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**IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG DIVISION, JOHANNESBURG**

CASE NO: 2024-077313

DELETE WHICHEVER IS NOT APPLICABLE

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

28 April 2026 P Uys (AJ)
DATE Signed electronically below

In the matter between:

M[...] : F[...] B[...]

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

Summary:

Evidence – Single witness. Credibility, probability, reliability and sufficiency of evidence. The onus of proof is only discharged on objective, credible and reliable evidence.

JUDGMENT

UYS AJ:

Order

[1] Having considered the evidence and heard counsel for both parties, it is ordered that:

1.1. *Default judgment is dismissed with costs.*

[2] The reasons for order follow:

Introduction

[3] This action was enrolled on the RAF default judgment roll of 3 March 2026.

[4] The plaintiff moved a substantive application in terms of Rule 38(2) of the Uniform Rules of Court that the factual evidence of the plaintiff, other factual witnesses and the experts be adduced upon affidavit. The application was supported by an affidavit by the plaintiff's attorney (Mr Myeni) with no confirmatory affidavit from the plaintiff. The founding affidavit contains no facts on or in support of liability or causal negligence of the insured driver.

[5] The nature of the proceedings and the evidence and the interest of justice demanded that *viva voce* evidence be heard in open court on the question of liability.

[6] Determination of liability (causal negligence of the insured driver) was separated from the balance of the issues and the balance of the issues postponed *sine die*.

The evidence

[7] The plaintiff was a single witness in respect of the incident which occurred on 6 September 2019 on the R618, in the vicinity of Somkehle, district of Mtubatuba.

[8] No other factual witness, including fellow passengers, the driver, or any investigating officer, was called.

[9] The plaintiff gave evidence that:

- 9.1. She was a passenger in a passenger bus travelling from Gauteng to KwaZulu-Natal to attend a cultural celebration.
- 9.2. She was 14 years of age at the time of the incident.
- 9.3. She was not seated at the time and standing at her seat and next to a side window while the bus was in motion.
- 9.4. The bus "jerked" from side to side, causing her to lose her footing and fall through the side window to the ground next to the bus.

[10] The plaintiff gave no evidence on the reason for the jerking manoeuvre, the speed of the bus, traffic conditions, road surface, braking, potholes, collision threat, or any manoeuvre observed by her.

[11] The nature, extent, severity and cause of the movement of the bus remained wholly unexplained.

[12] The plaintiff contradicted herself on whether she fell through an open window or was propelled out of the bus together with the entire window and/or its frame.

[13] The plaintiff could not elaborate whether other passengers were injured but confirmed that she was the only passenger that was propelled out of the bus.

[14] The plaintiff attested to a section 19(f) statutory affidavit in terms of the *Road Accident Fund Act*, a copy of which is uploaded to CaseLines 11-44.

[15] The affidavit simply states that “the plaintiff was a passenger in a motor vehicle with registration number NHL30801 and that the driver was trying to avoid a collision with another motor vehicle, when he swerved the vehicle and the plaintiff fell from the vehicle”.

[16] Both the affidavit and the plaintiff’s evidence on the occurrence of the collision/incident lacks particularity and detail.

The statutory context of the RAF Act

[17] The Act creates a statutory claim for compensation for loss or damage arising from bodily injury caused by or arising from the negligent driving of a motor vehicle (s17).

The onus of proof

[18] The plaintiff must prove:

18.1. Negligence or other wrongful driving-related conduct by the insured driver, and

18.2. a causal link between such conduct and her injuries.

[19] The court should weigh the evidence, consider the contents, decide whether it is trustworthy and assess whether, despite shortcomings, defects or contradictions in the testimony, the truth has been told¹. In *Stellenbosch Farmers' Winery Group Ltd & Another vs Martell et Cie & Others*² it was held that probability assessment:

“Necessitates an analysis and evaluation of the probability or improbability of each party’s version on each of the disputed issues.”

[20] Section 16 of the *Civil Proceedings Evidence Act* ³, provides that:

“Judgment may be given in any civil proceedings on the evidence of any single competent and credible witness”.

[21] There is no special approach that cautions against the acceptance of the evidence of a single witness (See *Road Accident Fund vs Maseng*⁴). Absence of opposition does not lower the evidentiary burden.

[22] It is trite that the court must weigh the evidence, consider the merit and demerit and, having done so, decide whether it is trustworthy and whether despite the fact that there are shortcomings or defects or contradictions in the testimony, the court is satisfied that the truth has been told. Although civil trials are decided on the balance of probability, the credibility and probability are often intertwined.

[23] Meeting the required onus in this matter, requires either credible direct proof of negligent driving or sufficiently cogent circumstantial evidence from which such negligence may be inferred⁵.

[24] In *Maseng, supra* at [12], Van der Linde,J who wrote for the full bench, held that:

24.1. Whether a particular assertion or event is probable or not, is aided by the fact adjudicator’s own experience and the application of known rules of logic.

¹ S vs Sols & Others 1981(3) SA172(AD) at 180 E - G

² 2003(1) SA11 (SCA) at [5]

³ 25 of 1965

⁴ 2017 (JDR) 0914 (GJ) at [9]

⁵ Macleod vs Rens 1997(3) SA1039(E) at 1049 A to B and H Mohammed & Associates v Buyeye 2005(3) SA 122(C) at 129 D to F

24.2. In a collision case, often, the adjudicator will him-or herself have been driving motor vehicles and will have observed the force of momentum, and the consequence of a swerve manoeuvre.

24.3. This acquired knowledge and experience is inevitably brought to bear on the analysis that the probability assessment calls for.

Conclusion on the evidence

[25] The cause and mechanism of ejection is central to negligence and causation.

[26] The cause, onset, severity and reason for the sideways movement of the bus remained wholly unexplained during evidence.

[27] The reason why the plaintiff was standing opposed to sitting and to the extent to which this contributed to the incident were not explained during evidence and remain unknown.

[28] The absence of evidence explaining why she was standing affects the court's ability to reconstruct the incident and assess causal negligence.

[29] The absence of evidence explaining force/velocity involved, the angle of the swerve, state of the window, together with the fact that no other passenger was similarly affected weakens the inferential strength and probability of the plaintiff's version.

[30] The absence of opposing evidence does not relieve the plaintiff of the burden of proving negligence. The material evidential gaps cannot be filled by speculation or common-sense inference regarding the movement of the bus.

[31] It is impossible to infer that the movement was negligent rather than an emergency avoidance manoeuvre, road-surface event, or non-negligent disturbance.

[32] The evidence is wholly insufficient to determine, on the balance of probabilities, whether the driver was causally negligent.

Order

[33] As a result, it is ordered that:

33.1. Default judgment is dismissed with costs.

[34] I hand down the judgment.

P UYS
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION
JOHANNESBURG

Signed Electronically

Delivered: This judgment was prepared and authored by the Acting 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 of the judgment is deemed to be **28 April 2026**.

FOR THE PLAINTIFF: R.E.Randambar instructed by Myeni
Attorneys

FOR THE DEFENDANT: T Bell instructed by the State Attorney
Johannesburg

DATE OF THE HEARING: 5 March 2026

DATE OF JUDGMENT: 28 April 2026