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**IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG**

CASE NO: RAF 380/2024

Not Reportable

In the matter between:

PAULUS PIETER MONYAMAZENI

PLAINTIFF

And

ROAD ACCIDENT FUND

DEFENDANT

Coram: Reddy J

Heard : 7 April 2026

Delivered: This judgment was handed down electronically by circulation to the parties' representatives via e-mail. The date and time for hand-down is deemed to be 16h00 on 7 July 2026.

Summary: Road Accident Fund Act 56 of 1996 — liability — motor vehicle collision — mutually destructive versions — credibility of witnesses — approach where two interested witnesses cancel each other out — decisive role of objective evidence — police witness declining to assert correctness of own observations under cross-examination — such evidence incapable of resolving factual dispute in favour of the RAF — Mr.Monyamazeni’s version credible, consistent and corroborated by photographs — insured driver’s version improbable and unsupported — contributory negligence not established — the RAF liable for 100% of Mr. Monyamazeni’s proven damages.

JUDGMENT

Reddy J

Introduction

[1] On 13 April 2021 Mr Paulus Pieter Monyamazeni, (Monyamazeni) was involved in a motor vehicle collision on the R502 road near Orkney. Monyamazeni was the driver of a BMW bearing registration number J[...]. Mr Zuko Nqodi, (Nqodi) was the driver of the other vehicle which bore registration number H[...]. In the context of these facts Nqodi was the insured driver for purposes of the Road Accident Fund Act 56 of 1996 (the Act).

[2] The parties agreed to separate the issues of liability and quantum in terms of Rule 33(4) of the Uniform Rules of Court. Only liability falls for determination. The RAF defended the claim on the basis that Monyamazeni negligence was the sole cause of the collision.

The pleadings

[3] Monyamazeni's version is that Nqodi encroached into his lane of travel whilst negotiating a leftward curve on the R502, striking his vehicle on the driver's right side. His vehicle lost control, spun and came to rest against a tree on the opposing lane. He denied overtaking any vehicle and denied any contributory negligence.

[4] The RAF denied liability. Its case is that Monyamazeni encroached into Nqodi's lane whilst overtaking approximately five vehicles in a convoy, forcing Nqodi to swerve entirely off the road onto the gravel verge. Despite that evasive action, Monyamazeni's vehicle struck Nqodi's vehicle. Contributory negligence was pleaded in the alternative.

The evidence

Monyamazeni's version

[5] On the evening of 13 April 2021, at approximately 19h50, Monyamazeni was travelling from Potchefstroom towards Orkney at approximately 80 km/h with one passenger, a Ms. A Bambo. As Monyamazeni navigated a leftward-curving section of the R502, Nqodi's vehicle suddenly encroached into his lane and struck his car on the right side at the driver's door. Monyamazeni's vehicle spun and came to rest against a tree on the opposing side of the road. He was trapped and had to be extricated by paramedics. Monyamazeni was then conveyed to Wilmed Park Hospital where he underwent surgical treatment for, inter alia, a fractured left ankle.

Nqodi's version

[6] Nqodi testified that at approximately 19h00 he was travelling from Orkney towards Vaalreefs. He observed a convoy of oncoming vehicles from

which Monyamazeni's BMW was overtaking approximately five vehicles, encroaching into his lane of travel. He swerved entirely onto the gravel verge in an attempt to avoid the collision. Notwithstanding this evasive action Monyamazeni's vehicle nonetheless struck his car on the right side. Both vehicles came to rest on his side of the road. Nqodi sustained serious injuries and was hospitalised. He himself lodged a claim against the RAF arising from the same collision, the success of which is contingent on the findings of this Court.

[7] Warrant Officer Obakeng Maila, (Maila) of Orkney Police Station attended the accident scene on the night of 13 April 2021. Maila arrived after the collision had already occurred and found both vehicles at rest on Nqodi's side of the road. He testified that, on his personal observations at the scene, the point of impact was on Mr . Nqodi's side of the road.

[8] Maila prepared the accident report and sketch plan. Under cross-examination Maila acknowledged that the sketch plan depicted the vehicles on incorrect sides of the road and that certain entries in the report were factually inaccurate. Maila offered no satisfactory explanation for those contradictions to which I will return.

The law

[9] What stands out from the evidence is that two mutually destructive accounts were presented. Our law is replete with precedential authority on the technique to be employed to resolve same. In *Stellenbosch Farmers' Winery*

*Group Ltd and Another v Martell Et Cie and Others*¹ the applicable technique was summarised as follows:

‘The technique generally employed by courts in resolving factual disputes of this nature may conveniently be summarised as follows. To come to a conclusion on the disputed issues a court must make findings on (a) the credibility of the various factual witnesses; (b) their reliability; and (c) the probabilities. As to (a), the 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 fact 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.’

[10] In *National Employers’ General Insurance Co Ltd v Jagers*² the following was posited:

‘It seems to me, with respect, that in any civil case, as in any criminal case, the onus can ordinarily only be discharged by adducing credible evidence to support the case of the party on whom the onus rests. In a civil case the onus is obviously not as heavy as it is in a criminal case, but nevertheless where the onus rests on the plaintiff as in the present case, and where there are two mutually destructive stories, he can only succeed if he satisfies the court on a preponderance of probabilities that his version is true and accurate and therefore acceptable, and that the other version advanced by the defendant is therefore false or mistaken and falls to be rejected. In deciding whether that evidence is true or not the court will weigh up and test the plaintiff’s allegations against the general probabilities. The estimate of the credibility of

¹*Stellenbosch Farmers’ Winery Group Ltd and Another v Martell & Cie and Others* 2003 (1) SA 11 (SCA) para 5.

²*National Employers’ General Insurance Co Ltd v Jagers* 1984 (4) SA 437 (ECD) at 440D-441A.

a witness will therefore be inextricably bound up with a consideration of the probabilities of the case and, if the balance of probabilities favours the plaintiff, then the court will accept his version as being probably true. If however, the probabilities are evenly balanced in the sense that they do not favour the plaintiff's case any more than they do the defendant's, the plaintiff can only succeed if the court nevertheless believes him and is satisfied that his evidence is true and that the defendant's version is false.

This view seems to me to be in general accordance with the views expressed by Coetzee J in *Koster Ko-operatiewe Landboumaatskappy Bpk v Suid-Afrikaanse Spoorweë en Hawens* (supra) and *African Eagle Assurance Co Ltd v Cainer* (supra). I would merely stress however that when in such circumstances one talks about a plaintiff having discharged the onus which rested upon him on a balance of probabilities one really means that the court is satisfied on a balance of probabilities that he was telling the truth and that his version was therefore acceptable. It does not seem to me to be desirable for a court first to consider the question of credibility of the witnesses as the trial judge did in the present case, and then, having concluded that enquiry, to consider the probabilities of the case, as though the two aspects constitute separate fields of enquiry. In fact, as I have pointed out, it is only where a consideration of the probabilities fails to indicate where the truth probably lies, that recourse is had to an estimate of relative credibility apart from the probabilities.'

[11] In *De Jager v Grunder*³ the approach where both witnesses are credible was articulated as follows:

‘Waar twee getuies teenstrydige weergawes van ’n insident gee en die Hof nie in staat is om, op grond van hul geloofwaardigheid alleen, te besluit watter weergawe die ware een is nie, moet die Hof sy beslissing baseer op die waarskynlikhede. In sulke gevalle kan ’n getuie selfs as ’n betroubare en eerlike getuie beskou word en tog kan sy weergawe verwerp word omdat dit minder waarskynlik is as die van die ander getuie. ’

³*De Jager v Grunder* 1964 (1) SA 446 (A) at 449H–450A.

[12] It is significant to underscore that where two witnesses give contradictory versions of an incident and the court is unable, on the basis of their credibility alone, to decide which version is the true one, the court must base its decision on the probabilities. In such cases a witness may even be regarded as a reliable and honest witness, yet their version may be rejected because it is less probable than that of the other witness. The use of probabilities as a tool to resolve disputes of fact is worth emphasising.

Assessing the dispute of fact

[13] Monyamazeni was composed and consistent witness who presented his version with clarity. During questioning Monyamazeni did not deviate from the essential features of his version notwithstanding several propositions being suggested to him. Towards this end, Monyamazeni confirmed photographic evidence as accurately depicting the road, which showed a leftward-curving road in his direction of travel, the point of impact, and the resting position of his vehicle against a tree. Monyamazeni confirmed that the impact to his vehicle was on the driver's right side, consistent with his vehicle having been struck whilst navigating the curve on his own side of the road. Monyamazeni denied having made any prior statement to Maila or having contributed to the preparation of the accident report.

[14] In *Santam Beperk v Biddulph*⁴ the court noted that the proper test is not whether a witness is truthful or indeed reliable in all that he says, but whether on a balance of probabilities the essential features of the story which he tells are true. Moreover, a witness who does not deviate from his essential version and has no discernible motive to lie is one whose evidence is in all the

⁴*Santam Beperk v Biddulph* (105/2003) [2004] ZASCA 11 para 10.

circumstances probably true. Monyamazeni's evidence is compelling on both points.

[15] Nqodi's version was substantially compromised by cross-examination which impugned the credibility of same. The finding is applied to great advantage by the following. First, Nqodi introduced for the first time an allegation that Monyamazeni had offered him R5 000 in compensation after the accident, an allegation that shifted to one made to his wife when he was pressed. No mention of this had been made in any prior statement or pleading. Second, Nqodi did not report the matter to the police until approximately one month after the collision.

[16] Third, and most significantly, the five vehicles Nqodi alleged were being overtaken by Monyamazeni are entirely absent from the police case docket. None of their drivers or passengers appear in any statement, a notable omission if such a manoeuvre had in fact occurred on a narrow rural road. Fourth, his own RAF claim supplies a powerful motive to exculpate himself. These contradictions and the lateness of his disclosures bear adversely on his credibility and reliability.

[17] When assessing the evidence of Nqodi against that of Maila the collective improbabilities of Nqodi's version are laid bare. Maila prepared the accident report and sketch plan. Surprisingly Maila acknowledged that the sketch plan depicted the vehicles on incorrect sides of the road and that certain entries in the report were factually inaccurate. Maila was unable to proffer a satisfactory explanation for these inaccuracies. What is more when confronted with the fact that other witnesses' evidence is in stark conflict with his own, Maila declined to assert that his observations were correct and rebuffed the opportunity to state which of the two conflicting versions was untrue. Simply

put, Maila was an evasive witness. It follows that the integrity and reliability of his evidence was severely compromised. Accordingly, Maila's evidence does not assist the RAF and is incapable of resolving the factual dispute in its favour.

Findings

[18] Applying trite principles, I am of the view that Monyamazeni was a credible and reliable witness. Monyamazeni's version was consistent, internally coherent, and corroborated by the objective features of the accident scene. The photographic evidence confirmed the leftward-curving road, the point of impact, the road markings, and the resting position of his vehicle against a tree on the opposing side. These features are entirely consistent with a vehicle that was struck whilst traversing a curve on its own path of travel and was displaced across the road by the impact. Monyamazeni's version accords with those objective features.

[19] Nqodi's version, by contrast, was materially undermined. His credibility was adversely affected by the late introduction and subsequent shift of the R5 000.00 allegation, his failure to report to the police for approximately one month, the absence of any of the five allegedly overtaken vehicles from the entire case docket, and his undisclosed financial interest in the outcome. His version that Monyamazeni was overtaking five vehicles on a narrow rural road at night is, in all the circumstances, improbable. The RAF has not placed before the court any independent witness, or any corroboration of the overtaking allegation. The five vehicles and their occupants remain entirely unaccounted for.

[20] This being the case, the RAF is left with the evidence of Nqodi alone on the central factual dispute. That evidence, for the reasons set out above, is

neither credible nor probable. Monyamazeni's version, by contrast, is credible, reliable, internally consistent, and corroborated by the objective evidence. I am accordingly satisfied that Monyamazeni has established, on a balance of probabilities, that the collision was caused by the negligence of Nqodi in encroaching into his lane of travel.⁵

[21] As regards the plea of contributory negligence, the RAF has adduced no credible evidence of any negligence on Monyamazeni's part beyond the overtaking allegation, which I have found to be improbable and unsupported. Accordingly, the plea of contributory negligence fails.

Costs

[22] Costs follow the event. Monyamazeni has been wholly successful. There is no basis to depart from that general rule.

Order

1. The Defendant is liable for 100% of the Plaintiff's proven or agreed damages arising from the motor vehicle collision that occurred on 13 April 2021.
2. The matter is postponed to a date to be arranged with the Registrar for the hearing of evidence on quantum, which is to serve before Reddy J.
3. The Defendant is ordered to pay the costs of the merits hearing on the party-and-party scale.

⁵ Section 17(1)(a) of the Road Accident Fund Act 56 of 1996; *Meek v SA Mutual Fire & General Insurance Co Ltd* 1975 (2) SA 223 (NPD).

A REDDY
JUDGE OF THE HIGH COURT
NORTH WEST DIVISION, MAHIKENG

Appearances

For the Plaintiff: Advocate G Mokonoto

Instructed by: TP Baloyi Inc
C/O Mokhetle Inc

For the Defendant: Mr M D Mohale

Instructed by : State Attorney,
North West Province.