IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

CASE NO: 12772/2022

(1) REPORTABLE: ~~YES~~/NO

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO

(3) REVISED

DATE 28/07/2026

SIGNATURE

In the matter between:

LEBEA JEFFREY LUCAN **PLAINTIFF**

ID NUMBER: 9[...]

and

ROAD ACCIDENT FUND **DEFENDANT**

LINK NUMBER: 579 0599

JUDGMENT

CORAM: ZITHA, AJ
Heard on: 29th April 2026
Delivered: 28th July 2026

INTRODUCTION

[1] This is a delictual claim for damages as a result of a motor vehicle collision which occurred on the 15th of October 2020 at R510 (Thabazimbi Road) near Thabazimbi. A motor vehicle accident occurred when a tractor with unkown registration details (hereinafter referred to as the insured vehicle) driven at the time by the plaintiff had brake failure and as a result the plaintiff avoided collision with other vehicles and the tractor lost control and overturned. The accident occurred during the plaintiff’s course and scope of his employment with Quality Plant Hire CC (hereinafter referred to as the insured owner). The matter appeared before Court by a way of Default Judgment application on the 29th of April 2026. The Plaintiff was a driver at the time of the collision.

PARTIES

[2]. The plaintiff is **LEBEA JEFFREY LUCAN** an adult male, born on the 02nd June 1992 and who is currently 34 (thirty four years of age). At the time of the collision, the plaintiff was twenty-eight (28) years old.

[3]. The defendant is the **ROAD ACCIDENT FUND**, a juristic person established in terms of section 2(1) of the Road Accident Fund Act 56 of 1996 ("*the Act*") with full legal personality and of address 3[...] I[...] Street, Menlo Park, Pretoria, Gauteng.

COMMON CAUSE

[4]. It is common cause that the Plaintiff was a driver when he had a brake failure of the tractor. The date, place and time of the collision is not in dispute.

ISSUES IN DISPUTE

[5]. The only aspect in dispute is the negligence on the part of the insured owner of the tractor. The was an application in terms of Rule 33(4) of uniform rules, in terms of which the plaintiff seeked to separate merits from quantum. Such an application was granted.

<u>EVIDENCE BEFORE COURT</u>

[6]. The Plaintiff made an application in terms of rule 38(2) and same was granted. The plaintiff relied on the following documents:

6.1. The section 19(f) affidavit.

6.2. The accident report.

6.3. The plaintiff based his claim for damages as a result of the negligence of the owner of the tractor to maintain the tractor in road worthy condition

[7]. The plaintiff thereafter closed it's case.

[8]. Defendant did not call any witnesses to testify. The Defendant had already been barred on the 09th July 2024, and there was no application before the court to uplift the bar.

<u>SUBMISSIONS ON BEHALF OF THE PLAINTIFF</u>

[9]. The plaintiff's counsel submitted that the plaintiff succeeded in establishing, on balance of probabilities, that the insured owner was negligent to maintain the tractor.

The Plaintiff's counsel further submitted that there were no contradictions in the accident report and the Plaintiff's testimony in whole. The plaintiff's version should be accepted.

It was further submitted on behalf of the plaintiff, that in the event that the court finds that the accident was due to the sole negligence of the insured owner that the defendant should be held liable hundred percent (100%) in favour of the plaintiff's agreed and/or proven damages. I hold a same view which I will elaborate later on.

<u>THE LAW</u>

In order to succeed in her claim, Legal Framework and Evaluation of Evidence

[10] Section 17 (1) of the Act reads:

17. Liability of Fund and agents-(1) the fund or an agent shall-

b). 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 <u>due to the negligence or other wrongful act of the driver or of the owner of the motor</u> <u>vehicle</u> or of his or her employee in the performance of the employee's duties as employee." **[my emphasis].**

[11] Section 18 (2) reads:

18. Liability limited in certain cases. –

(2) Without derogating from any liability of the Fund or an agent to pay costs awarded against it or such agent in any legal proceedings, where the loss or damage contemplated in section 17 is suffered as a result of bodily injury to or death of any person who, at the time of the occurrence which caused that injury or death, was being conveyed in or on the motor vehicle concerned and who was an employee of the driver or owner of that motor vehicle and the third party is entitled to compensation under the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993), in respect of such injury or death -…."

[12] Section 19 provides as follows:

*"**19. Liability excluded in certain cases***

The Fund or an agent shall not be obliged to compensate any person in terms of section 17 for any loss or damage-

(a) For which neither the driver nor the owner of the motor vehicle concerned would have

been liable but for section 21.

[13] It is important to note that to determine whether an injured party has a valid claim against the Fund, one must consider the provisions of Section 18. If the injured party was injured in the course and scope of their employment, they are entitled to claim compensation under the Compensation for Occupational Injuries and Diseases Act 130 of 1993 ("COIDA"). If the injury occurred during the course of employment in a motor vehicle accident, the claim must be made through COIDA, and the Fund's liability is limited to any balance not covered by COIDA. In other words, the Fund is only responsible for the remaining amount after the COIDA claim.

[14] In this case, I must also determine whether the plaintiff's claim falls within the scope of section 17 of the Act, specifically assessing whether the plaintiff's injuries resulted from a motor vehicle accident caused by the wrongful and negligent actions of the insured owner.

[15] *Wells and Another v Shield Insurance Co. Ltd and Others*[1] Corbett J stated the following in relation to section 17:

> "The section lays down two prerequisites of liability upon the part of a registered insurance company for damages suffered by a third party as a result of bodily injury. These are (i) that the injury was caused by or arose out of the driving of the insured motor vehicle and (ii) that the injury was due to the negligence or other unlawful act of the driver of the insured vehicle, or the owner or his servant. There are thus two separate enquiries, a fact which is sometimes lost sight of because in most cases the injury is caused by the negligent driving of the insured driving vehicle."

[16] In the unreported decision of *Maatla v Road Accident Fund*[2] the court found that the twofold enquiry referred to in *Wells supra*, had to be answered in the affirmative, namely, that the injuries arose out of a motor vehicle collision and secondly that the owner of the vehicle in terms of the common cause facts was negligent. Accordingly, the court concluded that the defendant should be held accountable for the injuries sustained by the plaintiff.

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[1] *Wells and Another v Shield Insurance Co. Ltd and Others* 1965 (2) SA 865 (C) at 867.

[2] *Maatla v Road Accident Fund (11690/11) [2015] ZAGPPHC 129* (6 March 2015) at para {15].

[17] In order to succeed in her claim, the plaintiff had to establish on a balance of probabilities that her injury arose out of the negligent driving of a motor vehicle and that there is some connection between the driving and her injury.[3] In the present case, the plaintiff will only succeed if he satisfies the Court on a preponderance of probabilities that his version is true and accurate and therefore acceptable. It is trite that the estimate of the credibility of a witness will be inextricably bound up with a consideration of the probabilities of the case.[4]

Explaining what the standard of proof on a balance of probabilities entails, learned author Schwikkard states as follows:[5]

'In civil cases the burden of proof is discharged as a matter of probability. The standard is often expressed as requiring proof on a "balance of probabilities" but that should not be understood as requiring that the probabilities should do no more than favour one party in preference to the other. What is required is that the probabilities in the case be such that, on a preponderance, it is probable that the particular state of affairs existed.'

[18] And, in *Stacey v Kent*,[6] Kroon J wrote:

'The inquiry after the case remains whether the plaintiff has, on a balance of probabilities, discharged the onus of establishing that the collision was caused by negligence attributable to the defendant.'

In the discussion that follows I apply these principles of the law to the facts of the plaintiff's application for the determination of the negligence of the owner of the tractor.

[19] In Ntsala and Others v Mutual and Federal Insurance Co Ltd 1996(2) SA 184(T), the honourable Judge Els. Stated the following:-

"The onus rests on the plaintiff to prove negligence on the part of the defendant's driver".

EVALUATION /APPLICATION OF THE FACTS TO THE LAW

[20] Despite the fact that RAF's defense was not properly placed before the court and or properly pleaded, this Court must be satisfied, on the facts presented by the plaintiff through his evidence that on a preponderance of probabilities, (a) he suffered bodily injury; (b) arising out of the negligent driving of a motor vehicle, (c) the insured owner failed to keep and maintain

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3 *Kemp v Santam Insurance Co Ltd* 1975(2) SA 329 (C) at 330F; *Van Wyk v Lewis* 1924 AD 438 at 444.
4 *National Employers' General Insurance Co Ltd v Jagers* [1984] 4 All SA 622 (E), at 624-5.
5 Schwikkard PJ (*et al*), Principles of Evidence, 4th Ed, 2016, page 627, at 32.7.
6 1995 (3) SA 344 (ECD) at 352I-J.

the tractor in a road worthy condition.

[21] The starting point is that the plaintiff was a single witness. Section 16 of the Civil Proceedings Evidence Act 25 of 1965 provides that judgment may be given in any civil proceedings on the evidence of any single competent and credible witness. In other words, only credible evidence shall be sufficient to enable a Court to give a default judgment.

[22] There is of course no rule of thumb or formula to apply in determining the credibility of a single witness. The trial court will weigh the evidence of the single witness and consider its merits and demerits, and having done so, decide whether it is trustworthy and whether it is satisfied that the truth has been told despite the shortcomings or defects or contradictions in the witness's evidence.[7]

[23] The essence of the plaintiff's testimony is that the tractor had a brake failure and as result he lost control and overturned.

[24] It bears emphasizing that the plaintiff's evidence must be based on facts and nothing else, and certainly not conjecture. There is direct evidence of the accident and how the alleged accident happened.

[25] I am asked to make a finding, from the aforegoing evidence, that the accident took place; and to draw an inference of negligence on the part of the insured owner,

[26] As is trite, there must be positive proven facts from which such inferences can be made. If there are none, the method of inference fails and what is left is mere speculation or conjecture.[8]

[27] On the plaintiff's version, it follows that the plaintiff is the one who must be taken as having possessed knowledge of facts regarding how the accident happened. His evidence was, therefore, crucial. There was an affidavit deposed to by the Plaintiff that formed part of the unchallenged evidence. Such evidence remains admissible. What therefore remains is

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[7] *S v Sauls* 1981 (3) SA 172 (A) at 180E–G.

[8] *S v Essack & another* 1974 (1) SA 1 (A) at 16C-E, quoting with approval *Caswell v Powell Duffryn Associates Collieries Ltd* [1939] 3 All ER 722 at 733.

circumstantial evidence from which it must be inferred that the plaintiff's injury arose from the alleged driving of the motor vehicle; and if so, whether the unknown owner was solely negligent.

[28] The cardinal rule of inferential reasoning is that the inference that is sought to be drawn must be consistent with all the proved facts; if it is not, then the inference cannot be drawn.[9] The inference sought to be drawn must, furthermore, be the 'more natural, or plausible, conclusion from amongst several conceivable ones' when measured against the probabilities.[10] As held in *Ocean Accident and Guarantee Corporation Ltd v Koch* 'plausible' in this context means 'acceptable, credible, suitable'.[11]

[29] In order for this Court to infer that a motor vehicle accident occurred out of which the injury of the plaintiff arose, and that the accident was caused by the sole negligence of the owner, it must be satisfied that the facts that have been set forth by the plaintiff reflect the probability of what took place on 15th of October 2020 at the time and place that he alleges that the tractor overturned.

<u>Single Witness</u>

[30] The plaintiff's testimony is pivotal as it provides the primary account of the circumstances surrounding the accident. While the court recognizes the importance of the plaintiff's perspective, it is essential to note that he stands as a single witness, and his version of events is uncorroborated by any additional evidence or testimony from other witnesses.

[31] It is well established that the burden of proof lies with the plaintiff to demonstrate, on a balance of probabilities, that the injuries sustained were a direct result of the negligence of the insured party.

[32] Notably, the defendant did not call any witnesses to dispute or challenge the plaintiff's account

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[9] *R v Blom* 1939 AD 188 at 202-203.
[10] *SA Post Office v Delacy and Another* 2009 (5) SA 255 (SCA) at para 35; *Cooper and Another v Merchant Trade Finance Ltd* (474/97) [1999] ZASCA 97 (1 December 1999) para 7; *Govan v Skidmore* 1952 (1) SA 732 (N) at 734C-E.
[11] 1963 (4) SA 147 (A) at 159B-D.

of events. This lack of counter-evidence leaves the plaintiff's version unchallenged, offering the court no alternative perspective to consider. The defendant's failure to present evidence contradicting the plaintiff" claims can be seen as an implicit acceptance of them. Although the burden of proof rests with the plaintiff, the defendant's omission to provide any conflicting evidence has a significant impact on the overall evidentiary landscape of this case.

[33] The court acknowledges the unique situation of relying on the testimony of a single witness, but the plaintiff's evidence remains unchallenged and is therefore accepted as it is the only version before the court. Beyond his accepted testimony, no further facts or circumstances were presented to either corroborate or contradict his account.

[35] A key issue before the court is whether the Plaintiff has adequately demonstrated that the Defendant was negligent at the time of the accident. For the defendant to deny liability, it must establish that the plaintiff acted in a manner that fell below the standard of care expected of a reasonably competent driver. This necessitates evidence showing that the plaintiff's actions directly contributed to the accident and the resulting injuries.

[36] After reviewing the evidence presented in this case, the court finds that the defendant has not provided any substantial evidence before the court to support a claim of negligence against the plaintiff. The defendant did not call any witnesses to testify about the circumstances of the accident or offer expert opinions on driving standards and practices. Additionally, no documentation or other forms of evidence were presented that would indicate any wrongdoing or lapse in judgment on the part of the plaintiff at the time of the accident.

[37] In the absence of such evidence, the court cannot conclude that the plaintiff was negligent. The plaintiff's testimony, which stands unchallenged by the defendant, provides a clear account of the events leading up to the accident. There is no basis for the court to infer negligence when the party alleging it has failed to produce any such evidence.

[38] The crux of this case lies in the failure of the vehicle's braking system, which the plaintiff contends was due to the owner's lack of maintenance and failure to keep the vehicle in good working condition. The evidence presented before the court indicates that the plaintiff was operating the vehicle when the brakes failed, leading to a loss of control and, ultimately, the accident. The plaintiff provided credible testimony regarding the accident, describing the circumstances leading up to the brake failure and the subsequent crash, as per the accident report and the section 19(f) affidavit.

[39] In assessing the defendant's liability, the court must determine whether the owner of the vehicle exercised reasonable care in maintaining the vehicle. It is well-established that vehicle owners have a duty to ensure that their vehicles are safe and roadworthy. This duty includes regular inspections and maintenance of critical safety features, such as the braking system. The failure to perform such maintenance may constitute negligence.

[40] In this case, the evidence shows that the braking system was faulty at the time of the accident. No adequate maintenance records were presented by the defendant to demonstrate that proper care had been taken to ensure the vehicle was in good working order. The absence of documentation reflecting regular servicing of the vehicle or any corrective measures taken to address known issues further supports the claim of negligence.

[41] Consequently, the court concludes that the owner of the vehicle, failed to meet the required standard of care in maintaining the vehicle in a safe and operable condition. The brake failure clearly indicates negligence, as it directly contributed to the accident and the injuries sustained by the plaintiff.

CONCLUSION

[42] In conclusion, the court determines that the accident resulted from the negligence of the vehicle owner for failing to maintain the vehicle in proper driving condition, particularly due to the malfunction of the braking system.

[43] I am satisfied that the plaintiff has met the burden of proof to establish that the defendant is 100% liable for the damages he sustained in the aforementioned motor vehicle collision.

[44] From plaintiff's own testimony the court is satisfied that on a balance of probabilities he has discharged the onus placed on him. The court is satisfied that; on a balance of probabilities the Plaintiff has discharged the onus of showing that the insured owner was negligent

[45] Taking all the evidence into consideration as well as case law referred to above the court is satisfied that the Defendant should be held liable Hundred percent (100%) of the plaintiff's agreed and /or proven damages.

ORDER

[46] Accordingly, I make the following order:

a) The defendant is held liable Hundred percent (100%) of the plaintiff's proven and/or agreed damages.

b) The Defendant is directed to pay the costs of the trial.

c) Separation in terms of Rule 33(4) is granted.

d) The application in terms of Rule 38(2) is granted.

e) The trial quantum aspect of the trial is postponed sine die.

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ZITHA. AJ

Acting Judge of the High Court

Gauteng Division

Pretoria

Appearances:

On behalf of the plaintiff: Adv. M Sithole

Instructed by: A Ndlovu Attorneys INC.

On behalf of the defendant: No appearance