

REPUBLIC OF SOUTH AFRICA



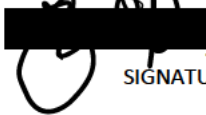
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 2024/046133

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

24 JUNE 2026

DATE



SIGNATURE

In the matter between:

GREEN LORENZO DAVID

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

BUTHELEZI AJ:

1. This matter came before this court as an application for default judgment against the Defendant, the Road Accident Fund (“RAF”), following RAF’s failure to comply with the Mediation Protocol despite the Plaintiff having obtained a Court order compelling it to do so.
2. Notwithstanding the Defendants' delinquency, it remains incumbent upon this Court to satisfy itself that the Plaintiff has established a proper case for the relief sought.
3. This Court was invited to determine both issues of liability and quantum.
4. Counsel for the Plaintiff made an application in terms of Rule 38(2) of the Uniform Rules of the Court to present evidence by way of affidavit instead of leading oral evidence, when Court indicated that it needed time to consider the issue of liability in the matter before making its ruling, this was met with objection from Plaintiff’s counsel. The application in terms of Rule 38 (2) was abandoned; Plaintiff’s counsel opted to call witnesses to testify on the issue of liability.
5. Plaintiff had initially intended to rely on the affidavit of his wife and that of the independent eyewitness. Plaintiff had not filed an affidavit of his

own. However, when a decision to lead oral evidence was made, the independent eyewitness was not called. Only Plaintiff and his wife (Ms Kristen Green) testified.

6. The Plaintiff testified that he was a driver of a Hyundai i20 on Witteberg Street, Eldorado Park, Gauteng Province, which collided with a Toyota Fortuner driven by a certain Mr. Tyesi (the insured driver).
7. Plaintiff alleges that the insured driver protruded into his lane of travel, causing the accident.
8. However, the accident report that formed part of the merits bundle, Plaintiff's vehicle is identified as "Vehicle A", the insured driver's motor vehicle is described as "Vehicle B". The report further states that it was "Vehicle A" that protruded into the face of oncoming traffic, and as a result, it collided with "Vehicle B".
9. Plaintiff argued that roles were swapped in the report.
10. Other than evidence given by the Plaintiff in court on the date of the hearing of the matter, there is no record of the Plaintiff's version of

events in the documents filed at court. Plaintiff never bothered to provide his version to the police.

11.Plaintiff testified that he lost a child in this accident.

12.On cross-examination, Plaintiff conceded that he never gave his version of events to the police upon being discharged because the matter had already been reported at the time.

13.He reported being visited by the investigators, but his statement was not taken.

14.He never followed up on the matter to ensure justice was served in a matter that resulted in the death of his own child.

15. Ms. Kristen Green (Plaintiff's wife) testified that she was a passenger in a vehicle driven by her husband. She noticed the white vehicle that collided with their car when it was already in front of their car.

16.It happened in a split second; she could not testify to what led to the collision as she was seated at the back.

The Evidentiary Value of the OAR

17. In RAF matters, the OAR constitutes an important contemporaneous record of the accident. While it is not, in itself, conclusive proof of the facts recorded therein, it serves as an objective source of information compiled shortly after the incident and often reflects observations made at the scene.

18. Courts have consistently recognised that such reports, particularly when supported by witness statements, may carry significant evidentiary weight, especially where a party's version is uncorroborated or emerges only at a later stage.

19. Fisher J in **Senwamadi v Road Accident Fund** ¹, stated at Paragraph 25 -26;

“[25] It *hardly needs to be stated that the accident report is a crucial piece of evidence in a claim against the RAF.*

¹ (2022/2719) [2025] ZAGPJHC 129

[26] The primary purpose of the accident report from the perspective of a plaintiff in a claim against the RAF is to prove that a motor vehicle accident occurred; that it was reported by an interested person; that it was recorded and placed on the police and/or other relevant national systems and is thus a matter of public record which can be accessed by all interested parties; and that the relevant details of the accident have been set out in the detail required for the record.”

Analysis of the Evidence

20. The OAR in the present matter records that the Plaintiff’s vehicle protruded into the lane of oncoming traffic, therefore causing the collision.

21. The Plaintiff, in his oral testimony before this Court, denied this version and maintained that the collision was caused by the other driver.

However, the Plaintiff’s version of events is only tendered for the first time at court during the hearing of the matter. .

22. Of particular concern is the absence of any statement by the Plaintiff in the police docket. Given that the Plaintiff was directly involved in the collision and, more significantly, that he tragically lost a child in the accident, it would reasonably be expected that he would have taken steps to provide a statement to the authorities and to pursue accountability.

23. The Plaintiff's failure to make any follow-up with the police, to ensure that the responsible party was brought to book, or to advance the investigation otherwise, is difficult to reconcile with his version that another party was solely to blame for the collision.

24. This omission materially detracts from the credibility of the Plaintiff's version. It suggests either a lack of genuine belief in the correctness of his own account or, at the very least, an indifference inconsistent with the gravity of the consequences of the accident.

25. When weighed against the contemporaneous OAR, the Plaintiff's version appears to be an ex post facto reconstruction lacking objective support.

26. The version of Plaintiff's wife does not advance the Plaintiff's case as she did not see how the accident occurred; her recollection is that of the white vehicle that was already in front of their car, and she could not provide details of the events leading to the collision as she was seated at the back of the vehicle.

27. In the matter of *Ninteretse v RAF*², Raulinga J indicated that "***...the plaintiff bears the onus to prove on a balance of probabilities that the insured driver was negligent and that the negligence was the cause of the collision from which he sustained the bodily injuries. Even in the instance where the defendant has not tendered evidence to rebut the evidentiary burden of the prima facie case presented by the plaintiff in this case, the plaintiff may not succeed with his claim depending on the nature and weight of the evidence so tendered.***"

28. As already stated, the Defendant has been barred from leading any evidence in this matter. However, it is a long-established principle, in the matter of *Siffman v Kriel*³, that courts are not bound to accept the testimony of a witness simply because it goes uncontradicted, the court stated that:

² 2018] ZAGPPHC 493 (2 February 2018) at para 28

³ 1909 TS 538

"It does not follow, because evidence is not contradicted, that therefore it is true. Otherwise the court, in cases where the defendant is in default, would be bound to accept any evidence the Plaintiff might tender. The story told by the person on whom the onus rests may be so improbable as not to discharge it"

CONCLUSION

29. Although the Defendant is barred and has not placed any version before this Court, the Plaintiff has failed to discharge the onus resting upon him.

30. The probabilities, when considered holistically, favour the version contained in the OAR.

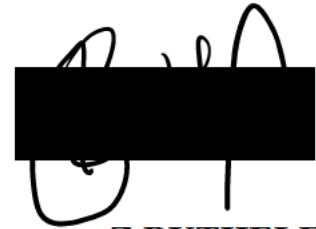
31. The Plaintiff's version, advanced for the first time in these proceedings and unsupported by any contemporaneous evidence, is improbable.

32. In the result, the Plaintiff has failed to establish, on a balance of probabilities, that the insured driver was negligent.

Order

33. The Plaintiff's claim is dismissed.

34. There is no order as to costs.

A handwritten signature in black ink, appearing to be 'Z Buthelezi', is written over a solid black rectangular redaction box.

Z BUTHELEZI

**ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG**

Heard on 24 March 2026

For the Plaintiff: Advocate Sophia Maritz