

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

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

21 May 2026
DATE


SIGNATURE

Case No. 60419 / 2021

In the matter between:

BUKANI BUHLEBUYEZA MKHIZE

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

ORDER

The plaintiff's claim is dismissed with costs.

JUDGMENT

TOLMAY J:

[1] The plaintiff instituted a claim for damages against the defendant (the RAF) after he was involved in a motor vehicle accident that occurred on 3 February 2021 near Wolmarans and Claim Street in Hillbrow, Johannesburg. The matter came before me to determine merits and quantum. There was no appearance on behalf of the defendant.

[2] The plaintiff testified on the merits. He is employed as a taxi driver, but on the day in question he drove a Toyota Corolla belonging to his cousin with registration number JW 20VXGP. He was at the time of the accident in the vicinity of a T-junction controlled by a robot. He stated that he was driving at approximately 20 km/h when another vehicle moved into his lane and collided with the right side of his car. There was damage to the driver's side of his vehicle, on the front door and bumper. The other vehicle apparently drove off. According to the plaintiff, the accident occurred at approximately 20:00. Hospital records indicate that he was admitted at 01:00. The plaintiff was unable to account for the time lapse between the accident and his admission.

[3] This version contradicts the version set out in an affidavit submitted by him in terms of s19(F) of the Road Accident Fund Act¹. In this affidavit he explained that on the day in question a motor vehicle of which the particulars were unknown veered into his lane and he hit the robot in an attempt to avoid the accident. He said that there was nothing he could have done to avoid the accident. This affidavit was attested to on 26 October 2021. He could not explain the discrepancies between this affidavit and his version in court. He blamed the person who drafted the affidavit, who turned out to be his attorney. No reasonable explanation was given, why his attorney got it wrong and no evidence was provided by the attorney to explain this allegation by the plaintiff.

[4] The collision was not reported to the police. The plaintiff explained that due to the severity of the injuries he was unable to do so. He could not explain why he did not do so on a later occasion, after he was discharged from hospital. It is also of concern that his cousin, whose vehicle was damaged, did not do so. In response to a

¹ 56 of 1996.

question from the court he said his cousin was at work and in Johannesburg. The cousin was not called as a witness, nor was the court requested to stand the matter down to allow for his testimony to be led.

[5] The plaintiff testified that he was taken to hospital by ambulance. In response to a question by the court he said security officers at the scene called the ambulance. He has never seen or talked to these security officers since the accident. No attempt was made to call the security officers or any explanation proffered why they could not be traced or called as witnesses. They could have been able to throw some light on exactly what happened.

[6] The court asked whether there were any photographs taken of the vehicle. The plaintiff said that he took photographs with his phone, but he lost his phone. One would have expected that seeing that the vehicle belonged to his cousin, that someone would have taken photographs of the damage to the vehicle.

[7] What we know is that on the night in question the plaintiff presented at the Charlotte Maxeke Hospital. The report of the orthopedic surgeon and the medical records notes injuries to the right ankle and foot. He was treated for these injuries and certain sequelae of these injuries will impact him adversely.

[8] The evidence about the accident was limited, conflicting, and inadequate. The plaintiff was not a convincing witness. Under Section 17(1)(b) of the Road Accident Fund Act the plaintiff bears the onus of proving, on a balance of probabilities, that the accident was caused by the negligent driving of a motor vehicle and that such negligence resulted in the harm suffered. In *Fikre v Road Accident Fund*,² the court emphasised that material contradictions in the plaintiff's testimony, coupled with the absence of corroborative evidence, significantly weaken the plaintiff's case. The court found that the plaintiff's failure to challenge the contents of an accident report or call witnesses to corroborate his version meant he had not discharged the burden of proof, leading to the dismissal of the claim. The same principle should apply here.

² [2025] JOL 70754 (GP).

[9] The absence of a police report and supporting evidence, such as photographs of the damage, further undermines the plaintiff's credibility and ability to substantiate the claim. In *Msibi v Road Accident Fund*,³ the court highlighted the importance of providing sufficient evidence to establish liability, particularly in cases involving unidentified drivers. The plaintiff's absence of supporting evidence weakens the claim and could result in dismissal. Procedural rules permit the plaintiff to present their case even if the defendant is absent, however, the plaintiff must still meet the evidentiary burden.

[10] The plaintiff's claim against the RAF should be dismissed if the plaintiff fails to prove, on a balance of probabilities, that the accident was caused by and the resulting injuries by the negligence of the driver of the unknown vehicle. In this case the contradictory versions of the accident, lack of police reporting, absence of photographic evidence, and no supporting evidence significantly undermined the plaintiff's case. I therefore conclude that the plaintiff did not prove on a balance of probabilities that the injuries sustained by him was as a result of the negligence of the unknown motor vehicle.

ORDER:

[11] The following order is made:

The plaintiff's claim is dismissed with costs.


R TOLMAY
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

This judgment was prepared and authored by the judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives

³ [2025] JOL 69072 (MM).

by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 21 May 2026.

APPEARANCES:

For the Plaintiff	:	Adv U.B Makuya
Instructed by	:	Makhavhu Attorneys
For the Defendant	:	No appearance
Matter heard on	:	22 April 2026
Judgment date	:	21 May 2026