The plaintiff's version is that she swerved to the left in order to avoid colliding head-on with the encroaching Toyota Avanza. She had no other option. When she lost control of her vehicle, she had completed her manoeuvre. It was contended on her behalf that had if she did not have to avoid the Avanza, she would not be in the position in which she found herself. Put differently, the contention is that but for the need to avoid the collision with the Toyota Avanza, the plaintiff would not have met with the accident.

[22] The only available record before this Court, of the alleged accident is the accident report which the plaintiff produced at the trial of the matter. It is perhaps instructive, for reasons that will become clear in the course of this judgment, to make reference to some of the aspects of the said accident report form which bear materially on the factual findings that this Court will have to make.

[23] On the face of the accident report, provision is made for the name of the SAPS station in which area the accident occurred and a Metro Municipal Traffic Police Office. This suggests that where the accident was reported to the Metro

Municipal Traffic Police Office, the details of such office must be supplied. An occurrence book must be supplied, or where the form was completed by the Metro Municipal Traffic Police, the traffic accident register number must be supplied.

[24] The form also requires the capturing authority number to be supplied by the data capturing authority. The signatures and initials of persons who completed and checked the form and the official date stamp must be entered in the relevant spaces of the form.

[25] I availed myself of the opportunity of having a plaintiff who, coincidentally, was a traffic officer herself, testify regarding the compilation of her accident report and asked her how the accident report was processed. It was her evidence that after its compilation, the accident report would be handed over to the SAPS, even though she could not explain what the purposes of that hand over would be. According to her, the report would be ascribed an occurrence book number.

[26] Notably in this case, Mr Nkululeko Tom was not called as a witness to testify in relation to his attendance at the scene of the accident. Regard must here be had to the fact that the plaintiff's version both according to her viva voce evidence and as gleaned from her affidavit suggests that she was not present when the accident report was compiled. She was told that a Traffic Officer had attended the scene and that Traffic Officer turned out to be Mr Tom who also compiled the report based on her telephonic explanation to him of how the accident took place.

[27] There was no agreement between the parties regarding the admission of documents as evidence at trial. That being so, the plaintiff was entitled to produce the accident report form and the plaintiff's affidavit as she served a notice dated 22 May 2025 upon the defendant in terms of Rule 35(10). The Rule provides that:

‘Any party may give to any other party who has made discovery of a document or tape recording notice to produce at the hearing the original of such document or tape recording, not being a privileged document or tape recording, in such party’s possession. Such notice shall be given not less than five days before the hearing, but may, if the court so allows, be given during the course of the hearing. If any such notice is so given, the party giving the same may require the party to whom notice is given to produce the said document or tape recording in court and shall be entitled, without calling any witness, to hand in the said document, which shall be receivable in evidence to the same extent as if it had been produced in evidence by the party to whom notice is given.’

[28] It is significant to note, however, that even though there was no objection to the production of the accident report, this did not amount to an admission of its contents. The admissibility of its contents remained subject to the rules of evidence. The contents of the accident report, although not objected to, remained hearsay evidence and could be admitted under the relevant exceptions to the common law hearsay rule.⁵ No application was made for the admission of the accident report under such exceptions. This is apart from the fact that no explanation was provided regarding why Mr Nkululeko Tom was not called to testify regarding the accident report.

[29] It was important that Mr Tom is called as a witness for two reasons: since the plaintiff merely gave her explanation of how the accident occurred over the phone, the compiler of the accident report would require more than a telephonic explanation. He required the relevant points of the scene to be physically identified to him by a person who may be able to do so. That would be the plaintiff herself or a person who witnessed the accident. Secondly, the plaintiff testified that a passer-

⁵ *Visser v 1Life Direct Insurance Ltd* 2015 (3) SA 69 (SCA) at 80H–81A. Section 3(1)(c) of the Law of Evidence Amendment Act 45 of 1988; and the Civil Proceedings Evidence Act 25 of 1965 make provision for the exceptions to the common law hearsay rule under which hearsay evidence may be admitted.

by or bystander called the police, however, she did not provide the details of that passer-by or bystander's identity.

[30] It was essential for Mr Tom to come and inform the court whether he was the person to whom the bystander or passer-by reported the accident and who that bystander or passer-by was; or whether he obtained the information about the accident elsewhere. Therefore, how Mr Tom became aware of the accident and how he would have formulated the depiction of the alleged accident scene as he purports to have done in the accident report remains a mystery.

[31] The situation, is in any event, compounded by the patent deficiencies in the accident report. Even though the plaintiff testified that Mr Tom's rank is that of a Senior Traffic Officer, this detail is not recorded in the report. The report is, furthermore, bereft of very important details, namely, the occurrence book number or accident register number, it has no capturing authority number. It does not contain the names of the person who checked or inspected it and their rank. It has no official date stamps of the Buffalo City Metropolitan Municipal Traffic Office in the relevant spaces. All this, despite the plaintiff evidence in court and in her affidavit that the accident report 'was compiled by the Traffic Department.' The plaintiff was no ordinary witness or a lay person. She is a Traffic Officer and was holding this title at the time of the incident. She ought to know the importance of an accurate and clear record of the accident, and the fact that the accident report is an item of evidence concerning the matters to which it relates.

[32] For all these reasons, the plaintiff's unexplained failure to call Mr Tom, the compiler of the accident report and incidentally a senior colleague of hers, is fatal to her case. The accident report falls short on reliability as the record of the

accident. This leaves the viva voce evidence of the plaintiff and her affidavit as the only other version before me.

[33] When the plaintiff was asked whether she reported the accident, her response was that a passer-by or bystander called the police and that she was removed from the scene by ambulance before the police arrived. It is not clear how the plaintiff knew that she was removed from the scene by ambulance before the police arrived when in her affidavit, she stated that she had no recollection of what happened after she lost control of her vehicle and she regained consciousness at the hospital.

[34] Rather curiously, no evidence was adduced of any form of patient conveyance record or of any form of treatment and/or examination or other assistance at the scene by the relevant emergency services personnel. No evidence was adduced, at most, of the time of admission at Life Beacon Bay Hospital together with such history and reasons for admission thereat, as may have been recorded. All of this accordingly weakens the cogency of the plaintiff's evidence.

[35] A further disconcerting feature of the plaintiff's version is that in her affidavit, she stated that the swerve to her left forced her to drive onto the gravel verge of the road, whereupon she lost control of her vehicle. In her testimony, she stated that upon swerving to the left, her vehicle hit the rails of the road and rolled over. She mentioned nothing about the verge of the road and the gravel thereon. This is a material contradiction between her testimony and her extra-curial statement, and another weighty consideration in the assessment probabilities which further militates against her. I may add that no details were given by the plaintiff in her testimony, of the point where her vehicle landed after it rolled over upon hitting the side rails.

[36] Apart from this, the sketch attached to the accident report does not depict the gravel verge of the road or other fixed points or objects such as the side rails. It further does not depict the point of collision between the plaintiff and the side rails. This would be the rails themselves appropriately marked.

[37] The instructions below the sketch indicate that the alleged point of impact, tyre marks, fixed points, and other object must be shown. There is good reason for this – it is to provide an intelligible and reliable record of the particulars of the accident. I can do no better than quote Fisher J, in *Senwamadi v Road Accident Fund*⁶ when she observed that ‘the accident report form is a staple requirement in the realm of the law relating to motor vehicle accidents – which includes the law of delict, insurance law and criminal law. Its recording is a matter of public interest. The form was designed by its draftspersons so as to solicit information describing all aspects of the accident which would be relevant to any interest or inquiry such as may be needed in a court case of this nature.’⁷

[38] Even though the plaintiff’s evidence stands uncontroverted, this Court must be satisfied that the facts that she has set forth reflect the probability of what took place on 23November 2020 at the time and place of the alleged accident. This is in keeping with the fact that as the onus bearing party, she must establish that on a preponderance, the probabilities are that it is the insured driver’s negligent driving of the offending vehicle, so to speak, which caused the accident from which she suffered bodily injuries. This is so notwithstanding the Fund’s failure to adduce evidence in rebuttal of her version.

⁶ Unreported judgment in *Senwamadi v Road Accident Fund* (2022/2719) [2025] ZAGPJHC 129 (14 February 2025).

⁷ Id, para 11, 12 and 16.

[39] The approach to be followed in the assessment of probabilities was laid down in *Stellenbosch Farmers' Winery Group Ltd. and Another v Martell & Cie SA and Others*,⁸ 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 facts 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. . .’⁹

[40] The plaintiff was a single witness in her case. 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.¹⁰ 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.

[41] In assessing the credibility of the evidence of a single witness, the trial court will 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.¹¹ 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.

⁸ *Stellenbosch Farmers' Winery Group Ltd and Another v Martell & Cie SA and Others* 2003 (1) SA 11 SCA.

⁹ *Ibid*, para 5.

¹⁰ Emphasis intended.

¹¹ *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.

[42] Even were it to be assumed that the plaintiff was injured when she lost control of her vehicle on 23 November 2020, for all the foregoing reasons, there is no credible evidence of the involvement of the second vehicle which resulted in her losing control of her vehicle. Her evidence in this regard is superficial and therefore lacks cogency. I need not deal with the remaining question of negligence. For this reason, I come to the conclusion that the plaintiff has failed to discharge the onus on her, of establishing on a balance of probabilities that the Fund is liable for her claim. The claim must accordingly fail.

Costs

[43] The general rule is that the successful litigant must be awarded its costs. There are no circumstances in the present case which warrant a deviation from this rule.

Order

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

1. The plaintiff's claim is dismissed.
2. The plaintiff shall pay the defendant's costs on Scale A referred to in Uniform Rule 67A, and such costs shall exclude the costs of 26 November 2025.

L. RUSI
JUDGE OF THE HIGH COURT

Appearances:

For the plaintiff : *Adv. J J Bester*

Instructed by : McMahon Kleynhans Blignaut Attorneys,
East London

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

Date heard : 27 November 2025

Date delivered : 24 February 2026