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**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG**

CASE NO: 4194/20P

In the matter between:

NIMALAN GONASEELAN

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

ORDER

The following order shall issue:

The plaintiff's claim is dismissed with costs on scale B.

JUDGMENT

Chithi J

Introduction

[1] On 7 July 2020, the plaintiff, Mr Nimalan Gonaseelan, instituted an action against the defendant, the Road Accident Fund, in which he claims damages arising from the injuries he allegedly suffered as a result of a road accident. This accident is alleged to have occurred on 19 May 2019 on the N3 Highway at or near Spaghetti Junction, Westville, Durban bound. At the time of the accident, the plaintiff was the driver of a motor vehicle, a silver Toyota Etios bearing registration letters and numbers N[...]. The issue of liability was separated from the issue of quantum in terms of an order of this court dated 14 November 2024, with the issue of quantum standing over for a later determination.

Particulars of the accident

[2] The particulars of the motor vehicle accident, as set out in paragraphs 5 and 6 of the plaintiff's particulars of claim, are as follows:

'5.

On or about 19 May 2019, at approximately 06h00am, at or near Spaghetti Junction, Westville, Durban, KwaZulu-Natal:

(a) When an unknown and unidentifiable driver of a certain motor vehicle whose registration details are unknown to the Plaintiff (hereinafter referred to as the "insured motor vehicle");

(b) The Plaintiff was the driver of a certain motor vehicle bearing registration letters and numbers N[...], being a silver Etios (hereinafter referred to as the "Plaintiff's motor vehicle");

(c) The insured motor vehicle had collided into the rear of the Plaintiff's motor vehicle causing the Plaintiff's motor vehicle to lose control and crash into a barrier and thereafter into another motor vehicle.'

6.

The sole cause of the aforesaid collision was as a result of the negligence of the driver of the unidentified motor vehicle who was negligent, *inter alia*, in one or more or all of the following respects:

- (a) He failed to keep any proper lookout for other road users;
- (b) He failed to keep the vehicle driven by him under proper control;
- (c) He failed to apply his brakes timeously or at all;
- (d) He failed to slow down, stop or turn aside or attempt to avoid the collision;
- (e) He failed to take adequate precautions to safeguard the wellbeing of the other road users;
- (f) He failed to avoid the collision by exercising the reasonable skill and care he could, and should have done so;
- (g) He drove at a speed that was excessive under the circumstances.'

[3] The defendant, in response to the plaintiff's allegations, contended as follows in paragraph 3 of its plea:

'3.

Ad paragraphs 4 to 6

The defendant has no knowledge of the averments in paragraphs 4 to 5, does not admit them, and puts the plaintiff to the proof thereof.

Alternatively

Where the plaintiff is able to prove the averments in paragraphs 4 and 5 of the claim, then the defendant pleads as hereinafter set forth:

- (a) The sole cause of the collision was the negligent driving of the plaintiff, and the plaintiff was negligent in one or more of the following respects:
 - a. He failed to keep a proper lookout;
 - b. He drove at an excessive speed;
 - c. He failed to take reasonable precautions in the manner in which he rode his vehicle;

- d. He failed to stop, swerve, turn aside, slow down or take any adequate steps to avoid the said collision when by the exercise of reasonable skill and care he could and should have done so;
 - e. He failed to have regard to the other road users and in particular, to the insured driver;
 - f. He failed to drive his vehicle with a degree of skill which would be exercised by a reasonable person, having regard to the circumstances.
- (b) **Alternatively**, where the plaintiff is able to prove that the unknown driver of the unknown motor vehicle was negligent, which is denied, then the defendant pleads that the plaintiff too was negligent and that any damages which the plaintiff may have suffered, falls to be reduced in accordance with the provisions of the Apportionment of Damages Act 34 of 1956.'

The issues

[4] The parties agreed that the following were the issues in dispute:

- (a) Was the plaintiff's motor vehicle knocked by an unidentified motor vehicle?
- (b) If so, was the driver of the unidentified motor vehicle the cause of the accident?
- (c) Did the plaintiff contribute to the accident?
- (d) If so, to what extent?
- (e) Did the plaintiff fall asleep while driving, thereby causing the accident?

[5] The parties agreed that what was common cause was that the plaintiff was the driver of a Toyota Etios, bearing registration letters and numbers N[...].

[6] From the above synopsis it is apparent and therefore fair to conclude that, broadly, the issues this court must determine are:

- (a) Was the motor vehicle accident from which the plaintiff's injuries arose caused by the negligent driving of an unknown motor vehicle?
- (b) If so, was the driver of the unknown motor vehicle the sole cause of the accident?
- (c) If not, to what extent did each driver contribute to the accident?

[7] If the answer to the first question is negative, it would not be necessary to proceed and consider the remaining two questions. However, if the answer is in the affirmative, it would be necessary to proceed and consider the second question. If the answer in respect of the second question is in the affirmative, it would not be necessary to proceed and consider the third question. However, if the answer to the second question is negative, it would be necessary to proceed and consider the third question.

Documentary evidence

[8] At the outset of the trial, the parties handed in bundles of documents to be admitted in evidence comprising an index to pleadings, index to liability bundle, index to general bundle and notice in terms of rule 36(10). This court was not requested to mark any of these bundles, but they were referred to in general terms as indicated.

The plaintiff's evidence

[9] The plaintiff was the sole witness to testify in these proceedings. Mr Gonaseelan confirmed that he was the plaintiff in this matter. He resided in Phoenix in the greater Durban area. He testified that he recalled the motor vehicle accident in relation to which he was called to testify about. He testified that the motor vehicle accident occurred on 19 May 2019 at the Spaghetti Junction heading towards the beaches on the N2 Highway. The accident happened on Sunday at about 06h00. However, the plaintiff corrected himself and stated that, in fact, the motor vehicle accident did not occur on the N2 Highway but instead on the N3 Highway. He stated that he was coming from the

direction of the Pavilion Mall. He further went on to state that the reason why he mentioned the beaches is because that is where he intended to go.

[10] At the time of the motor vehicle accident, the plaintiff testified that he was driving a silver Toyota Etios, the owner of which was Mr Ricardo Parker. The plaintiff testified that he had hired this motor vehicle and used it to operate a Bolt service. At the time when the motor vehicle collision happened, he was going to the beach in order to relax and he intended to go home afterwards. He went on to say that at that time, he had just dropped off his last customer and was not in any hurry at that moment.

[11] He testified that he had been working an eight-hour shift. He had started work at about 22h00 on Saturday, 18 May 2019. The collision happened on Sunday, 19 May 2019. The plaintiff testified that he was driving in the extreme left lane at an approximate speed of 80 km per hour. Before he joined the N3 Highway, he was driving from the Pavilion onramp. Before joining the freeway, he looked at his rear-view mirror and there were no vehicles behind him. He considered it safe to join the freeway. However, when he looked at his rear-view mirror again, in a flash, he heard a bang and saw this motor vehicle which hit the rear of his motor vehicle. The impact of the collision caused him to lose control of his motor vehicle. As he was trying to steer his motor vehicle and to bring it under control, he hit a steel barrier which resulted in him losing control of his motor vehicle and hitting a stationary minibus taxi, which was parked over the yellow line. After hitting the stationary minibus taxi, he passed out.

[12] The plaintiff used photographs 9 and 10, contained in the bundle 'notice in terms of Rule 36 (10)', as a reference point to indicate whereabouts on the N3 Highway he might have been at the time of the collision. He pointed at the photographs which depict the countdown marker with two bars on the extreme left lane of the N3 Highway as the spot where the collision occurred. The plaintiff testified that the motor vehicle that collided into his motor vehicle threw his motor vehicle off the road. He did not take notice of the make and the colour of the motor vehicle which collided with his motor vehicle.

[13] The plaintiff further testified that at the time of the collision, he was feeling absolutely fresh because he had a good rest before he started his shift on Saturday night at 22h00. He stated that before his shift at 22h00, his last shift was at 8h00 in the morning of that day. He further stated that he would disagree if anyone ever suggested that he was very tired at the time of the collision. The plaintiff indicated that the first thing he recalled after the accident was when he woke at King Edward Memorial Hospital (KEH). However, he did not know how he got to KEH. What he knew was that after he knocked the steel barrier and the minibus taxi, he passed out. The plaintiff testified that he suffered a broken hip, knee, and multiple lacerations on his head and received stitches for the injuries to his head and lips.

[14] Lastly, he testified that the date which was inserted on page 4 of the accident report contained in the bundle titled 'index to liability bundle', under the heading 'office where the accident was reported', is 8 August 2019.

[15] Under cross-examination, the plaintiff testified that he has been driving for 35 years and that he was fully aware of the road signs. He confirmed that at the time of the collision, he was traveling on the N3 in the vicinity of Spaghetti Junction and his intention was to proceed towards the beaches. The plaintiff further confirmed that he was in the extreme left lane driving towards the beaches. When reference was made to photo 2 of the bundle 'notice in terms of Rule 36 (10)' and asked whether he was in the extreme left lane where a VW Polo was depicted, he confirmed that to be the position. He further testified that he had ample time to change lanes to the middle lane. The plaintiff confirmed that he was the one who prepared the sketch plan, which is in the accident report form, and which formed part of the index to liability bundle. On the accident report, he was referred to pages 2 and 8 in which the sketch plans are set out. In relation to those sketch plans, the plaintiff confirmed that there was no indication anywhere that the road in question was curving.

[16] The plaintiff further confirmed that in the accident report, under the heading 'direction of road', he had marked that the road was curving. The plaintiff disagreed that the rendition of his sketch plan and his evidence were inconsistent. The plaintiff confirmed that he deposed to two affidavits in this matter, as contemplated in s 19(f) of the Road Accident Fund Act 56 of 1996 (the Act). The first affidavit was deposed to on 10 September 2019 and the second affidavit on 25 April 2023. In relation to the first affidavit, the plaintiff was asked whether he was the one who lost control of his vehicle, consequent upon which the unidentified motor vehicle collided into him, or whether, in relation to the second affidavit, the unidentified motor vehicle lost control and collided into the rear of his motor vehicle. In relation to these questions, the plaintiff testified that he had no idea whether the unidentified motor vehicle lost control.

[17] When the plaintiff was confronted about the discrepancy in his affidavits and whether this court could rely on his evidence, the plaintiff insisted that his evidence in court was absolutely correct. The plaintiff confirmed that after the collision, he passed out. He further confirmed that when he deposed to his affidavits, the events were still fresh in his memory. However, he confirmed that he did not state anywhere in his affidavit that he passed out. The plaintiff further confirmed that he learnt later that he was attended to by paramedics. The plaintiff was referred to the patient report form on page 62 of the index to general bundle. It was pointed out to him that nowhere in that report is it recorded that he had passed out. It was, in fact, specifically pointed out to the plaintiff that what was recorded in the patient report form under the subheading 'treatment', among others, was the caption 'calm and reassure'. In response to this proposition, the plaintiff insisted that he had passed out. The plaintiff was asked about what is recorded in the following pages of the medical records:

- (a) Page 19 of the index to general bundle: where it is recorded 'a 52-year-old male, Uber taxi driver, MVA, restrained, fell asleep while driving'.
- (b) Page 20: 'MVA driver unrestrained, fell asleep on the wheel, lost control of vehicle, poor recollection'.
- (c) Page 30: 'Male, MVA, fell asleep on the steering wheel, unrestrained'.

(d) Page 42: records that a '51-year-old male patient is admitted in a ward, from room 50. He is accompanied by relatives in a stretcher. The patient verbalised that he fell asleep on the steering wheel'.

(e) Page 52: where it is recorded that 'MVA, PT fell asleep and lost control, Uber driver - unable to recollect incident'.

[18] In response, the plaintiff denied that what was recorded in his medical records was correct. The plaintiff confirmed that he never challenged the medical records during the six years of their existence. The plaintiff asserted that he thought that what the hospital would record was correct. The plaintiff contended that he came to know only for the first time during his cross-examination about what was recorded in his medical records. When it was put to him whether he was denying the correctness of his medical records, he confirmed this. When it was put to the plaintiff that his medical records were objective evidence and that those who authored them had nothing to gain from what they had recorded, the plaintiff contended that he was disappointed about what the hospital recorded in his medical records. The plaintiff suggested that some of that information was incorrect. When it was put to him that his evidence was unreliable when it was contrasted with his statement, the plaintiff denied this.

[19] In re-examination, the plaintiff testified that he does not recall being treated by the paramedics at the scene. Further, he testified that he did not recall what he told the hospital staff and that he does not recall telling the hospital staff anything. After leading his evidence, the plaintiff closed his case. The defendant also closed its case without leading any evidence.

The parties' submissions

[20] Ms *Moola*, who appeared for the plaintiff, submitted that the first issue this court was called upon to decide was whether the plaintiff was knocked by an unidentified motor vehicle. Ms *Moola* argued that in his testimony, the plaintiff testified consistently that his motor vehicle was knocked from behind and this caused him to lose control of

his motor vehicle. She further went on to argue that the plaintiff in his testimony could not testify as to the model or colour of the unidentified motor vehicle which collided into him as this happened in a flash. Ms *Moola* suggested that had the plaintiff desired to be untruthful, he could have given a random description. Ms *Moola* argued that the fact that the plaintiff's motor vehicle was hit from behind triggered the presumption of negligence on the part of the unidentified driver. Ms *Moola* further suggested that the negligent conduct of the unidentified driver was the cause of the collision. Ms *Moola* went on to argue that the defendant was required to place sufficient facts before this court to rebut the negligence of the unidentified driver.

[21] Ms *Moola* stated that the defendant did not call any witness to rebut the negligence on the part of the unidentified driver. Ms *Moola* further suggested that the plaintiff had worked only an eight-hour shift and he had rested before the shift began. Regarding the entries in the medical records, Ms *Moola* urged this court not to attach any weight to the medical records.

[22] Mr *Sayed-Omar*, on behalf of the defendant, argued that the plaintiff tailored his evidence. He further submitted that the contradictions in the plaintiff's affidavits in terms of s 19(f) of the Act rendered the plaintiff's evidence not only unreliable but also not worthy of any credence. Those contradictions were in relation to who lost control: whether it was the plaintiff who lost control of his vehicle or whether it was the unidentified driver who lost control of his vehicle and collided into the plaintiff's motor vehicle. Mr *Sayed-Omar* suggested that according to the medical records, the ambulance was at the scene within six minutes of the collision, and if the plaintiff had passed out, as he suggested in his evidence, the paramedics would have found him still in that state.

[23] After the parties rendered their oral submissions, this court invited them to advise if they desired to deliver written submissions to augment their oral submissions. The parties duly delivered their written submissions, as directed by this court. This court does not propose to repeat the parties' contentions, as expounded in their written

submissions, as those contentions amounted merely to them joining issue in relation to the same issues which they had already ventilated in their oral submission, save to refer to authorities, which this court does not consider necessary to make reference to for the purposes of this judgment.

The relevant legislative provisions

[24] In order to answer the main issue which this court must determine, as set out above, the convenient starting point is to consider the provisions of s 17(1)(b) of the Act, which reads:

'17. Liability of Fund and Agent-

(1) The Fund or an Agent shall -

(a) ...

(b) subject to any regulation made under section 26, in the case of a claim for compensation under this section arising from the driving of a motor vehicle where the identity of neither the owner nor the driver thereof has been established, be obliged to compensate any person (the third party) for any loss or damage which the third party 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 or of his or her employee in the performance of the employee's duties as employee: Provided that the obligation of the Fund to compensate a third party for non-pecuniary loss shall be limited to compensation for a serious injury as contemplated in subsection (1A) and shall be paid by way of a lump sum.'

[25] Regulation 2(1)(d) of the Regulations, which came into effect on 1 May 1997, originally required physical contact between the unknown insured motor vehicle and the

claimant to be proved to found liability by the defendant, before this requirement was repealed in 2008, when the regulations published under the Act were amended.¹

The relevant applicable test

[26] It is trite that the onus is on the plaintiff to prove on a balance of probabilities that the defendant is liable to compensate him for his damages. In this case, the plaintiff was required to allege and prove that his damages arise out of the driving of an unknown insured motor vehicle.

[27] In *Lee v Minister for Correctional Services*,² the test for causation was set out as follows:

'Although different theories have developed on causation, the one frequently employed by courts in determining factual causation is the *conditio sine qua non* theory or but-for test. This test is not without problems, especially when determining whether a specific omission caused a certain consequence. According to this test the enquiry to determine a causal link, put in its simplest formulation, is whether "one fact follows from another".' (Footnotes omitted.)

[28] The Supreme Court of Appeal in *Za v Smith and Another*³ articulated the but-for test as follows:

'What it essentially lays down is the enquiry - in the case of an omission - as to whether, but for the defendant's wrongful and negligent failure to take reasonable steps, the plaintiff's loss would not have ensued. In this regard this court has said on more than one occasion that the application of the 'but-for test' is not based on mathematics, pure science or philosophy. It is a matter of common sense,

¹ The Regulations, promulgated in GN R609, GG 17939, 25 April 1997, were repealed by the Regulations promulgated in GN R 770, GG 31249, 21 July 2008, with effect from 1 August 2008.

² *Lee v Minister for Correctional Services* [2012] ZACC 30; 2013 (2) SA 144 (CC) para 40.

³ *Za v Smith and Another* [2015] ZASCA 75; 2015 (4) SA 574 (SCA) para 30.

based on the practical way in which the minds of ordinary people work, against the background of everyday-life experiences. In applying this common-sense, practical test, a plaintiff therefore has to establish that it is more likely than not that, but for the defendant's wrongful and negligent conduct, his or her harm would not have ensued. The plaintiff is not required to establish this causal link with certainty.'

[29] This is the context within which the questions which have been set above must be answered. Ms *Moola* argued that the conduct of the unidentified driver was the cause of the negligence and the defendant did not place sufficient facts before this court to rebut the negligence of the unidentified driver in that it did not call any witnesses.

Was the accident caused by the negligent driving of the driver of an unknown motor vehicle?

[30] Although the defendant's counsel did not apply for an absolution from the instance in this matter, when he could and should have done so, it has been recognised more than a century ago that merely because the evidence of the plaintiff was uncontradicted does not translate into the plaintiff having discharged the onus of proving its case and entitling it to a judgment.

[31] Innes CJ articulated this trite position as follows in *Siffman v Kriel*:⁴

'It does not follow, because evidence is uncontradicted, 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.'

[32] *Siffman* is a seminal judgment, which is authority in relation to this issue and has since been followed in a long line of cases.⁵

⁴ *Siffman v Kriel* 1909 TS 538 (*Siffman*) at 543.

[33] With this background in mind, it is therefore necessary to consider the plaintiff's case standing uncontradicted as it is and decide whether the plaintiff discharged the onus which was embedded upon him.

[34] The plaintiff testified that he was joining the N3 Highway from the Pavilion onramp when the collision occurred. He was driving in the extreme left lane. The plaintiff could not identify the model or the colour of the motor vehicle which collided into him. After the collision, the plaintiff alleges that he passed out. The plaintiff testified that he passed out after hitting the minibus taxi. The stage at which the plaintiff passed out is relevant to the question of why he was unable to identify the model or the colour of the motor vehicle which collided into him. If, the plaintiff passed out only after hitting the minibus taxi as per his testimony the question then is, why was he unable to identify the model or the colour of the motor vehicle? If, for example, the plaintiff passed out immediately on impact, this would have provided a sufficient basis as to why he was unable to identify the model or the colour of the motor vehicle.

[35] What makes this question more pertinent and to even assume a prominent role in the determination of this matter, is another significant question which is whether the plaintiff ever passed out at all. What triggers this significant question is what the plaintiff alleges as against what the paramedics have recorded in their records. The plaintiff alleged that he passed out after the collision and only regained his consciousness at KEH. There is nowhere in the patient report form, which formed part of the plaintiff's medical records, where the state of consciousness of the plaintiff is described as 'unconscious'. The paramedics merely recorded under 'diagnosis' 'L femur, laceration lower lip'. Additionally, under 'treatment' it was recorded 'calm and reassure, all vitals done, leg splinter in line and pain relief administered'. Nothing is recorded about the plaintiff's state of consciousness.

⁵ Some of the cases include: *Katz v Bloomfield and Keith* 1914 TPD 379 at 381; *Nelson v Marich* 1952 (3) SA 140 (A) at 149A-B; *Shenker Brothers v Bester* 1952 (3) SA 664 (A) at 670F-G; *Sigoumay v Gillbanks* 1960 (2) SA 552 (A) at 558H; *Da Mata v Otto* NO 1972 (3) SA 858 (A) at 869D-E; *Kentz (Pty) Ltd v Power* [2002] 1 All SA 605 (W) para 16; and *McDonald v Young* [2011] ZASCA 31; 2012 (3) SA 1 (SCA) para 6.

[36] What this court must stress is that the paramedics were the first responders who attended the scene of the accident within minutes after it happened. According to the patient report form, the paramedics received a call at 05h23 and they were at the scene at 05h41. What this means is that the paramedics were at the scene within 18 minutes after they received the call. At 06h37, the paramedics departed the scene and were at KEH by 06h50. The issue of the plaintiff having passed out is not only not recorded in the patient report form, but it is also not recorded in the hospital records. The significance of this is how probable is it that both the paramedics and the hospital personnel would omit to record in their records what was the most important health condition of the plaintiff, which would have informed them what first aid to render to the plaintiff at the scene, and, as for the hospital personnel, what treatment to administer to the plaintiff? It is important to stress that the paramedics are independent professionals who work independently from hospital personnel.

[37] As if the glaring omission relating to the plaintiff's state of consciousness was not enough, according to the medical records, the plaintiff is the one who verbalised that he lost control of his motor vehicle in consequence of him having fallen asleep at the wheel. When the plaintiff was confronted about what was recorded in his medical records, he merely denied their correctness. When the plaintiff was confronted about why, during the six years of the existence of the medical records before he instituted his claim, he never challenged their correctness, he stated that he only came to know about what was recorded in his medical records for the first time during his cross-examination. He added that he thought that the hospital would have recorded its observations correctly in the medical records.

[38] This court must stress that it must be remembered that the medical records were lodged with the defendant by the plaintiff's attorneys on 4 February 2020, as part of a bundle of documents which were submitted in support of the plaintiff's claim for compensation, alternatively constituted the plaintiff's claim for compensation against the defendant. What is apparent from the plaintiff's evidence is that both the plaintiff and his

attorneys, when they lodged his claim, were simply going through the motions. They did not care to ensure that the documents which they submitted in support of the plaintiff's claim did, in fact, support the claim. The plaintiff and his attorneys failed to ensure that the supporting documents which they submitted to the defendant were not contrary to the very claim which the plaintiff sought to make. The plaintiff's explanation that he only came to know about what was recorded in his medical records for the first time during his cross-examination unfortunately does not pass muster. Those are the documents which the plaintiff submitted with the defendant as part of his claim.

[39] Apart from the difficulties which this court has chronicled above, the plaintiff had further difficulties. The first is in relation to the particulars of the accident, as set out in his affidavit which he deposed to as contemplated in s 19(f) of the Act. In his updated affidavit, which was deposed to on 25 April 2023, the plaintiff alleged that the driver of the insured motor vehicle, who was driving at an extremely high-speed, lost control and collided into the rear of his motor vehicle. As a result of that, he lost control of his motor vehicle and collided into the barrier and thereafter veered into the taxi that was stationary over the yellow line. In his initial affidavit, which was deposed to on 10 September 2019, the plaintiff alleged that the driver of the insured motor vehicle collided into the rear of his motor vehicle at high speed, as a result of which he lost control of his motor vehicle and veered off the road, colliding into the barrier and thereafter a taxi, which was stationary over the yellow line.

[40] The plaintiff could not account for the discrepancy between these two sworn statements. In my view, this is a serious discrepancy. It is serious because the plaintiff in his particulars of claim contended that the insured motor vehicle collided with the rear of his motor vehicle causing his motor vehicle to lose control and crash into the barrier and thereafter into another motor vehicle. These contentions are not consistent with the particulars of the accident, as set out in the plaintiff's updated affidavit deposed to by him on 25 April 2023. The significance of this discrepancy seriously compromised the plaintiff's case, above and beyond the plaintiff's case being seriously undone by the records in the medical records. This court cannot stress the invaluable function

medical records serve as objective facts which constitute part of the mosaic in the adjudication of personal injury claims. The significance of medical records is that they are instantaneous records which are not authored in anticipation of litigation. What gets said and recorded in medical records is unfiltered and not influenced by the exigencies of litigation. They represent what may be true or at least close to the truth. I disagree with Ms *Moola* that this court should not attach any weight to the medical records. Had the medical records been unimportant, the plaintiff's attorneys would not have used them in support of the plaintiff's claim when they lodged his claim. Moreover, the plaintiff's attorneys would not have placed them before this court as part of the evidentiary material to be considered by this court in adjudicating this matter.

[41] The plaintiff wanted to paint a favourable picture about himself. He suggested that he was fresh because he had last worked on Saturday, 18 May 2019 at 08h00. The fact that the plaintiff's last shift was at 08h00 the previous day does not detract from the fact that he had been working a night shift from 22h00, at least for about seven hours at the time of the accident. At the time of the accident, the plaintiff must already have been tired and sleepy, consistent with what is recorded in the medical records.

[42] I was not impressed by the plaintiff as a witness. He came across to this court as a person who wanted to be compensated, irrespective of whether his claim satisfied the jurisdictional requirements of s 17(1)(b) of the Act. He created the impression that it did not matter whether there was any other vehicle which was involved, he considered himself entitled to be compensated by the defendant. More importantly, the plaintiff could not account for the discrepancy between his updated affidavit and the particulars of the accident, as set out in paragraphs 5(a) and (c) of the particulars of claim. While the plaintiff delivered photographs in terms of uniform rule 36(10), depicting whereabouts at the scene the accident happened, but he never delivered any photographs of his motor vehicle depicting the extent of the damage to it in particular whether it had any damage at the back.

[43] The plaintiff's attitude that he did not care whether his claim was valid or not is reflected by his persistence with his claim, even in the face of his claim being nullified by his own medical records, which he submitted with the defendant, obviously without ever considering them and later placing them before this court. Again, obviously without ever considering them to establish to what extent they support his claim. If the plaintiff, his attorneys and counsel had considered the plaintiff's medical records in preparation for trial there is no way that the plaintiff would have seen the discrepancy in his medical records only for the first time during his cross-examination. It seems to this court that the plaintiff and his attorneys were merely going through the motions in the expectation that the defendant would settle the plaintiff's claim without more or giving any due consideration to the medical records and all other documents which were submitted in support of the claim. The plaintiff's difficulties do not end there, during his testimony, the plaintiff alleged that the road was straight. However, in the accident report form, under the subheading 'direction of the road', he marked that the road was curvy, and the plaintiff had admitted that he was the one who completed that in the accident report. Additionally, under the subheading 'accident sketch', in the accident report form, contrary to the mark which he made under the subheading 'direction of road,' the plaintiff constructed a sketch plan which depicted the road as straight.

[44] In my view, the plaintiff was not credible as a witness and his evidence was completely unreliable to have found any claim against the defendant. Additionally, the plaintiff was unimpressive as a witness. In my view, his evidence, standing uncontradicted as it does, has not established the presence of another motor vehicle which was the cause of the accident. Consequently, the plaintiff's claim falls to be dismissed. For this reason, as previously indicated, it is not necessary for this court to proceed and consider the other issues.

Costs

[45] As far as the costs are concerned, the general rule is that the costs follow the event. I do not see any reason why I should deviate from this general rule. While the

matter itself was straightforward counsel who were involved were fairly experienced. In the circumstances, this court is of the considered view that it would just and fair if costs were awarded on scale B.

Order

[46] In the result, I grant the following order:

The plaintiff's claim is dismissed with costs on Scale B.

CHITHI J

APPEARANCES

For plaintiff: Ms S Moola
Instructed by: Shashi Marajh & Company Inc.
27 Vuna Close
Umhlanga Ridge
Suite 601, Ridge 7
Umhlanga
Email: litigation@shashimarajh.co.za
c/o: Botha and Oliver Inc
239 Peter Kercchhoff Street
Pietermaritzburg
Ref: SM/G1020/1FH/NZ

For defendant: Mr A. Sayed-Omar
Instructed by: Office of the State Attorney

5th Floor MetLife Building
391 Anton Lembede Street
Durban
Link: 4928873 / G BANJO
Email: gay!enes@rafco.za
c/o: Office of the State Attorney - PMB
Satellite Office, 2nd Floor
Magistrate Court Office Building
302 Church Street
Pietermaritzburg

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Date of judgment: 5 June 2026